

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
December 18, 2017**

Members Present:	Jeff Finlay Mary Rogers Dr. Lisa Zotarelli Donald Oroian Denise Ojeda Henry Rodriguez Maria Cruz Alan Neff Jesse Zuniga Seth Teel John Kuderer George Britton Jr.	Staff: Catherine Hernandez, Planning Manager Joseph Harney, City Attorney Logan Sparrow, Principal Planner Oscar Aguilera, Planner
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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-17-209

Applicant: Kevin Hull
Owner: Universal Toyota
Council District: 10
Location: 12102 IH 35 N
Legal Description: Lot 7, Block 1, NCB 17622
Zoning: "L IH-1 AHOD" Light Industrial Northeast Gateway Corridor
 Overlay Airport Hazard Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for 1) an 8.75 foot variance from the 26.25 foot height limit for secondary signage to allow a sign to be 35 feet tall, and 2) a request from the Northeast Gateway Corridor Overlay maximum sign height of 30 feet to allow the same sign to be 35 feet tall.

Oscar Aguilera, Planner presented the background information and staff's recommendation of the variance. He indicated 15 notices were mailed, 0 returned in favor, and 0 returned in opposition with no neighborhood association.

Brian Crowsey, representative stated the sign simply needs to be updated according to Toyota's Policies and standards, requiring the Variance.

Andrew Perez, Chief Sign Inspector corrected the exact specifics of the size of the sign.

The following Citizen appeared to speak.

Dayro Hernandez, spoke in favor.

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-7-209 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Regarding Appeal No. A-17-209, request for 1) an 8.75 foot variance from the 26.25 foot height limit for secondary signage to allow a sign to be 35 feet tall, and 2) a request from the Northeast Gateway Corridor Overlay maximum sign height of 30 feet to allow the same sign to be 35 feet tall, subject property being Lot 7, Block 1, NCB 17622, situated at 12102 IH 35 N, applicant being Kevin Hull.

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 proposed signs will replace the current signage and, when completed, the new signs will be identical in height and size to the existing signs. The new signage will comply with Toyota's new requirements in order to better promote the business and increase visibility.

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

The strict enforcement of this article will limit the dealerships ability to provide adequate signage for their facility and to comply with Toyota's marketing requirements.

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

The ordinance intends to protect the public from over-crowding of signage while providing businesses the opportunity to advertise. The proposed variance will not have an adverse impact on neighboring properties as many of the properties surrounding the

subject property are also auto dealers or other commercial properties with similar signage. The height and size will be similar to the existing signage.

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 “L IH-1 AHOD” Light Industrial Northeast Gateway Corridor Overlay 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.*

The requested height 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.

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.*

Universal Toyota is proposing this variance to make the property meet the branding actions required by Toyota and to maintain the longstanding active commercial use of the existing signage on the property.” The motion was seconded by Mr. Rodriguez.

AYES: Kuderer, Rodriguez, Cruz, Ojeda, Britton, Neff, Teel, Dr. Zottarelli, Oroian, Zuniga, Rogers

NAYS:None

THE VARIANCE IS GRANTED.

Case Number: A-18-006

Applicant: Site Enhancement Services
 Owner: MB San Antonio Brooks LTD Partnership
 Council District: 3
 Location: 3147 SE Military Drive
 Legal Description: Lot 24, NCB 10979
 Zoning: “C-2 AHOD” Commercial Airport Hazard Overlay District
 Case Manager: Oscar Aguilera, Planner

Request

A request for a 75 foot variance from the 150 foot 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 75 feet apart.

Oscar Aguilera, Planner presented the background information and staff's recommendation of the variance. He indicated 6 notices were mailed, 0 returned in favor, and 0 returned in opposition. No response from the Highland Hills Neighborhood Association.

Shawn Smith, representative stated this sign was the best option for Olive Garden that are within the rules of the UDC.

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-18-006 closed.

MOTION

A motion was made by **Mr. Rodriguez**. "Regarding Appeal No. A-18-006, a request for a 75 foot variance from the 150 foot minimum required distance between two signs on a sign master plan development agreement to allow two signs to be 75 feet apart, subject property being Lot 24, NCB 10979, located at 3147 SE Military Drive, applicant being Site Enhancement Services.

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 applicant stated that the proposed Olive Garden would suffer an unnecessary hardship as this condition existed with the previous tenant. The previous tenant had a freestanding sign at the existing location and removed the sign cabinet. The pole and foundation for the sign were left at the property. The applicant would like to place the Olive Garden Sign at the exact location where the foundation and previous pole are, since there is a lack of way finding services on the east side of the building and to effectively make the business visible to westbound motorists. The property owner requires signage in order to promote the 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 and the sign is simply located too close to another.

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

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 SE Military Drive.

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. Ojeda.

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

NAYS: None

THE VARIANCE HAS BEEN GRANTED.

Case Number: A-18-010

Applicant: Christus Santa Rosa Medical Center
Owner: Christus Santa Rosa Medical Center
Council District: 6
Location: 8703 Bandera Road
Legal Description: Lot 5, Block 3, NCB 17929
Zoning: “C-3 AHOD” General Commercial Airport Hazard Overlay District
Case Manager: Oscar Aguilera: Planner

Request

A request for 1) a six foot variance from the 40 foot height limit to allow a sign to be 46 feet tall and 2) a request for a 28.5 square foot variance from the 240 square foot area limitation to allow a sign to be 268.5 square feet.

Oscar Aguilera, Planner, presented background, and staff’s recommendation of the variance requests. He indicated 21 notices were mailed, 0 returned in favor, and 0 returned in opposition and no neighborhood association.

Jim Givins, gave a presentation regarding the property. The representative stated the request is for the width of the sign. They wish for the height to stay the same for a better view. Reducing it they feel will be a disadvantage.

The Following citizens appeared to speak.

Michelle Debs: spoke in opposition.

Angie Lambert: spoke in favor.

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-8-010 closed.

MOTION

A motion was made by **Mr. Teel** "Regarding Appeal No. A-18-010, a request for 1) a six foot variance from the 40 foot height limit to allow a sign to be 46 feet tall and 2) a request for a 28.5 square foot variance from the 240 square foot area limitation to allow a sign to be 268.5 square feet, subject property being Lot 5, Block 3, NCB 17929, located at 8703 Bandera Road, applicant being Christus Santa Rosa Medical Center.

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 proposed emergency center would like to replace an existing freestanding sign with the same height of 46 feet and increase the square footage to 268.5. The applicant will suffer an unnecessary hardship if the variance is not approved. The applicant cannot advertise the Emergency Center at this location due to the existing trees to the north obstructing the visibility of the signs. The property owner requires signage in order to promote the 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 and the sign will be blocked by the existing trees.

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

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.

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 height and increase of the square footage 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." Mr. Neff seconded the motion.

AYES: Teel, Neff, Rodriguez, Zuniga, Cruz, Ojeda, Oroian, Britton, Dr. Zottarelli, Kuderer, Rogers

NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-18-005

Applicant: Esther Ponce
Owner: Esther Ponce
Council District: 2
Location: 1220 Wyoming Street
Legal Description: East 61.5 Feet of Lot 16, Block 111, NCB 45
Zoning: "MF-33 AHOD" Multi-Family Airport Hazard Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for a special exception, as described in Section 35-399.01, to allow a one operator beauty/barber shop within a single-family home.

Oscar Aguilera, Planner, presented the background information, and staff's recommendation of the variance request. He indicated 26 notices were mailed, 1 returned in favor, 0 returned in opposition and no response from the Denver Height Neighborhood Association.

Esther Ponce, owner would like to renew her Special Exception after following all regulations. She provided 5 letters of support. She also stated her business is by appointment only and has made various improvements to the property.

The following 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-18-005 closed.

Ghalei Rodriguez: spoke in opposition.

Debra Loma: spoke in favor.

John Casey: spoke in favor.

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-18-005 closed.

MOTION

A motion was made by **Mr. Neff**, "Regarding Appeal No. A-18-005, a request for special exception to allow a four-year renewal for a one-operator beauty shop, subject property being East 61.5 Feet of Lot 16, Block 111, NCB 45, situated at 1220 Wyoming Street, applicant being Esther Ponce.

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 spirit and purpose of the chapter is to ensure that the operation of a one-operator beauty/barber shop does not negatively impact the character of the community or the quality of life of neighbors. The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code. Staff finds that the special exception will be in harmony with the spirit and purpose of the chapter.

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

The public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood. The proposed hours of operation will be limited to Tuesday through Saturday from 7 am to 7 pm, by appointment only.

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

The requested special exception is not likely to negatively impact adjacent property owners because the home is in character with those around it. During field visits staff noted nothing visible from the street that would indicate the presence of a beauty/barber shop. There is also a driveway capable of providing any necessary parking for the proposed use.

- 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 requested special exception is not likely to alter the essential character of the district as the property is still used, primarily, as residence.

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

The primary use of the dwelling remains residence. The one-operator barber/beauty shop will have restricted hours, which are established by the Board of Adjustment. The

applicant has met all other requirements established by the Unified Development Code.” Ms. Ojeda seconded the motion.

AYES: Teel, Neff, Ojeda, Rodriguez, Cruz, Britton, Oroian, Dr. Zottarelli, Zuniga, Kuderer, Rogers

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

The Board of Adjustment recessed for a 10 min break at 3:10pm and reconvened and returned at 3:20pm.

Mr. Kuderer left the Meeting at 3:10pm and was replaced by Mr. Finlay.

Case Number: A-17-210

Applicant: Cesar Galvez

Owner: Cesar Galvez

Council District: 6

Location: 6515 Tezel Road

Legal Description: Lot 1, Block 9, NCB 18484

Zoning: “C-1 AHOD” Light Commercial Airport Hazard Overlay District and
“C-3R AHOD” General Commercial Restrictive Alcoholic Sales
Airport hazard Overlay District.

Case Manager: Logan Sparrow, Principal Planner

Request

A request for a variance from the requirement that a building located in the “C-1” zone have at least 30 percent of the façade dedicated to windows.

Logan Sparrow, Principal Planner, presented background information, and staff’s recommendation of the variance requests. He indicated 31 notices were mailed, 0 returned in favor, 0 returned in opposition and no response from the Great Northwest Neighborhood Association.

Cesar Galaz, applicant stated he was not aware of the 30% need for window for his structure and is asking for a 25% variance to deter any theft. 30% windows will cause a distraction for drivers as well as for their Congregants.

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-17-210 closed.

MOTION

A motion was made by **Mr. Oroian**. “Regarding Appeal No. A-17-210, request for a 25 percent variance from the requirement that a building located in the “C-1” zone have at least 30 percent of the façade dedicated to windows, to allow the building to have 5 percent of the façade dedicated to windows, subject property being Lot 1, Block 9, NCB 18484, situated at 6515 Tezel Road, applicant being Cesar Galvez.

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 design elements intended to create a cohesive streetscape along light commercial corridors. The applicant is not proposing any window front retail operation, but is rather intending to develop the property as a church. Staff finds that the requirement for window dedication would be out of place on the proposed development.

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

The special condition present in this case is the type of the proposed development. The applicant has stated that the church use would not benefit from the window dedication and that the operation of a church may be harmed by it.

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

The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. The intent of the code is to create a window shopping experience along light commercial corridors. That intent does not translate to the proposed church use.

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-1 AHOD” Light Commercial Airport Hazard Overlay District and “C-3R AHOD” General Commercial Restrictive Alcoholic Sales 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.*

It is unlikely that the variance will harm adjacent property in that there are no adjacent commercial properties. The subject property is a stand-alone commercial use, surrounded entirely by single-family development.

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 the type of proposed development. This is not the fault of the owner of the property, nor is this issue merely financial in nature.” The motion was seconded by **Mr. Zuniga.**

AYES: Oroian, Zuniga, Teel, Neff, Ojeda, Cruz, Finlay, Britton, Rodriguez, Dr. Zottarelli, Rogers

NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-18-021

Applicant: Tobias Stapleton
Owner: Tobias Stapleton
Council District: 1
Location: 205 Ostrom Drive
Legal Description: Lots 1 and 2, NCB 69389
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: Cory Edwards

Request

An appeal of the Historic Preservation Officer’s decision to deny a request for demolition of a structure.

Logan Sparrow, Principal Planner, presented background information, and staff’s recommendation of the variance request. He indicated 33 notices were mailed, 0 returned in favor, 15 returned in opposition and 0 response from the River Road Neighborhood Association

Corey Edwards, Office of Historical Preservation, gave a presentation explaining the office’s decision regarding the appeal. After many meetings and careful consideration the OHP believes the burden of proof has not been met to approve the variance.

Tobias Stapleton: applicant went into detail regarding his request with a power point presentation with a timeline of events and answered the Boards questions.

The following citizens appeared to speak.

Mimi Quintana: spoke in opposition
David Schmidt: spoke in opposition
David McDermott: spoke in opposition
Jim Cullum: spoke in opposition
Patty Ziontz: spoke in opposition
Larry de Martino: spoke in opposition
Christopher Green: spoke in opposition
Darla Piner: spoke in opposition
Rawly Wood: spoke in opposition
Kim Wood: spoke in opposition
Anna Ramirez: spoke in opposition
George Nash: spoke in opposition
Myfie Moore: spoke in opposition

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-18-021 closed.

MOTION

A motion was made by **Mr. Teel**. "Regarding Appeal No A-18-021, request for an appeal of the Historic Preservation Officer's decision to deny a request for demolition of a structure, subject property being Lots 1 and 2, NCB 6938, situated at 205 Ostrom Drive, applicant being Tobias Stapleton.

The applicant is correct in asserting that the Historic Preservation Officer incorrectly denied the applicant's request for a demolition permit." **Ms. Ojeda** seconded the motion.

AYES: Zuniga, Oroian, Britton, Ojeda, Dr. Zottarelli

NAYS: Teel, Rodriguez, Cruz, Neff, Finlay, Rogers

THE MOTION FAILS

The Board of adjustment convened for a 5 minute break at 5:30 pm and reconvened at 5:35 pm. Ms. Ojeda and Mr. Oroian left the meeting leaving 9 voting members.

Case Number:	A-18-009
Applicant:	Esmeralda Galindo
Owner:	Esmeralda Galindo
Council District:	5
Location:	838 Keats Street
Legal Description:	Lots 8 and 9, Block 9, NCB 8965
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 solid screen fence to be as tall as six feet in the front yard of the property.

Oscar Aguilera, Planner, presented background, and staff's recommendation of the variance requests. He indicated 44 notices were mailed, 0 returned in favor, and 1 returned in opposition and no neighborhood association.

Esmeralda Galindo, applicant decided to put up a privacy fence to protect her family from her neighbors Great Danes which easily jump the 6 foot fence. She also stated when the dogs are in here yard the neighbors who are all related take the dogs back to their yard before animal control arrives.

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-18-009 closed.

MOTION

A motion was made by **Mr. Neff**. "Regarding Appeal No A-18-009, a request for a special exception to allow a solid screen fence to be as tall as six feet in the front yard of the property, subject property being Lots 8 and 9, Block 9, NCB 8965, situated at 838 Keats Street, applicant being Esmeralda Galindo.

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 solid six foot fence in the front of the property is in harmony with the spirit and purpose of the chapter as the fence is intended to protect the applicant's children from dogs.

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

Allowing the property owner to place a six foot solid fence on the side will help to prevent the neighbor's dogs roaming freely on her property and posing a threat to her and her children. 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 the neighbor's dogs 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 six foot solid front side fence would not significantly alter the overall appearance of the district and would be able to provide added security and protection 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 a six foot tall solid front side fence in order to add security for the owner. Therefore, the requested special exception will not weaken the general purpose of the district." The motion was seconded by Mr. Britton.

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

NAYS: None

THE VARIANCE IS GRANTED

Case Number: A-18-003
Applicant: Gabriela Escobedo
Owner: David R. Bernal Gabriela Escobedo
Council District: 4
Location: 230 Prospect Road
Legal Description: Lot 22, Block 57, NCB 8633
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Oscar Aguilera, Planner

Request

A request for a ten foot variance from the 20 foot rear setback, as described in Section 35-310.09, to allow an addition to be ten feet from the rear property line.

Oscar Aguilera, Planner, presented background, and staff's recommendation of the variance requests. He indicated 50 notices were mailed, 1 returned in favor, and 0 returned in opposition and no response from the Quintana Neighborhood Association.

Gabriela Escobedo, applicant stated the need to expand her home for her growing family.

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-18-003 closed.

MOTION

A motion was made by **Mr. Rodriguez** "Regarding Appeal No. A-18-003, a request for a ten foot variance from the 20 foot rear setback to allow an addition to be ten feet from the rear property line, subject property being Lot 22, Block 57, NCB 8633, situated at 230 Prospect Road, applicant being Gabriela Escobedo.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property 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 represented by setbacks to provide separation between incompatible uses and to ensure fair and equal access to air and light. The proposed living space meets the five foot side setback requirement. The ten foot rear setback will be in harmony with the neighboring properties. Staff 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 in this case is that the current home is only 832 square feet in living area and the applicant is struggling to complete an addition that meets the required setback. Staff finds that a literal enforcement of the ordinance would result in unnecessary hardship.

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

The spirit of the ordinance is the intent of the requirements rather than the strict letter of the law. The intent of the setback is to provide sufficient separation between incompatible uses. As the dwelling unit does meet the side setback, and the applicant will provide a ten foot rear setback, staff 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*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-6 AHOD" Residential Single-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.*

As the proposed addition will provide a ten foot rear setback and the adjacent rear lot is vacant, it is unlikely that adjacent property will be harmed by the proposed development

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 the case is that the property addition does meet the side setback and there are similar rear setbacks within the subdivision. This setback issue is not merely financial in nature.” The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE IS GRANTED

Ms. Rogers made a motion to approve the December 18, 2017 minutes with all members voting in the affirmative.

Manager's report: None

There being no further discussion, meeting adjourned at 6:15 p.m.

December 18, 2017

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APPROVED BY: Mary E. Rogers OR _____
Chairman Vice-Chair

DATE: 1-8-17

ATTESTED BY: [Signature] DATE: 1-9-18
Executive Secretary