

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
December 4, 2017**

Members Present:

Mary Rogers
Jeff Finlay
Donald Oroian
Denise Ojeda
Roger Martinez
Maria Cruz
Alan Neff
Jesse Zuniga
Seth Teel
George Britton Jr.
Henry Rodriguez

Staff:

Catherine Hernandez, Planning Manager
Joseph Harney, City Attorney
Logan Sparrow, Principal Planner
Oscar Aguilera, Planner

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Ms. Rogers, called the meeting to order and called roll of the applicants for each case.

Herman Perez, World Wide Languages-Interpreter, present.

Case Number: A-18-001
Applicant: Keller Customer Signs
Owner: JD Keller
Council District: 8
Location: 4400 Block of Loop 1604 West
Legal Description: Lot 10, Block 1, NCB 17700
Zoning: "C-3 UC-1 MLOD-1 AHOD ERZD" General Commercial Urban Corridor Overlay Camp Bullis Military Lighting Overlay Airport Hazard Overlay Edwards Recharge Zone District
Case Manager: Oscar Aguilera, Planner

Request

A request for a 39 foot variance from the 200 feet minimum required distance between two signs on a sign master plan development agreement, as described in Chapter 28, Section 28-49, to allow two signs to be 161 feet apart.

Oscar Aguilera, Planner presented the background information and staff's recommendation of the variance. He indicated 7 notices were mailed, 0 returned in favor, and 0 returned in opposition with no neighborhood association.

JD Keller, representative stated since originally erecting the sign the property has changed owners and the Sign master plan needed to be updated the.

Andrew Perez, Chief Sign Inspector clarified it was in an Urban Corridor area and answered the Boards questions regarding the case.

The following Citizen appeared to speak.

Jimmy Ellis, applicant stated the only reason they applied for the variance is because of the SAWS easement which change the boundary lines.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-18-011 closed.

MOTION

A motion was made by **Mr. Martinez**. "Regarding Appeal No A-18-001, a request for a 39 foot variance from the 200 feet minimum required distance between two signs on a sign master plan development agreement to allow two signs to be 161 feet apart, subject property being Lot 10, Block 1, NCB 17700, 4400 Block of Loop 1604 West, applicant being Keller Customer Signs.

I move that the Board of Adjustment grant the applicant's request for the variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property; and.*

The sign master plan development agreement did not include the property where the tire store is located. The tire store currently has signage that interferes with the applicant's signage. The property owner requires signage in order to promote his business.

3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*
 - A. *Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.*

The request is not out of character with the surrounding commercial properties. The signs are simply located too close to another.

B. Granting the variance will not have a substantially adverse impact on neighboring properties.

The sign master plan states that all land owners agree to the terms of the plan and that they and their successors will abide by the plan. The proposed variance will not have an adverse impact on neighboring properties as many of the properties surrounding the subject property or other commercial properties have similar signage and front Loop 1604.

C. Granting the variance will not substantially conflict with the stated purposes of this article.

The requested variance does not conflict with the stated purpose of the chapter. The requested minimum distance provides reasonable limits on signage to help preserve economic cornerstones. Further, the request will not create traffic hazards by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs.” The motion was seconded by Ms. Cruz.

**AYES: Martinez, Cruz, Finlay, Rodriguez, Ojeda, Britton, Neff, Teel, Oroian, Zuniga, Rogers
NAYS:None**

THE VARIANCE IS GRANTED.

Case Number:	A-17-214
Applicant:	Bill Shrum
Owner:	Halle Properties, LLC
Council District:	10
Location:	13429 Nacogdoches Road
Legal Description:	Lot 66, Block 1, NCB 15716
Zoning:	“C-3 AHOD” General Commercial Airport Hazard Overlay District
Case Manager:	Logan Sparrow, Principal Planner

Request

A request for 1) an eleven foot variance from the 15 foot Type B bufferyard, as described in Section 35-510, to allow a four foot deep bufferyard in the rear yard and 2) a request for a nine foot variance from the ten foot Type A bufferyard, also described in Section 35-510, to allow a one foot deep bufferyard in the front of the property.

Logan Sparrow, Principal Planner presented the background information and staff's recommendation of the variance. He indicated 22 notices were mailed, 0 returned in favor, and 0 returned in opposition. No response from the El Chaparral/ Fertile Valley Neighborhood Association.

Bill Shrum, representative stated because of the TXDOT dedication, it triggered the need for a variance. He also stated they would beautify with area with shrubs.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-214 closed.

MOTION

A motion was made by **Ms. Ojeda**. "Regarding Appeal No A-17-214, a request for 1) an eleven foot variance from the 15 foot Type B bufferyard to allow a four foot deep bufferyard in the rear yard and 2) a request for a nine foot variance from the ten foot Type A bufferyard to allow a one foot deep bufferyard in the front of the property, subject property being Lot 66, Block 1, NCB 15716, situated at 13429 Nacogdoches Road, applicant being Bill Shrum.

I move that the Board of Adjustment grant the applicant's request for the variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

The building setback line also helps to separate incompatible uses. In this case, the required setback is 30 feet. The site plan submitted shows that the proposed Discount Tire is located nearly 60 feet from the shared property line with adjacent single-family uses. Because the applicant is nearly doubling the required setback, staff finds that reducing the rear bufferyard is not contrary to the public interest. Further, several properties along Nacogdoches Road, including the Professional Office to the east, and other commercial properties across the street, have minimal front bufferyards.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition present in this case is that the proposed building is to be located nearly twice as far as is required from the rear property line. Further, the reduced front bufferyard is not unlike other commercial properties located along Nacogdoches Road.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The intent of the code is to enhance urban streetscapes with appropriate landscape buffering. The request to reduce the rear or the front bufferyard depth is unlikely to detract from the corridor.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The variance will not authorize the operation of a use other than those uses specifically authorized in the “C-3 AHOD” General Commercial Airport Hazard Overlay District.

- 5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

Adjacent property is unlikely to be harmed by either request. The homes to the rear are provided nearly double the required rear setback, and other properties along Nacogdoches already enjoy reduced, or no, front bufferyards.

- 6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The unique circumstance present in this case is that the proposed building is located nearly 60 feet from the rear property line and that other commercial properties along Nacogdoches Road already enjoy reduced front bufferyards.” The motion was seconded by **Mr. Oroian.**

AYES: Ojeda, Oroian, Zuniga, Britton, Rodriguez, Martinez, Cruz, Finlay, Neff, Teel, Rogers
NAYS: None

THE VARIANCE HAS BEEN GRANTED.

Case Number:	A-17-206
Applicant:	Angel Sandoval and Martha Gonzalez
Owner:	Angel Sandoval and Martha Gonzalez
Council District:	6
Location:	7107 Gallery Ridge
Legal Description:	Lot 42, Block 28, NCB 18520
Zoning:	“R-6” Residential Single-Family District
Case Manager:	Oscar Aguilera, Planner

Request

A request for a special exception, as described in Section 35-399.04 to allow an eight foot tall solid fence in the rear yard of the property.

Oscar Aguilera, Planner, presented background, and staff’s recommendation of the variance requests. He indicated 30 notices were mailed, 0 returned in favor, and 0 returned in opposition and no neighborhood association.

Martha Gonzalez and Angel Sandoval, requested interpreter services, stated they built the fence for her safety reasons and to help calm his son who is disabled. They have had property stolen on multiple occasions and have video evidence of the thieves jumping the fence and police reports.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A 17-206 closed.

MOTION

A motion was made by **Mr. Rodriguez** "Regarding Appeal No. A-17-206, a request for a special exception to allow an eight foot tall solid screen fence in the rear yard of the property, subject property being Lot 42, Block 28, NCB 18520, situated at 7107 Gallery Ridge, applicant being Angel Sandoval and Martha Gonzalez.

I move that the Board of Adjustment grant the applicant's request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter.*

The request for an eight foot fence in the rear of the property is in harmony with the spirit and purpose of the chapter as the fence is intended to protect the property.

- B. *The public welfare and convenience will be substantially served.*

Allowing the property owner to place an eight foot fence on the rear property will help to prevent acts of trespass in the future, ensure the safety of the owner's property. Therefore, the public welfare and convenience will be substantially served.

- C. *The neighboring property will not be substantially injured by such proposed use.*

Granting the requested special exception will not substantially injure the neighboring properties as the fence will be able to protect the subject property from trespass and other criminal acts.

- D. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*

The eight foot rear fence would not significantly alter the overall appearance of the district and would be able to provide added security for the property owner.

- E. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*

The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow an eight foot tall rear fence in order to add security for the owner. Therefore, the requested special exception will not weaken the general purpose of the district." Mr. Zuniga seconded the motion.

AYES: Rodriguez, Cruz, Ojeda, Oroian, Britton, Finlay, Teel, Neff, Rogers
NAYS: Martinez, Zuniga

THE SPECIAL EXCEPTION IS GRANTED

Case Number:	A-17-208
Applicant:	Edwin Mickelson
Owner:	Michael & Patricia Dennis
Council District:	1
Location:	103 Devine Road
Legal Description:	The South 159.5 Feet of the East 75 Feet of Lot 2, NCB 35 and Lot 34 and the South 75 Feet of Lot 35, NCB 6759
Zoning:	“R-5 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Oscar Aguilera, Planner

Request

A request for a special exception, as described in Section 35-399.04, to allow a six foot tall solid screen fence in the front yard of the property.

Oscar Aguilera, Planner, presented the background information, and staff’s recommendation of the variance request. He indicated 9 notices were mailed, 0 returned in favor, 0 returned in opposition and no neighborhood association.

Ed Mickelson, contractor stated the fence is for safety and protection. Traffic has increased and with the addition of multiple neighbors he feels the fence is needed.

Patricia Diaz Dennis, owner expressed the need for the fence due to the student housing and Sunshine cottage which opened in the neighborhood along with the increased traffic flow caused by the businesses

No Citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-208 closed.

MOTION

A motion was made by **Ms. Ojeda**, “Regarding Appeal No. A-17-208, a request for a special exception to allow a six foot tall solid screen fence in the front yard of the property, subject property being The South 159.5 Feet of the East 75 Feet of Lot 2, NCB 35 and Lot 34 and the South 75 Feet of Lot **53**, NCB 6759, situated at 103 Devine Road, applicant being Ed Mickelson.

I move that the Board of Adjustment grant the applicant’s request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we

have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

A. The special exception will be in harmony with the spirit and purpose of the chapter.

The request for a solid six foot fence in the front property line is in harmony with the spirit and purpose of the chapter as the fence is intended to protect the property and there are similar fences within the district. Additionally, the lot is large enough to qualify for the “Large Lot Fencing” provisions of the code. These provisions permit a six foot tall front yard fence by right, but it must be predominately open.

B. The public welfare and convenience will be substantially served.

Allowing the property owner to place a six foot fence in the front of the property will help to prevent acts of trespass in the future, ensure the safety of the owner’s property, and give the property owners privacy. Therefore, the public welfare and convenience will be substantially served.

C. The neighboring property will not be substantially injured by such proposed use.

Granting the requested special exception will not substantially injure the neighboring properties as the fence will be able to protect the subject property from trespass and provide privacy. In addition there are similar fences in height within the neighboring district.

D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.

The solid six foot fencing around the front property line would not significantly alter the overall appearance of the district since there are similar fences in height. In addition, the applicant will comply with the Clear Vision Requirements.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow a solid six foot tall front fence in order to add security and privacy for the owner. Therefore, the requested special exception will not weaken the general purpose of the district.” Mr. Rodriguez seconded the motion.

AYES: Ojeda, Rodriguez, Cruz, Finlay, Teel, Britton, Oroian, Martinez, Zuniga, Kuderer, Rogers
NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

The Board of Adjustment recessed for a 10 min break at 2:30pm and reconvened and returned at 2:40pm.

Case Number: A-17-211
Applicant: Stacy and Mitchell Walker
Owner: Stacy and Mitchell Walker
Council District: 1
Location: 106 Magnolia Drive
Legal Lot 2, Block 3, NCB 6531
Description:
Zoning: “R-4 CD H RIO-1 AHOD” Residential Single-Family River Road Historic River Improvement Overlay Airport Hazard Overlay District with Conditional Use for Two Dwelling Units
Case Manager: Logan Sparrow, Principal Planner

Request

A request for four foot variance from both the five foot side and rear yard setbacks, as described in Section 35-371, to permit a carport/accessory dwelling unit one foot from the side and rear property lines.

Logan Sparrow, Principal Planner, presented background information, and staff’s recommendation of the variance requests. He indicated 37 notices were mailed, 0 returned in favor, 2 returned in opposition and no response from the River Road Neighborhood Association.

Holly Sanchez, representative clarified the dwelling was duplex and now a single family dwelling. She explained they are proceeding with this request on a step by step basis and are seeking a variance for the two car carport.

The Following citizens appeared to speak.

Lawrence De Martino, spoke in opposition.
Christopher Coreen, yielded time to Mr. De Martino.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-211 closed.

MOTION

A motion was made by **Mr. Teel**. “Regarding Appeal No A-17-211, a request for a four foot variance from both the five foot side and rear yard setback, to permit a carport/accessory dwelling unit one foot from the side and rear property lines, subject property being Lot 2, Block 3, NCB 6531, situated at 106 Magnolia Drive, applicant being Stacy and Mitchell Walker.

I move that the Board of Adjustment grant the applicant's request for the variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

Many homes within the historic district have reduced setbacks; several homes were built prior to 1938 and had no setback requirements at all. Other homes, including the subject property, were built when side setback requirements were only three feet, and certain provisions of the code allowed for detached structures to be built on property lines. In that so many other structures in the neighborhood have reduced setbacks, the Board finds that the request is not contrary to the public interest.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition present in this case is that reduced setbacks are an established characteristic within the community. Despite this, the neighborhood doesn't feel cramped, and this request is unlikely to affect that balance.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The intent of the code is to provide for consistent development and to establish room for maintenance, and to reduce the threat of fire spread. In that the structure will be fire rated, and because the proposal is consistent within the context of the community in which it is located, the Board finds that the spirit of the ordinance will be observed.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The variance will not authorize the operation of a use other than those uses specifically authorized by the "R-4 CD H RIO-1 AHOD" Residential Single-Family River Road Historic River Improvement Overlay Airport Hazard Overlay District with Conditional Use for Two Dwelling Units zoning.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

In that many homes within the neighborhood enjoy either primary dwelling or accessory structures within restricted setbacks, the Board finds that the essential character of the community is unlikely to be negatively affected.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The unique circumstance present in this case is that the requested design is not atypical within the context of the community in which it is located. This request is not merely financial in nature.” The motion was seconded by **Ms. Ojeda.**

AYES: Ojeda, Cruz, Britton, Rodriguez

NAYS: Teel, Finlay, Martinez, Zuniga, Oroian, Neff, Rogers

THE VARIANCE FAILED

Case Number:	A-17-207
Applicant:	Robert Lee
Owner:	Lindlee, LLC
Council District:	5
Location:	315 Grove Avenue
Legal Description:	Lot 18, Block 7, NCB 2981
Zoning:	“MF-33 AHOD” Multi-Family Airport Hazard Overlay District
Case Manager:	Logan Sparrow, Principal Planner

Request

A request for a 13 foot variance from the 20 foot garage setback requirement, as described in Section 35-516(g), to allow a garage to be seven feet from the property line.

Logan Sparrow, Principal Planner, presented background information, and staff’s recommendation of the variance request. He indicated 24 notices were mailed, 0 returned in favor, 0 returned in opposition and no response from the Roosevelt Park Neighborhood Association.

Eliot Lee, applicant, explained that he was approved for a permit as designed (carport), but now wish to add doors and that would require a variance. He went on to say after speaking with the City they agreed the property owner will improve and maintain the alley for use.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-17-207 closed.

MOTION

A motion was made by **Mr. Finlay.** “Regarding Appeal No A-17-207, a request for a 13 foot variance from the 20 foot garage setback requirement to allow a garage to be seven feet from the property line, subject property being Lot 18, Block 7, NCB 2981, situated at 315 Grove Avenue, applicant being Robert Lee.

I move that the Board of Adjustment grant the applicant’s request for the variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of

the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

The public interest is served by setbacks that ensure that the location of parked vehicles does not interfere with the safety of other motorists and pedestrians. Because the property owner is not seeking to reduce the garage setback from a public street, but rather a private ingress/egress easement, the only persons affected by the variance would be those living on the property.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition present in this case is that the reduction would only be applicable along the property line near a shared access easement, not along a public street.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The intent of the code is to prevent vehicles parking on driveways and blocking the public right-of-way. Because the requested variance would only reduce the setback along the side property line, the public will be unaffected by the request.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The variance will not authorize the operation of a use other than those uses specifically authorized in the “MF-33 AHOD” Multi-Family Airport Hazard Overlay District.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

In that the request would only allow the garage to be nearer to the side property line, where no adjacent homes are located, the Board finds that the request is unlikely to harm adjacent properties.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The unique circumstance present in this case is that the requested variance has no impact on the public right-of-way. The request is not merely financial in nature.” Mr. Oroian seconded the motion.

**AYES: Finlay, Zuniga, Rodriguez, Cruz, Finlay, Teel, Rogers
NAYS: Oroian, Britton, Martinez, Ojeda**

THE VARIANCE REQUEST FAILS

Case Number: A-17-213
Applicant: Mariana Munante
Owner: Lima Square, LLC
Council District: 2
Location: 601 and 603 Coleman Street
Legal Description: Lot 37, Block 1, NCB 12831
Zoning: "R-6 CD" Residential Single Family District with Conditional Use for a Duplex
Case Manager: Logan Sparrow, Principal Planner

Request

A request for a three foot variance from the five foot side yard setback, as described in Section 35-310.01, to allow two homes to be as near as two feet from the side property line.

Logan Sparrow, Principal Planner, presented background, and staff's recommendation of the variance requests. He indicated 24 notices were mailed, 1 returned in favor, and 0 returned in opposition and no response from the Government Hill Neighborhood Association.

Mariana Munante, applicant stated she hired 3 different contactors with different results. Ultimately was notified she needed a variance to continue the building. She was originally given a permit but the property which was originally surveyed incorrectly.

Mark Benavides, contractor clarified the correct measurements for the property and asked if part of the request could be voted on so that construction can begin.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A 17-213 closed.

MOTION

A motion was made by **Mr. Neff**. "Regarding Appeal No A-17-213, a request for a three foot variance from the five foot side yard setback to allow two homes to be as near as two feet from the side property line., subject property being Lot 37, Block 1, NCB 12831, situated at 601 and 603 Coleman Street, applicant being Lima Square, LLC.

I move that the Board of Adjustment grant the applicant's request for the variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

The requested variance most directly affects the property to the west. The applicant also owns the property to the west. Because the person most-directly affected by the variance is the owner of the property, and because the request will have minimal impact on other property owners, the request is not contrary to the public interest.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The special condition present in this case is that the contractor incorrectly identified the property line, and has placed the foundations too close to the side property line. Further, many homes within Government Hill have reduced setbacks. Lastly, only portions of the foundations, as currently placed, are violating the setback. A literal enforcement of the ordinance may result in unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The intent of the code is to provide for consistent development and to establish room for maintenance, and to reduce the threat of fire spread. The structure still provides ample room for fire separation and maintenance. Granting the requested variance will result in substantial justice.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The variance will not authorize the operation of a use other than those uses specifically authorized by the “R-6 CD” Residential Single Family District with Conditional Use for a Duplex zoning.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

In that other homes within the neighborhood enjoy reduced setbacks, and because only portions of the structures are located within restricted setbacks, the Board finds that the essential character of the community is unlikely to be negatively affected.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The unique circumstance present in this case is that the contractor failed to identify the property line appropriately; this request is not merely financial in nature, nor is it the fault of the owner of the property.” The motion was seconded by Mr. Oroian.

**AYES: Neff, Oroian, Martinez, Zuniga, Finlay, Teel, Rodriguez, Cruz, Ojeda, Britton, Rogers
NAYS: None**

THE VARIANCE IS GRANTED

APPROVED BY: Mary E Rogers OR 12-18-17
Chairman Vice-Chair

DATE: _____

ATTESTED BY: [Signature] DATE: 12/19/17
Executive Secretary