BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 19, 2014

Members Present:

Andrew Ozuna
Mary Rogers
Frank Quijano
Alan Neff
Gabriel Velasquez
George Britton
Maria Cruz
Jesse Zuniga
John Kuderer
Roger Martinez
Gene Camargo

Staff:
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Paul Wendland, City Attorney

Call to Order

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

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

Mr. Zuniga made a motion to move Case No A-14-052 to the beginning of the agenda. **Mr. Rodriguez** seconded the motion with all members voting in the affirmative.

CASE NO. A-14-057

Applicant – Executive Signs, Ltd.
Lot F, Block 7, NCB 6774
1315 Frio City Road
Zoned: "C-3NA AHOD" General Commercial Nonalcoholic Sales Airport Hazard Overlay District

The applicant is requesting 1) 4-foot, 2-inch variance from the 24-foot maximum height to allow a freestanding sign 28 feet, 2 inches in height along an Arterial Type B street, 2) a 5-foot variance from the 10-foot setback requirement along Frio City Road for a single-tenant freestanding sign over 25 feet in height to allow a setback of 5 feet, and 3) a 5-foot variance from the 10-foot setback requirement along Kirk Place for a single-tenant freestanding sign over 25 feet in height to allow a setback of 5 feet.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 11 notices were mailed, none were returned in favor and none were returned in opposition.

Terry Sherheart, representative, stated the property line includes the sidewalk Kirk St. He also stated the sign would be above the rooftop which would be visible from both Kirk and Frio City Rd. He further stated this will be a fixed sign.

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-14-057 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-14-057,** variance application for **1) 4-foot, 2-inch variance from the 24-foot maximum height to allow a freestanding sign 28 feet, 2 inches in height along an Arterial Type B street, 2) a 5-foot variance from the 10-foot setback requirement along Frio City Road for a single-tenant freestanding sign over 25 feet in height to allow a setback of 5 feet, and 3) a 5-foot variance from the 10-foot setback requirement along Kirk Place for a single-tenant freestanding sign over 25 feet in height to allow a setback of 5 feet,** located at **1315 Frio City Road,** subject property description **Lot F, Block 7, NCB 6774,** applicant being **Executive Signs, Ltd.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-057**, application for a sign 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 the variance a denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **Because of the unique design of the site, with almost the entire site being covered by buildings, there is limited space to erect a freestanding sign that can meet the required setbacks and be seen due to site line interference with the existing building. As such, a variance to allow a reduced setback and additional height are necessary.** 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. **The requested variance would not grant a special privilege not enjoyed by other businesses similarly situated as not granting the variance would result in the property owner not being able to erect any viable freestanding signage.** Granting the variance will not have a substantially adverse impact upon neighboring properties. **The site is completely surrounded by street right-of-way, and therefore has no properties directly adjacent to it. The sign is directed toward Frio City Road and away from residential properties on Kirk Place, minimizing any impact to those residential properties.** Granting the variance will not substantially conflict with the stated purposes of this article. **The requested variance does not appear to conflict with any of the stated purposes of Chapter 28.**" The motion was seconded by **Ms. Cruz.**

AYES: Quijano, Cruz, Neff, Martinez, Velasquez, Kuderer, Britton, Zuniga, Camargo, Rogers, Ozuna
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-061

Applicant – Bury, SA-Inc.
Lots 2, 3, & 4, Block 3, NCB 929
The block generally surrounded by S Flores Street, E Arsenal, and the San Antonio River and Cesar Chavez Blvd.
Zoned: "D HS RIO-4 AHOD" Downtown, Historically Significant, River Improvement Overlay-4, Specific Use for a gas station, Airport Hazard Overlay Districts

The applicant is requesting 1) a 19-foot variance from the maximum curb cut width of 25-feet to allow 4 curb cuts no wider than 44 feet and 2) a variance from the minimum 15-foot landscape buffer to allow surface parking that is not screened from the public right-of-way.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 26 notices were mailed, one was returned in favor and none were returned in opposition and no response from the King William and Downtown Residents Association.

Collen Swain, staff, stated the city council approved a development agreement with HEB for the expansion of their campus and the closure of Main on December 5, 2013. She also stated the development of 10,000 square foot grocery store was also approved with HEB providing public improvements before the closure of Main is allowed. The public improvements include the bike and pedestrian path along Flores and on Arsenal from the river connecting to San Pedro Creek. The development of grocery store will be on the corner of Cesar Chavez and Flores. She further stated the two variances are being requested for the two main entrances for the campus. The other two variances are for the entrances for the grocery store to allow the delivery of gas.

Mark Johnson, stated they are requesting the variance from the landscape buffer due to the amount of dedication they are giving up. He also stated the parking would also diminish the amount of buffer that would be provided.

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-14-061 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Re Appeal No. **A-14-061**, variance application for **1) a 19-foot variance from the maximum curb cut width of 25-feet to allow 4 curb cuts no wider**

than 44 feet and 2) a variance from the minimum 15-foot landscape buffer to allow surface parking that is not screened from the public right-of-way, situated at **the block generally surrounded by S. Flores Street, E. Arsenal, the San Antonio River and Cesar Chavez Blvd,** subject property description the **Lots 2, 3, & 4, Block 3, NCB 929**, applicant being **Bury, SA-Inc.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-061**, 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 such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety and welfare of the public at large. The public interest in this case is the pedestrians walking near the San Antonio River. The Certificate of Appropriateness includes conditions of approval to protect the pedestrian including pavement makings. Therefore the variance is not contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the Board of Adjustment is asked to evaluate the situation and determine if the literal enforcement of the ordinance results in an unnecessary hardship. The applicant states the driveway sizes are essential to the efficient function of the campus. Traffic control signals are being installed and at least two curb cuts are being abandoned. Though the driveways are larger than Code allows, reducing the number and controlling the traffic actually improves the pedestrian experience.** The spirit of the ordinance is observed and substantial justice is done in that **the Board of Adjustment is asked to determine the spirit of the regulation as compared to the literal language of it. In this case, the spirit is in protecting and enhancing the pedestrian experience. The applicant is constructing 1000 linear feet of enhanced sidewalk and bike path, observing the spirit of the ordinance. In addition, controlling the exit as it crosses the sidewalk is preferable to continuous traffic.** 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 "D HS RIO-4 S AHOD" 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 character of the area has been established by the historic Arsenal and Commander's House, all of which will be preserved and enhanced by the proposed project. The parking areas within the campus have also existed for decades and will not be changed by the construction. The variances will allow the applicant to reduce the number of curb-cuts into the campus while preserving the efficient flow of traffic. The essential character of the area will be enhanced by the project.** 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 **according to the applicant, the unique circumstance is the construction of a grocery store on a busy corner in downtown. The requested variance to allow wider curb-cut results from the turning radius of a delivery rig traveling in a narrow single lane; entering from the outside lane is not an option. The landscaped buffer required on lots with existing parking is also a hardship. The applicant's representative has indicated that there will not be a total variance but they**

do propose to provide some minimal landscape buffering in those areas where is required." The motion was seconded by **Mr. Martinez.**

AYES: Kuderer, Martinez, Britton, Camargo, Quijano, Zuniga, Neff, Cruz, Velasquez, Rogers, Ozuna
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-045

Applicant – Maria Teresa Ruthenberg
Lot 29, Block 12, NCB 10806
243 East Formosa Boulevard
Zoned: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 5-foot variance from the 5-foot side yard to allow a structure on the west side property line.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 32 notices were mailed, 2 were returned in favor and none were returned in opposition.

Maria Teresa Ruthenberg, applicant, stated they intend to move the beam to the side of the driveway and in different positions to allow the opening of the truck doors. She also stated the wall will be taken down to have accessibility between the beams. She further stated the overhang will also be removed.

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-14-045 closed.

MOTION

A motion was made by **Ms. Rogers**. "Re Appeal No. **A-14-045**, variance application for a **4-foot variance from the 5-foot side yard setback to allow a structure on the west side property line,** situated at **243 East Formosa Boulevard,** subject property description **Lot 29, Block 12, NCB 10806**, applicant being **Marie Teresa Ruthenberg.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-045**, 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 such variance will not be contrary to the public interest in that **building setbacks are designed to preserve adequate access, access to light and air, and preserve public safety by ensuring proper separation of buildings. The**

structure abuts the neighboring property's required side yard area however at the current time there are no buildings or any in the foreseeable future to be built on the additional property adjacent. By allowing the addition to remain, as proposed by the applicant, she will be allowed to pull her truck in closely and yet have her door open by removing the beams and placing them closer to the house and taking away all the boards currently shown. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the subject property is sufficiently deep to allow the construction of this carport and there appears to be no weight near in the rear of the property. The special conditions in this particular property are that the lot is a narrow lot and the driveway for this truck to enter has to be of sufficient size as shown by the applicant.** The spirit of the ordinance is observed and substantial justice is done in that **this carport constructed as the applicant has shown today, would not be of any obstruction to the neighboring properties.** 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 anything other than specified as she has so stated in a "R-4" single-family based 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 **there will be spacing and any additional permitting and additions to this carport or changes that have to go through the permitting process with the city and adhere to the specific rules and regulations.** 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 applicant needs to be able to park this vehicle next to her house."** The motion was seconded by **Mr. Martinez.**

AYES: Rogers, Martinez, Neff, Camargo, Britton, Kuderer, Zuniga, Cruz, Ozuna
NAYS: Quijano, Velasquez

THE VARIANCE WAS GRANTED.

CASE NO. A-14-054

Applicant – Reynaldo R Muniz
Lot 6, Block 6, NCB 6609
713 Waverly Avenue
Zoned: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 5-foot variance from the required 5-foot side yard setback to allow an accessory structure on the property line.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of denial of the requested variance. She indicated 25 notices were mailed, 4 were returned in favor and none were returned in opposition.

Reynaldo Muniz, applicant, stated he is willing to fire rate the wall and provide gutters for the drainage runoff from the rain.

The following citizens appeared to speak:

Cruz Urtado, 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-14-054 closed.

MOTION

A motion was made by **Mr. Camargo**. "I would move that in Case **A-14-054**, the request of **Reynaldo R. Muniz**, at **713 Waverly Avenue,** on property known as **Lot 6, Block 6, NCB 6609,** be granted a **5-foot side yard setback to allow an accessory structure on the property line.** Specifically, we find that such variance will not be contrary to the public interest in that **the adjacent property owner, that is mostly affected is affected so it's questionable whether its not against the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **I find no hardship in this particular case and that there seems to be solutions to resolve this matter.** The spirit of the ordinance is observed and substantial justice is done in that **it is difficult to find in my opinion in that corrections can definitely be made in a not too expensive manner to correct the situation.** 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 **granting the variance would in fact allow a use in violation of zoning regulations if in fact it is approved.** 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 variance if granted would affect the adjacent property owner in that it encroaches upon a setback that the adjacent property owner is entitled to have maintained.** 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 **I do not find any unique circumstances other than someone placing this building in error and violation of the ordinances.**" The motion was seconded by **Mr. Zuniga.**

AYES: Zuniga
NAYS: Camargo, Britton, Martinez, Velasquez, Kuderer, Cruz, Quijano, Neff, Rogers, Ozuna

THE VARIANCE WAS NOT GRANTED.

Board members recessed for ten minutes.

CASE NO. A-14-058

Applicant – Caner Enbatan
Lot 165, Block 20, NCB 16866
11729 Spring Ridge Drive
Zoned: "RM-4 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 3-foot variance from the 3-foot maximum fence height to allow a sold fence up to 6 feet in height in the front yard.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 42 notices were mailed, none were returned in favor and 2 were returned in opposition and no response from the Oxbow Neighborhood Association.

Caner Enbatan, applicant, stated there are several houses in the area that have six foot fences. He also stated the fence would provide security and safety for the property owner. There have been several trespassers knocking on his door late at night and trash being thrown on his yard.

The following citizens appeared to speak:

James Stowe, citizen, spoke in favor.

Abraham Villanueva, 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-14-058 closed.

MOTION

A motion was made by **Mr. Martinez.** Re Appeal No. **A-14-058**, variance application for a **3-foot variance from the 3-foot maximum fence height to allow a solid fence up to 6 feet in height in the front yard,** situated at **11729 Spring Ridge Drive,** subject property description **Lot 165, Block 20, NCB 16866**, applicant being **Caner Enbatan.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-058**, 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 such variance will not be contrary to the public interest in that **usually, fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. Front yard fences of varying materials are common in this area; additionally, given the unique development of the site with detached garage, the fence does not have the appearance of a front yard fence. In fact, if the garage were attached, a variance would be unnecessary. As such, the variance**

is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a special condition exists because of the unique site design of the townhome lots with the garage being detached and within the front yard.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed because the fence does not extend past the front façade of the detached garage, which would appear to a passerby to be the front yard.** 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 Residential Mixed 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, if approved, will not injure the appropriate use of adjacent properties or alter the essential character of the district as front yard fences of varying materials and heights are commonplace within the development.** 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 circumstance on the property results from the unique site design of the townhomes on the property.**" The motion was seconded by **Mr. Quijano.**

AYES: Martinez, Quijano, Neff, Britton, Zuniga, Cruz, Rogers, Kuderer, Ozuna
NAYS: Camargo, Velasquez

THE VARIANCE WAS GRANTED.

CASE NO. A-14-060

Applicant – Gerald M Sutherland
Lot 31, Block 2, NCB 17315
3 Westelm Point
Zoned: "R-6 PUD" Residential Single-Family Planned Unit Development District

The applicant is requesting a 1-foot variance from the 6-foot maximum fence height to allow a solid fence up to 7 feet in height in the side and rear yard.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 16 notices were mailed, one was returned in favor and one was returned in opposition.

Gerald Sutherland, applicant, stated the fence would provide privacy for the property. He also stated he chose the wrought iron fence so that the property would not be completely enclosed.

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-14-060 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-14-060**, variance application for a **1-foot variance from the 6-foot maximum fence height to allow a solid fence up to 7 feet in height in the side and rear yard,** situated at **3 Westelm Point,** subject property description **Lot 31, Block 2, NCB 17315**, applicant being **Gerald M. Sutherland.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-060**, 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 such variance will not be contrary to the public interest in that **usually, fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. The applicant's property sits lower than the neighboring property, and the applicant has been unable to achieve the desired level of privacy in their rear yard due to the failing health of the vegetation. Because of the topographical difference, the variance is not contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a special condition exists because of the topographical differences between the subject property and the adjacent property.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance will be observed because the proposed fence is only high enough to maintain the applicant's rear yard privacy due to the topographical differences between the subject property and the adjacent 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 variance will not authorize the operation of a use on the subject property other than those specifically permitted in the Residential Single-Family PUD 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, if approved, will not injure the appropriate use of adjacent properties or alter the essential character of the district.** 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 circumstance on the property results from the difference in topography between the subject property and the adjacent property.**" The motion was seconded by **Ms. Cruz.**

AYES: Quijano, Cruz, Martinez, Britton, Camargo, Velasquez, Kuderer, Neff, Zuniga, Rogers, Ozuna
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-062

Applicant – Ronald & Chastity Puente
Lot 29, Block 32, NCB 15275
151 Lelani Place
Zoned: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 3-foot variance from the maximum 3-foot fence height to allow a 6-foot fence in the front yard.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 20 notices were mailed, 2 were returned in favor and 2 were returned in opposition and no response from the People Active in Community Effort Neighborhood Association.

Chastity Puente, applicant, stated the fence would provide protection and security. She also stated she has had incidents with the adjoining neighbors for several years. They have been attacked by that neighbor and have provided police reports in regards to harassment and assaults. She further stated the fence would provide comfort for her 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-14-062 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Re Appeal No. **A-14-062**, variance application for a **3-foot variance from the maximum 3-foot fence height to allow a 6-foot fence in the front yard and a 2-foot variance from the maximum 6-foot fence height to allow an 8-foot fence in the rear yard,** situated at **151 Lelani Place,** subject property description **Lot 29, Block 32, NCB 15275**, applicant **being Ronald & Chastity Puente.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-062**, 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 such variance will not be contrary to the public interest in that **the public interest in this case is represented the expected quiet enjoyment of private property as we have heard by the applicant. The applicants definitely need to have additional separation between the parties as we have heard.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant states that there is a desperate need for separation between the two owners. The applicant states that there is not adequate space to plant a hedge, because of the driveway location there. She has also stated that it's difficult to have her children go in front and play. They are captive in their home and nobody should have that.** The spirit of the ordinance is observed and substantial justice is done in that **the stress associated between these two**

neighboring property owners has been on-going since 2006 and needs resolution. The fencing will assist in this resolution and therefore will observe the spirit of the ordinance. We also heard that the applicant stated that the S.A.F.E. officer has gone out their numerous times and has suggested the resolve of this situation with the fence. 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 "R-6 AHOD" 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 **one of the essential objectives of regulating front yard fencing is to preserve visibility of the street by people indoors. While there are no other front yard fences of this type along this street, the fence as proposed will not reduce the eyes on the street and we have heard testimony of fact from the staff.** 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 **According to the applicant, the unique circumstance existing on the property is the ongoing conflict between the abutting property owners. Other solutions have been explored and proven unsuccessful. Therefore, the privacy fencing allowed by the variance in both the front and rear yards is definitely warranted.**" The motion was seconded by **Mr. Quijano.**

AYES: Kuderer, Martinez, Quijano, Camargo, Velasquez, Zuniga, Neff, Rogers, Britton, Cruz, Ozuna
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-14-059

Applicant – Lori Poujol
Lots 15 & 16, Block 2, NCB 6424
510 W Lynwood
Zoned: "R-6 NCD-2 AHOD" Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting a 1) a 2.5-foot variance from the minimum 5-foot side setback to allow a carport 2.5 feet from the side property line; 2) 5-foot variance from the minimum 5-foot front façade setback; 3) a variance to allow a roof pitch on the carport different from that of the primary structure.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of variance request one and three and denial of the second variance request.. She indicated 29 notices were mailed, 4 were returned in favor and 2 were returned in opposition and no response from the Alta Vista Neighborhood Association.

Lori Poujol, applicant, stated they have tried to get in contact with the homeowners by email and yet have not received any responses from them. She also stated they hired a contractor to repair the existing carport. She assumed the contractor had taken care of the project and didn't realize he had not obtained any permits until they were given a letter by the code enforcement. She further stated the carport would provide security and protection for her family.

No citizens appeared to speak.

Mary Dewein, 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-14-059 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-14-059**, variance application for **1) a 2.5-foot variance from the minimum 5-foot side setback to allow a carport 2.5 feet from the side property line; 2) 5-foot variance from the minimum 5-foot front façade setback; 3) a variance to allow a roof pitch on the carport different from that of the primary structure**, situated at **510 W. Lynwood,** subject property description **Lots 15 & 16, Block 2, NCB 6424**, applicant being **Lori Poujol.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-14-059**, 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 such variance will not be contrary to the public interest in that **the public interest in this case is represented by minimum setbacks established to ensure that activities on individual properties do not impact the rights of a neighboring property owner and allow for property maintenance. The distance of 2.5 feet does allow for maintenance and thus the setback variance is not contrary to the public interest. The roof pitch is not as influential in this application, given the type of roof design on the primary structure. Therefore, the variance to roof pitch would not be contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a carport was constructed in the same location as the historic one was, with room for just one vehicle. With the minimum setback in place, there is not room for a carport over the driveway. Given the location of the carport, so close to the neighboring home and even with or behind the front façade of the primary house, agable roof over the carport would be unnoticeable and could be considered an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the applicant states that they had no intention to replace the carport, only repair it. In addition, they have agreed to comply with fire-rated construction requirements and install gutters to minimize the impact on the neighboring property owner.** 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 "R-6 NCD-2 AHOD" 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 variances will likely not alter the characteristics of the district since it replaces a carport that was in the exact same location and to have the carport flush with façade.** 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 condition that exists on the property is that the house was constructed with only enough setback for a driveway on one side, typical for houses built during the first half of the 20th century. The applicant hired a contractor to repair the existing carport and he did so without permits. The applicant is seeking the variances in order to retain the improvements as installed.**" The motion was seconded by **Ms. Rogers.**

AYES: Quijano, Rogers, Britton, Martinez, Neff, Kuderer, Velasquez, Zuniga, Cruz, Camargo, Ozuna
NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

Mr. Velasquez made a motion to approve the February 3, 2014 minutes. **Mr. Quijano** seconded the motion with all members voting in the affirmative

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There being no further discussion, meeting adjourned at 4:51 pm.

APPROVED BY: _____ OR _____
Andrew Ozuna, Chairman Mary Rogers, Vice-Chair

DATE: 6/2/14

ATTESTED BY: _____ DATE: 6-5-14
Executive Secretary