BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 15, 2009

Members Present:

Michael Gallagher
Andrew Ozuna
Liz Victor
Edward Hardemon
Helen Dutmer
George Alejos
Rolando Briones
Mary Rogers
Gene Camargo
Mimi Moffat

Staff:

Fernando De León, Assistant Director
Rudy Niño, Senior Planner
Jacob Floyd, Planner
Michael Farber, Planner
Paul Wendland City Attorney

Call to Order

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

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

Mr. Alejos arrived at 1:10 p.m.

CASE NO. A-09-051

Applicant – Roberto Y Espinoza
Lots 8 and 9, Block 18, NCB 1790
1126 West Summit Avenue
Zoned: "R-6 NCD-5" Residential Single-Family Beacon Hill "Area Neighborhood Conservation District

The applicant is requesting **1)** a complete variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" zoning districts, in order to keep an existing structure on the east side property line and **2)** a 9-foot variance from the Beacon Hill Area Neighborhood Conservation District standard that garages may only be constructed in the rear-yard, in order to keep an existing detached garage that encroaches 9 feet into the side-yard.

Michael Farber, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 25 notices were mailed, 3 were returned in favor and 2 were returned in opposition and no response from the Beacon Hill Neighborhood Association.

Roberto Espinoza, applicant, stated limited budget to have the cut the trees down was the reason for the place of the garage at the time it was constructed. He also stated he didn't get a permit and just starting constructing the garage. He further stated he constructed the garage because of limited monetary and he wanted to move his mother in.

The following citizens appeared to speak:

David Reyes, citizen, spoke in favor.

Cosima Colvin, citizen, spoke in opposition.

Mark Spielman, citizen, spoke in opposition.

Joanne Walsh, citizen, spoke in opposition.

Mary Ann Van Ness, citizen, spoke in opposition.

Everett Ives, citizen, spoke in opposition.

Jack Finger, citizen, spoke in opposition.

Jonathan Ashkenaze, citizen, 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-09-051 closed.

MOTION

A motion was made by **Mr. Camargo.** I would like to move that in Case **A-09-051**, the request of **Roberto Espinoza,** on property legally described as **Lots 8 and 9, Block 18, NCB 1790,** also known as **1126 West Summit Avenue be approved for the following findings of fact that the development that has occurred is in compliance with the Beacon Hill Conservation District and not in violation of the Unified Development Code and there is very little opposition to this request. The applicant will be required to meet the standards with electrical city codes.** The motion seconded by **Ms. Dutmer.**

AYES: None
NAY: Camargo, Dutmer, Rogers, Victor, Briones, Hardemon, Alejos, Moffat, Ozuna, Gallagher

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-09-062

Applicant – Hector Valadez (Valadez Investments, Inc.)
Lot 44, NCB 7902
645 Chalmers Avenue
Zoned: "C-2" Commercial District

The applicant is requesting a 5-foot variance from the requirement that a minimum 10-foot side setback be maintained in "C-2" zoning districts when abutting residential uses or zoning districts, in order to erect an addition 5-feet from the east side property line.

Michael Farber, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 18 notices were mailed, 2 were returned in favor and 2 were returned in opposition.

Eric Valadez, representative, stated because of the growing customers they need more space in the restaurant. He also stated if he puts the addition to the back it would require them to remove their trees, have less storage area, and eliminate some of the parking. They own the property to the east and have plans to rezone it in the near future. The restaurant does have enough parking spaces in the back but customers decide to use the street to park.

The following citizens appeared to speak:

Richard Valadez, citizen, spoke in favor.

Andy Guerrero, citizen, spoke in favor.

Anita Granados Ramirez, citizen, spoke in favor.

Enrique Dimas, citizen, spoke in opposition.

Mrs. Dimas, citizen, 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-09-062 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal **A-09-062,** variance application for **645 Chalmers Avenue, Hector Valadez with Valadez Investments Inc.,** the subject property description is **Lot 44, NCB 7902,** situated at **645 Chalmers Avenue,** the applicant again is **Hector Valadez with Valadez Investments Inc.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-062,** application for a variance to the subject property as described above, because the testimony presented to use, 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. The request is for **a 5-foot variance from the requirement that a minimum 10-foot side setback be maintained in "C-2" zoning districts when abutting residential uses or zoning districts, in order to erect an addition 5-feet from the east side property line.** Specifically we find that such variance will not be contrary to the public interest in that **the applicant will have all city building permits pulled for the project and addition they will be required to maintain parking requirements as set forth by the city code.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant will not be able to move forward with their project to expand the existing restaurant as it exists today. One special note is that the applicant owns the property to the east which is the property that would be most affected by the setback requirement, so its given that they own the property and they are proposing to move forward with the zoning change on the project the literal enforcement would impact them adversely.** The spirit of the ordinance is observed and substantial justice is done in that **no other land use requirement changes are requested and the "C-2" zoning district will remain in effect.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **again the existing "C-2" Commercial District will be maintained and there is no proposed changes to the land use of the property.** 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 **we saw from evidence presented that there was surrounding neighbors in the most part in support of the setback and that the applicant owns the adjacent properties that are most affected by the setback.** 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 in that **again the applicant owns the properties that are most affected and there was a master plan in place in which will address not only the expansion of the parking lot but also a rezoning to provide an increased buffer for the subject and the applicant will meet all building permits, all clear vision areas, and parking requirements for the proposed extension.** The motion seconded by **Mr. Hardemon.**

AYES: Ozuna, Hardemon, Dutmer, Alejos, Gallagher
NAY: Camargo, Victor, Rogers, Moffat, Briones

THE VARIANCE WAS NOT GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-09-065

Applicant – Pedro Tapia
The West 15 feet of Lot 12, The East 18 feet of Lot 13, and the South 80 feet of the West 32 feet of Lot 13, Block 60, NCB 3658
3923 West Salinas Street
Zoned: "R-4" Residential Single-Family District

The applicant is requesting for **1)** a complete variance from the requirement that a minimum 5-foot side setback be maintained, in order to keep an existing carport on the ease side property line and **2)** a 9-foot, 2-inch variance from the requirement that a minimum 10-foot front setback be maintained, in order to keep an existing carport 10 inches from the front property line.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of the requested variances. He indicated 29 notices were mailed, 2 were returned in favor and 6 were returned in opposition and no response from the Prospect Hill Neighborhood Association.

Monica Tapia, representative, stated the structure was built without a permit and her father was unaware that he needed a permit. She also stated code compliance came out and instructed her father to obtain a permit which he pulled the permit and he thought that was the end of it. She further stated he did the plot plan to the best of his knowledge. The option of putting the carport in the backyard was not good for the simple reason that the vehicles they own would not fit through the alleyway because of the narrowness.

Pedro Tapia, applicant, stated he is willing to put a gutter to eliminate some of the water from going into the vacant lot. He also stated he drew the property line wrong on the plot plan and misunderstood on how to draw the plot plan. He further stated he plans to put an in ground pool and basketball court in the backyard of house in the near future.

The following citizens appeared to speak:

Lisa Tapia, citizen, spoke in favor.

Orano Torres, citizen, spoke in opposition.

Veronica Rodriguez, citizen, 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-09-065 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal **A-09-065,** variance application for **Pedro Tapia,** variance application for **3923 Salinas Street,** subject property description is **the west 15 feet of Lot 12, the east 18 feet of Lot 13, and the south 80 feet of the west 32 feet of Lot 13, Block 60, NCB 3658,** situated again at **3923 West Salinas Street,** the variance request is for **1) a complete variance from the requirement that a minimum 5-foot side setback be maintained, in order to keep an existing carport on the east side property line and 2) a 9-foot, 2-inch variance from the requirement that a minimum 10-foot front setback be maintained, in order to keep an existing carport 10 inches from the front property line.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-065,** application for a variance to the subject property as described above, because the testimony presented to use, 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 such variance will not be contrary to the public interest in that **structure that has been constructed will be modified to prevent waterfall coming off the structure from impacting the neighbors the adjoining property owners.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the carport has already been constructed on the subject property. In order to comply with the existing development code the applicant would have to basically demolish the existing structure and move it to an area which would impede on the applicant's jungle gym in the backyard and jumping trampoline.** The spirit of the ordinance is observed and substantial justice is done in that **the applicant is requesting a variance so that he could keep the existing structure and no other land use changes are being proposed.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the existing "R-4" Residential Single-Family District is to remain and there are no other changes proposed in the land use.** 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 **we saw some testimony that there structures similar to the subject in the neighborhood.** 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 in that **the carport was constructed with permits pulled after the construction and the applicant thought he that he was conforming with agreed land use UDC at that time.** The motion seconded by **Ms. Dutmer.**

AYES: Dutmer, Alejos, Gallagher
NAY: Ozuna, Rogers, Victor, Camargo, Hardemon, Briones, Moffat

THE MOTION WAS NOT GRANTED.

Sign Master Plan No. 09-003

Arturo Elizondo, Sign Inspector, briefed Board Members on Sign Master Plan for The Parke-revised, located at Loop 1604 and Potranco.

Mr. Camargo made a motion to approve **Sign Master Plan No. 09-003** and was seconded by **Ms. Victor** and all members voted in the affirmative.

Approval of the June 1, 2009 Minutes

The June 1, 2009 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 3:42 p.m.

APPROVED BY: _____ OR _____
Michael Gallagher, Chairman Andrew Ozuna, Vice-Chair

DATE: July 20, 2009

ATTESTED BY: _____ DATE: July 27, 2009
Executive Secretary