BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 14, 2011

Members Present:

Michael Gallagher
Andrew Ozuna
Liz Victor
Edward Hardemon
Helen Dutmer
George Britton
Mary Rogers
Jesse Zuniga
Gene Camargo
Henry Rodriguez
Maria Cruz

Staff:

John Jacks, Interim Assistant Director
Jacob Floyd, Senior Planner
Andreina Dávila-Quintero, Planner
James Cramer, Intern
Victor Caesar, Intern
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.

CASE NO. A-11-072

Applicant – Gerardo Mechler
Lot 21 and East 25 feet of Lot 20, Block 9, NCB 7634
340 Montrose Street
Zoned: "MF-33 AHOD" Multi-Family Residential Airport Hazard Overlay District

The applicant is requesting a 10-foot variance from the 20-foot minimum setback requirement for a garage entry accessed from a street right-of-way, in order to allow a 10-foot setback to the garage entry.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of denial of the requested. She indicated 26 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Hot Wells Neighborhood Association.

Gerardo Mechler, representative, stated this variance is to provide visibility to the traffic. The variance allows them access to come into the property off the street. He also stated the neighbors in the area are in support and there is no opposition to the variance. He further stated the character and the use of property is not going to be changed. It is still going to remain a private residence with a two car garage.

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-11-072 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal No **A-11-072**, variance application for **Gerardo Mechler**, subject property description is **Lot 21 and East 25 feet of Lot 20, Block 9, NCB 7634**, applicant again is **Gerardo Mechler**, the request is for a **10-foot variance from the 20-foot minimum setback requirement for a garage entry accessed from a street right-of-way, in order to allow a 10-foot setback to the garage entry**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-11-072**, application for a 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 UDC, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the applicant has brought testimony to us today in showing that there is no opposition to the request from any of his neighbors. All his neighbors that would be most impacted by the requested variance are in support of the project. Further we have been provided testimony that because of the 21-feet from the garage to the edge of the curb that there is an adequate size line and including the 10-foot width of the alley to provide a corner visibility that would provide for a safe exit and entry into the imposed garage.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **again the applicant has provided testimony to us today that the setback locations of the proposed garage would be prohibited for him to kind of enter into the garage from the alley because of the sharp 90 degree band that he would have to make. Also the city's requirement that if he was to situate the garage and use the alley entry that he would have to pave the entire width of that entry into his garage in which it is prohibited because of the special condition that exists.** The spirit of the ordinance is observed and substantial justice is done in that **again there is no opposition to the proposed garage location from the neighbors that would be most affected.** 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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "MF-33" Multi-Family Residential base zoning district.** 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 requested variance will not substantially injure the appropriate use of the subject conforming properties or alter the essential character of the district. The subject property is located in a residential area with single-family and multi-family residential uses. Several properties within this area have detached garages and other accessory structures, to include the properties to the north, south and west of the subject property.** 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 unique conditions are such that the configuration of the alley way and the applicant's necessity to secure his property against theft which he has mentioned would occur if the garage is not located within the requested variance setback.** The motion was seconded by **Mr. Zuniga**

AYES: Ozuna, Zuniga, Hardemon, Cruz, Britton, Camargo, Victor, Rogers, Rodriguez, Dutmer, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-11-073

Applicant – Edward Gutierrez
Lot 3, Block 14, NCB 14890
5602 UTSA Boulevard
Zoned: "C-1 S MLOD-1 UC-1" Commercial Military Lighting Overlay District IH-10/FM-1604 Urban Corridor with a Specific Use Authorization for a Gasoline Filling Station with a Car Wash

The applicant is requesting a10-foot variance from the 40-foot maximum sign height requirement for properties located within the "UC-1" IH-10/FM-1604 Urban Corridor, in order to allow a 50-foot tall freestanding sign.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of denial of the requested. He indicated 5 notices were mailed, none were returned in favor and none were returned in opposition.

James Griffin, representative, stated this variance is to provide effective signage at this location. He also stated the existing trees and landscaping on the property is one of the reasons for this variance. The trees on the site do not provide adequate signage. The granting of this variance provides preservation of the trees. He further stated multi-tenant signs are allowed up to 50-feet and it is defined as three tenants but they only have two tenants.

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-11-073 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re: Appeal No **A-11-073**, variance application for **Edward Gutierrez and Big Diamond Inc.**, subject property description is **Lot 3, Block 14, NCB 14890**, situated at **5602 UTSA Boulevard**, the applicant request is for a **10-foot variance from the 40-foot maximum sign height requirement for properties located within the "UC-1" IH-10/FM -1604 Urban Corridor, in order to allow a 50-foot tall freestanding sign**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-11-073**, application

for a 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 according to Section 28-247 of Chapter 28: Signs and Billboards, in order for a variance to be granted, the applicant must demonstrate 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. **The applicant provided testimony to us today about their intent to save the tree canopy and the necessity to possibility lower the canopy, remove trees if the existing 45-foot requirement were to be enforced on the subject location. Additionally it is a safety issue where by the traffic preceding down IH-10 would need to identify the sign and enough space to allow them to exit off the access roads to get to the Valero store, not having to weave in and out of traffic.** A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **Again the applicant has provided to us testimony that the surrounding the gasoline station located across IH-10 actually has a 60-foot sign. So what they are asking for with the 50-foot variance is not out of character with the existing signage program along the IH-10 corridor.** After seeking one or more of the findings set forth in (1) or (2), the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated. **Again the applicant provided testimony that the adjoining neighbor to the east has a sign which is in height greater than what the applicant is requesting so there is no special privilege being granted.** Granting the variance will not have a substantially adverse impact upon neighboring properties. **Again the evidence provided to us shows that there was no opposition to the request for the variance.** The motion was seconded by **Mr. Zuniga.**

AYES: Ozuna, Zuniga
NAY: Camargo, Victor, Rogers, Hardemon, Cruz, Rodriguez, Britton, Dutmer, Gallagher

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-11-059

Applicant – Asher Reilly
Lot 1, Block 5, NCB 6204
112 Lindell Place
Zoned: "MF-33 H RIO-1 AHOD" Multi-Family Residential River Road Historic River Improvements Overlay District 1Airport Hazard Overlay District

The applicant is requesting an appeal of the Historic Preservation Officer's decision to deny the Certificate of Appropriateness for the demolition of the structure located at 112 Lindell Place.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation that the Board of Adjustment make their findings based on the required criteria of Section 35-614 of the UDC; in particular, the criteria for loss of significance as established in Section 35-614(c) of the UDC. She indicated 24 notices were mailed, 2 were returned in favor and 13 were returned in opposition and no written response from the River Road Neighborhood Association.

The following citizens appeared to speak:

Matthew Wymer, citizen, spoke in favor of the appeal

Herbie Hightower, citizen, spoke in favor of the appeal.

Tom Bereton, citizen, spoke in favor of the appeal.

Bebb Frances, citizen, spoke in opposition of the appeal.

Barbara Witte-Howell, citizen, spoke in opposition of the appeal.

James Cullum, citizen, spoke in opposition of the appeal.

Mary McHenry, citizen, spoke in opposition of the appeal.

Larry De Martino, citizen, spoke in opposition of the appeal.

Sally Buchanan, citizen, spoke in opposition of the appeal.

Richard Garay, citizen, spoke in opposition of the appeal.

John Lewis, citizen, spoke in opposition of the appeal.

Donna Martin, citizen, spoke in opposition of the appeal.

Felix Alimaraz, citizen, spoke in opposition of the appeal.

Raleigh Wood, citizen, spoke in opposition of the appeal.

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-11-059 closed.

MOTION

A motion was made by **Mr. Camargo.** I would move that in Case **A-11-059,** on property which is located at **112 Lindell Place,** also legally described as **Lot 1, Block 5, NCB 6204, that this Board of Adjustment uphold the decision of the Historic Preservation Officer in reference to the demolition permit for property and the above stated address. It is felt that it has been very many definitions given and opinions as far as significance of this structure in the**

historic district. Apparently contrary to the Historic Preservation Officer's initial opinion, in reference to the significance, the HDRC voted to recommend back to the Historic Preservation Officer that the structure in fact does have significance in this historic district for which the HPO then concurred and made that decision that in fact it does. Therefore the applicants in this case have appealed to this board for a determination. It has been stated by many residents in the area that they feel that, and I concur, that the area does have significance and cultural viability here in San Antonio. I question whether in fact the proponderous of residents in this area feel that the structure itself as we see it on the screen has significance and contributing to this historic district. That is questionable. We do have an appointed committee by City Council; made up of various professions architects, engineers, designers, etc; that in their opinion have made a recommendation to the HPO that the structure has significance. I personally from experience can understand why the HPO followed the recommendation of the HDRC. I am asking by this motion that we uphold the determination and the decision of the HPO and for each one of us to vote on the conscious on the information we've heard and why those decisions were made. The motion was seconded by **Mr. Hardemon.**

AYES: Victor, Rogers, Britton, Cruz, Gallagher
NAY: Camargo, Hardemon, Zuniga, Rodriguez, Ozuna
ABSTAIN: Dutmer

THE MOTION FAILS.

Ms. Dutmer made a motion to reconsider the previous motion in the event some of the members did not understand the previous motion. Mr. Rodriguez seconded the motion with all board members voting in the affirmative.

The original motion was then voted on again.

AYES: Hardemon, Rogers, Britton, Cruz, Victor, Gallagher
NAY: Camargo, Rodriguez, Zuniga, Ozuna, Dutmer

THE MOTION PASSES.

Board members recessed for 10 minutes.

Mr. Britton departed at 4:32 p.m.

CASE NO. A-11-074

Applicant – Joseph Property Group, Inc.
North 210 feet of Lot 1, Block 40, NCB 3699
1606 South Hamilton Avenue
Zoned: "C-2 AHOD" Commercial Airport Hazard Overlay District

The applicant is requesting **1)** a 5-foot variance from the maximum 3-foot solid front yard fence height standard, in order to allow an 8-foot tall solid fence along the south property line within the front yard and **2)** a 2-foot variance from the maximum 6-foot side and rear yard fence height standard, in order to allow an 8-foot tall fence along the south and east property lines within the side and rear yard.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of approval of the requested variances. She indicated 28 notices were mailed, none were returned in favor and none were returned in opposition.

Carlos Garcia, representative, stated the applicant replaced an existing chain link fence with a wrought iron fence. He also stated the 8-foot fence is for security reasons. There is a vacant lot to the east of the property where people hang out to drink. He further stated the wood fence is an 8-foot fence because the residential property owner behind them wants privacy from the commercial business.

The following citizens appeared to speak:

Mark White, citizen, 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-11-074 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal No. **A-11-074**, Variance Application for **Joseph Property Group Inc.**, subject property location is **north 210 feet of Lot 1, Block 40, NCB 3699**, address is **1606 South Hamilton Avenue**, applicant again is **Joseph Property Group Inc.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-11-074**, application for a 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 UDC, as amended, would result in an unnecessary hardship. The variance request is for **1) a 5-foot variance from the maximum 3-foot solid front yard fence height standard, in order to allow an 8-foot tall solid fence along the south property line within the front yard; and 2) a 2-foot variance from the maximum 6-foot side and rear yard fence height standard, in order to allow an 8-foot tall fence along the south and east property lines within the side and rear yard.** Specifically, we find that such variance is not contrary to the public interest in that the **subject property is a commercial property that is surrounded by other commercial and residential uses. The UDC establishes additional standards to protect residential uses from commercial uses, such as buffer yards and screening fences. However, due to the surrounding zoning districts, the subject property is not required to provide a buffer yard that will separate the commercial from the single-family residential uses. Furthermore, the boundaries of the residential property to the east of the subject property extend to the south beyond the limits of the subject property, the property to the south is currently vacant, and the following property, 1618 South Hamilton Avenue, is a single-family residence. Both residential properties are impacted by the commercial uses on the subject property. The**

proposed 8-foot tall fence along the east and south property lines will provide a protective barrier and screen the commercial uses on site from the surrounding residential uses within the area. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the maximum fence height standard will require the applicant to reduce the height of the existing fences to 3-feet when located within the front yard, and 6-feet when located within the side and rear yards. The subject property is not uniquely influenced by oppressive conditions that would justify an 8-foot tall fence, however, the subject property is surrounded by single-family residential uses to the east and south. The additional height will provide additional screening to the single-family residential homes within the vicinity, and thus meet one of the goals of the UDC that is to protect residential properties from the more intense commercial uses.** The spirit of the ordinance is observed and substantial justice is done in that **the requested fence height variances will be in keeping with the spirit of the ordinance as the proposed fence height complies with the intent of the maximum fence height standards by protecting the abutting single-family residence to the east and adjacent single-family residences to the south from the more intense commercial uses on the subject property.** 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 requested variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-2" Commercial base zoning district.** 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 requested fence height variances will not adversely impact the adjacent conforming properties. The proposed 8-foot tall fence will only extend along the south and east property lines, where the property abuts a single-family residence or is in close proximity to other single-family residential uses. The taller fence along the south and east property lines, where proposed in accordance to the Site Plan, will allow for better screening of the commercial property from the adjacent single-family residential homes.** 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 requested variances are due to burglaries, vandalism and other crime activities that occur in the area. These conditions are not a result of the general conditions of the zoning district or due to financial hardship. However, these conditions are not unique to the land, and all properties within this area are susceptible to the same crime activities. Nonetheless, the subject property is surrounded by single-family residential uses to the south and east, where the 8-foot tall fence is proposed. The additional height will provide better screening of the variety of commercial uses on site from the residential uses within the vicinity, in particular the abutting single-family residence to the east.** The motion was seconded by **Mr. Rodriguez.**

AYES: Ozuna, Rodriguez, Camargo, Hardemon, Rogers, Dutmer, Zuniga, Victor, Cruz, Gallagher
NAY: None

THE VARIANCES WERE GRANTED.

CASE NO. A-12-001

Applicant – Francisco Franco, Jr.
Lot 23 & 24, Block 94, NCB 8037
507 Whitman Avenue
Zoned: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception to relocate a structure from 12939 SW Loop 410 to 507 Whitman Avenue.

Victor Caesar, Planner, presented background and staff's recommendation of approval of the requested. He indicated 36 notices were mailed, none were returned in favor and none were returned in opposition and none from the Tierra Linda Neighborhood Association.

The following citizens appeared to speak:

Francisco Franco, Jr., citizen, 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-12-001 closed.

MOTION

A motion was made by **Ms. Rogers.** Re Appeal No **A-12-001,** application for **special exception to relocate structure from 12939 SW Loop 410 to 507 Whitman Avenue**, subject property description is **Lot 23 & 24, Block 94, NCB 8037,** located at **507 Whitman Avenue,** applicant **Francisco Franco, Jr.** I move that the Board of Adjustment grant the applicant's request regarding appeal, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UD 35-482(h). The special exception will be in harmony with the spirit and purpose of the chapter in that **the granting of the special exception will be in harmony with the spirit and purpose of the chapter. The applicant is proposing to relocate a structure to a vacant lot and intends to repair the structure in accordance with city code.** The public welfare and convenience will be substantially served in that **the structure proposed to be relocated will be used as single family dwelling and make use of an undeveloped parcel within an area of residential land uses.** 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 in that **the special exception will not alter the essential character of the district in which it is sought as the structure is of a similar character and age as other structures within the district.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the special exception will not weaken the general purpose of "R-4" zoning district to accommodate residential land uses. The applicant is proposing to**

relocate the structure and intends to repair this structure to meet city code. The motion was seconded by **Mr. Hardemon.**

AYES: Rogers, Hardemon, Victor, Cruz, Dutmer, Zuniga, Rodriguez, Ozuna, Gallagher
NAY: Camargo

THE VARIANCES WERE GRANTED.

CASE NO. A-12-002

Applicant – Glazer Investments
Lots 2, 3, and 4, Block 9, NCB 11379
1002 South Callaghan Road
Zoned: "C-3 GC-2 MAOZ-2 AHOD" General Commercial Highway 151 Gateway Corridor Military Airport Overlay Zone 2 Airport Hazard Overlay District, "C-3R GC-2 MAOZ-2 AHOD" Restrictive Commercial Highway 151 Gateway Corridor Military Airport Overlay Zone 2 Airport Hazard Overlay District, "C-3R MAOZ-2 AHOD" Restrictive Commercial Military Airport Overlay Zone 2 Airport Hazard Overlay District, "I-1 GC-2 MAOZ-2 AHOD" General Industrial Highway 151 Gateway Corridor Military Airport Overlay Zone 2 Airport Hazard Overlay District and "I-1 MAOZ-2 AHOD" General Industrial Military Airport Overlay Zone 2 Airport Hazard Overlay District

The applicant is requesting a 5-foot variance from the minimum 5-foot planting strip between the end of the curb and the sidewalk requirement of the "GC-2" Highway 151 Gateway Corridor District, in order to allow the sidewalk to be placed at the back of the curb along the Callaghan Road and State Highway 151 rights-of-way.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation of partial approval of the request. The portion that applies to Sough Callaghan Road complies with all the required approval criteria for granting a variance. She indicated 12 notices were mailed, none were returned in favor and none was returned in opposition and no response from the Community Workers Council Neighborhood Association.

Jan Jiles, representative, stated there are obstructions on the right-of-ways between the proposed back up curb locations and where the sidewalk can go. She also stated without the variance they would have to redesign the entire drainage swale which drains to other contributing areas.

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-12-002 closed.

MOTION

A motion was made by **Mr. Ozuna.** Re Appeal No **A-12-002,** a variance application for **Glazer Investments,** subject property description is **Lot 2, 3, and 4, Block 9, NCB 11379.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-12-002,** application for a 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 UDC, as amended, would result in an unnecessary hardship. The variance request the applicant is requesting is a **5-foot variance from the minimum 5-foot planting strip between the end of the curb and the sidewalk requirement for the "GC-2" Highway 151 Gateway Corridor District, in order to allow the sidewalk to be placed at the back of the curb along the Callaghan Road and State Highway 151 rights-of-way.** Specifically, we find that such variance will not be contrary to the public interest in that **the proposed minimum planting strip between the curb and the sidewalk is to protect pedestrians from the high speed of vehicles and traffic on the right-of-way, in this case we have the situation with the swales. The applicant is providing for the sidewalk and is providing for somewhat of a buffer with the meandering sidewalks on the 151 right-of-way.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant has provided testimony to use today about the 100-foot wide drainage easements on South Callaghan Road right-of-way which prevents a hardship on 151. The applicant provided evidence about the drainage easement but also the decelaration/exceleration lanes around 151 which would cause additional right-of-way or additional use of the real estate which would create a hardship in trying to push all the development back further from the roadway, impacting the development plans by the applicant.** The spirit of the ordinance is observed and substantial justice is done in that **the applicant is proposing to comply with the minimum standards of the "GC-2" Highway 151 Gateway overlay district to the most extent possible.** 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 requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "C-3" General Commercial, "C-3R" Restrictive Commercial, or "I-1" General Industrial base zoning districts, as well as the "MAOZ-2" Military Airport Overlay Zone overlay district.** 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 requested variance will not substantially injure the appropriate use of the adjacent conforming properties. The subject property is surrounded by undeveloped land or other similar warehouse/distribution uses. The property will be required and provided for the 5-foot planting strip as well as any proposed sidewalk and existing design recommendations.** 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 variance is sought due to the existing drainage swale and head-wall, as well as the overhead high-voltage electrical lines and easement that exist on the property. These conditions are not a result of an action by the property owner, are not merely financial, or due to the general conditions in the district.** The motion was seconded by **Mr. Zuniga.**

AYES: Ozuna, Zuniga, Hardemon, Dutmer, Cruz, Rodriguez, Gallagher

NAY: Camargo, Victor, Rogers

SUBSTITUTE MOTION

A motion was made by **Mr. Camargo.** I would like to move that in Case No **A-12-002,** the applicant being **Glazer Investments,** on property located at **1002 South Callaghan Road**, also known as **Lots 2, 3, and 4, Block 9, NCB 11379,** be granted a variance **to not comply with the 5-foot setback planting strip along South Callaghan Road. It is this members feeling that on Callaghan Road, it has been shown by the applicant and staff that the wide and deep drainage channel that it parallels Callaghan Road would make it impossible to comply with the code regulations. I think for that sole reason and purpose this board has the authority to grant that variance when you have these actual technical and physical difficulties when complying when the code is impossible. I won't address the other issues on 151 because that is not on the table.** The motion was seconded by **Mr. Hardemon.**

AYES: Camargo, Hardemon, Victor, Dutmer, Rogers, Rodriguez, Ozuna, Cruz, Gallagher
NAY: Zuniga

THE SUBSTITUE MOTION WAS GRANTED.

CASE NO. A-12-003

Applicant – Brenda A. Stahl
Lot 13, Block 2, NCB 10106
150 East Vestal Place
Zoned: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a special exception to allow a one operator beauty or barber shop in a residential zone.

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation approval of the requested variance. She indicated 25 notices were mailed, one was returned in favor and one was returned in opposition.

Brenda Stahl, applicant, stated she does not have a sign or advertisement on this property. She also stated she only one customer at a time. She further stated this is more for close friends and family members.

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-12-003 closed.

MOTION

A motion was made by **Mr. Rogers.** Re Appeal No **A-12-003**, variance application for **719 West Hildebrand Avenue**, subject property description is **Lot 13, Block 2, NCB 10106**, located at **150 East Vestal Place**, the applicant is **Brenda Stahl.** I move that the Board of Adjustment grant the applicants request regarding Appeal No. **A-12-002**, application for a Special Exception for the subject property s described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.01. The special exception will be in harmony with the spirit and purpose of the chapter in that **the existing one-operator beauty/barbershop follows the specified criteria established in Section 35-399.01 of the UDC.** The public welfare and convenience will be substantially served in that **the requested special exception will further serve the public welfare in that this beauty shop has continuously operated within the parameters set forth by Section 35-399.01 and has served as a public convenience within a residential area.** The neighboring property will not be substantially injured by such proposed use in that **the granting of the special exception will not alter the use of the property for which this exception is sought. The primary use of the subject property is a single-family residence.** 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 in that **it does not appear that the granting of the special exception will alter the essential character of the district in which the subject property is located in that the existing beauty shop has and will remain confined to 25% or less of the gross floor area of the primary residence.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the purpose of the district is to promote the public health, safety, morals, or general welfare. The granting of this special exception will not weaken this purpose, nor will it weaken the regulations established for this district. The hours of operation will be Tuesday, Thursday, Friday, and Saturday from 10:00 am until 3:00 pm, no time the hours are not to exceed 20 hours per week. This special exception is granted for a period of four years.** The motion was seconded by **Ms. Cruz.**

AYES: Rogers, Cruz, Hardemon, Camargo, Dutmer, Zuniga, Victor, Rodriguez, Ozuna, Gallagher
NAY: None

THE VARIANCE WAS GRANTED.

CASE NO. A-12-004

Applicant – Daniel Monreal

Lot 4, Block 3, NCB 9690
150 Freiling Drive
Zoned: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 7-foot variance from the minimum 20-foot rear setback requirement, in order to allow a 13-foot setback from the centerline of the alley (5-foot, 6-inch setback from the rear property line).

Andreina Dávila-Quintero, Planner, presented background and staff's recommendation denial of the requested variance. She indicated 31 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Dellview Area Neighborhood Association.

Sharon Monreal, representative, stated the main building was attached to the accessory. She also stated the owner thought he was able to connect the main and the accessory building together without a permit since they already existed. The neighbor was not against the structure being a full home but was annoyed by the noise. She further stated the building is a used for residential. When he went to pull the permit, he was told that this was no longer an accessory structure and had to abide by the 20-foot setback.

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-12-004 closed.

MOTION

A motion was made by **Mr. Rodriguez.** In Case No **A-12-004,** the applicant **Daniel Monreal,** being represented by **Sharon Monreal,** the owner being **Eduardo Camargo,** location **150 Freiling Drive, Lot 4, Block 3, NCB 9690,** zoning **"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.** I move that the Board of Adjustment grant the applicant's request regarding appeal No **A-12-004,** application for a 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 such variance will not be contrary to the public interest in that **this is an old neighborhood with tons of code violations and it's a moderate to low-income area where working class people live and struggle everyday of their lives and in this hard economy is what we have here.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **this working family is only trying to accommodate their children and have a better life for them.** The spirit of the ordinance is observed and substantial justice is done in that **the zoning "R-4" will not be compromised.** 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 **nobody really is objecting to what they are trying to do here. It is my understanding that the person that did complain about the noise they were creating while trying to build the additional structure.** 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 **there is no way in the world that it could injure anything. The people, the neighbors who are in close proximity are in agreement that this is okay.** 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 **while it is the fact that it is not merely financial, the hardship is there. The hardship is the fifteen years of working and trying to do right by the family. I know that if they could afford they would live in a gated community but this as good as they can do and this is the kind of people that live in this community.**

AYES: Rodriguez, Zuniga, Cruz, Camargo, Dutmer, Rogers, Ozuna, Gallagher
NAY: Victor Hardemon

2nd Motion

A motion was made by **Mr. Camargo to continue this case until the next regularly scheduled meeting on December 5, 2011.** The motion was seconded by **Mr. Hardemon with all members voting in the affirmative.**

THE MOTION PASSES.

Approval of the October 24, 2011 Minutes

The October 24, 2011 minutes were approved with all members voting in the affirmative

There being no further discussion, meeting adjourned at 6:32 p.m.

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

DATE: 1-30-12

ATTESTED BY: _____ DATE: 2-1-12
Executive Secretary