

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
September 15, 2014**

Members Present:

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

Staff:

Catherine Hernandez, Planning Manager  
Margaret Pahl, Senior Planner  
Paul Wendland, City Attorney

---

**Call to Order**

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

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

---

**CASE NO. A-14-088**

Applicant – Veronica Romo  
Lots 39 & 40, Block 3, NCB 6152  
233 E. Hafer  
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) a 3-foot variance from the maximum height of 3 feet to allow a 6-foot wall in a portion of the front yard as detailed in Section 35-514(d); and 2) a 5-foot variance from the minimum 10 foot setback as detailed in Table 35-310 to allow a carport 5 feet from the front property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the requested fence variance and approval of the requested carport variance. She indicated 43 notices were mailed, 5 were returned in favor and one was returned in opposition.

Veronica Romo, applicant, stated the fence would provide security and privacy from her neighbors. She also stated the neighbors have harassed her children and thrown trash into her yard.

**The following citizens appeared to speak:**

Dora Mendez, citizen, spoke in favor.

Lucille Duran, 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-14-088 closed.

**MOTION**

A motion was made by **Mr. Camargo**. “I would move that in case **A-14-088**, the request of **Veronica Romo**, on property known as **233 E. Hafer**, legally described as **Lots 39 & 40, Block 3, NCB 6152** be granted the requested variance of a **3-foot variance from the maximum height of 3 feet to allow a 6-foot wall in a portion of the front yard as detailed in Section 35-514(d) and also a 5-foot variance from the minimum 10 foot setback as detailed in Table 35-310 to allow a carport 5 feet from the front property line**. Specifically, we find that such variance will not be contrary to the public interest in that **the large number of notices that were mailed to the adjacent property owners, the majority of property owners on Hafer Street recommended approval of this case. In their response they have also indicated that which has been stated by two of the adjacent neighbors of the high crime rate in the particular area and the nuisance that the adjacent property owners have provided**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the literal enforcement of the ordinance should not be followed and that special situation being the applicant and adjacent property owners have stated what the applicant had originally stated of the nuisance situation that occurs adjacent to her and that being her rational in constructing a solid concrete masonry wall within the front setback**. 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 **this is a single-family use and will be continued to be operated as such**. 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 **I question the appropriate use based on the comments made by the applicant that no enforcement of her allegations have been taken in the years past that has caused her to vacate the premises and construct the wall**. 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 circumstances are those which were outlined by the applicant and that of an un-rudely adjacent property owners**.” The motion was seconded by Ms. Rogers.

**AYES: Camargo, Rogers, Quijano, Neff, Kuderer, Velasquez, Cruz, Britton, Ozuna**

**NAYS: Zuniga, Martinez**

**THE VARIANCES WAS GRANTED.**

---

**CASE NO. A-14-089**

Applicant – Delisa and Scott Duran

Lot 29, NCB 9178

2507 W Kings Hwy

Zoned: “R-6 NCD-7 AHOD” Residential Single Family Jefferson Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting a 2 foot variance from the 6 foot maximum as described in Section 35-514(d) to allow an 8 foot tall fence in the rear and side yards.

Logan Sparrow, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 16 notices were mailed, 3 were returned in favor and none were returned in opposition and the Jefferson/Woodlawn Lake Association is in opposition.

Scott Duran, applicant, stated there has been several incidents of theft of their property. He also stated the fence would provide security for their personal belongings.

**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-14-086 closed.

**MOTION**

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-14-089**, variance application for a **2 foot variance from the 6 foot maximum as described in Section 35-514(d) to allow an 8 foot tall fence in the rear and side yards**, subject property description **Lot 29, NCB 9178**, situated at **2507 W Kings Hwy**, applicant being **Delisa and Scott Duran**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-089**, 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 maximum fence heights so as not to create a visual blight to neighboring property owners. The rear property line abuts a service alley and will, therefore, not negatively impact the neighboring properties. The portion of the fence that runs from the garage to the house is not visible from the street and will therefore not be contrary to the public interest. While a case may be made that the fence running along the west side of the property may be contrary to the interests of the neighbors, there exists dense vegetation between the properties, in affect creating a dense separation between properties already. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that in this case the special conditions existing on the property are the thefts occurring on a regular basis – three times in one year. The applicants are asking for the variance to deter**

**theft and to provide a greater sense of comfort in their homes.** The spirit of the ordinance is observed and substantial justice is done in that **the variance request may be considered consistent with the spirit of the ordinance because the fences are not visible from the street and are constructed of the same materials as other fences common in the community.** 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-7 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 variance will likely not alter the character of the district because most of the fence is not easily visible to the public and because the portion of the fence abutting the neighboring property will also be concealed, in part, by existing vegetation, making it more visually appealing.** 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 is being burglarized on a regular basis. These conditions are not created by the homeowners and are not merely financial in nature.”** The motion was seconded by Ms. Cruz.

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

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

**CASE NO. A-14-093**

Applicant – Raymond Navarro Jr.

Lots 2 & 3, NCB 11889

363 E. Terra Alta Drive

Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting 1) a 5-foot variance from the maximum 3-foot solid fence; 2) a 1-foot variance from the maximum 4-foot open fence; 3) a 2-foot variance from the maximum 6-foot fence, as detailed in Section 35-514(d) and 4) a variance from the clear vision area, as detailed in Section 35-506 to allow an 8-foot tall fence in the rear, side and a portion of the front yard and a 5-foot wrought iron open fence in the remaining portion of the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 46 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Oak Park-Northwood Neighborhood Association.

Raymond Navarro, applicant, stated the fence would provide security and privacy from trespassers in the nearby area. He also stated the wrought iron fence would provide visibility. He further stated

**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-14-093 closed.

## **MOTION**

A motion was made by Mr. Neff. "Re Appeal No. A-14-093, variance application for **1) a 5-foot variance from the maximum 3-foot solid fence; 2) a 1-foot variance from the maximum 4-foot open fence; 3) a 2-foot variance from the maximum 6-foot fence, as detailed in Section 35-514(d) as detailed in Section 35-506 to allow an 8-foot tall fence in the rear, side and a portion of the front yard and a 5-foot wrought iron open fence in the remaining portion of the front yard, subject property description Lots 2 & 3, NCB 11889, situated at 363 E. Terra Alta Drive, applicant being Raymond Navarro Jr.. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-14-093, 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 applicant is requesting the variances to his fencing in order to provide more separation from the apartments to the rear and the commercial properties to the south and east. Because of the inherent conflicts that arise between a single family home and the more intense neighboring land uses, additional fencing is warranted and 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 **the special conditions present in this case are that the subject property abuts multi-family and commercially zoned properties. The applicant seeks to separate his home from the neighboring uses by using increased fence heights. Requiring the applicant to adhere to the UDC requirements could lead to unpleasant living conditions due to sound and traffic encroachment and could be considered an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the applicant is permitted an 8 foot fence along the east side of his property by right up to the façade of the home, as it separates a residential use from a commercial use. The variance request to allow an 8 foot fence in the rear and west side of the property may be considered in keeping with the spirit of the ordinance because allowing the applicant to maintain a consistent fence height will help to contribute to the character of the community. In addition, front wrought iron fencing can be and is allowed in certain circumstances.** 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-5 AHOD" Residential Single-Family Airport Hazard 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 fence height variances will likely not alter the character of the local community as the applicant merely seeks to separate his home from neighboring uses. The proposed front wrought fencing will be attractive and consistent with the Mediterranean style of the home, contributing to the character.** 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 property is situated near properties zoned for commercial and multi-family uses. According to the owner, the location demands additional security measures to provide a similar level of protection other properties have from separation.**"

The motion was seconded by Mr. Quijano.

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

**NAYS: None**

**THE VARIANCES WERE GRANTED.**

**Board member recessed for 5 minutes.**

**CASE NO. A-14-090**

Applicant – Rex Corporation  
SW 58.32 ft of Lot 17, NCB 9582  
2710 St. Mary’s Street  
Zoned: “C-3 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting 1) a 3-foot variance from the maximum 3-foot fence height as described in Section 35-514 (d) to allow a 6-foot solid fence in the front yard; 2) a 15-foot variance from the minimum 15-foot wide bufferyard as described in Table 510-1 to allow reduction and/or elimination of the required bufferyard; 3) an 11-foot variance from the minimum 30-foot sideyard setback as described in Table 310-1 to allow a building 19 feet from the south property line; and 4) a variance from the minimum required off-street parking stalls as detailed in Table 526-3(b) to allow a business with no off-street parking.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 32 notices were mailed, 4 were returned in favor and 7 were returned in opposition and the Tobin Hill Community Association is in favor.

Lawrence Seiterle, representative, stated they want to align this business with the neighborhood plan. He also stated the building will be reduced in sign to have a more environmental project. He further stated the business will have a family oriented concept that will give the community an opportunity to walk to a restaurant.

**The following citizens appeared to speak:**

Martin Kushner, citizen, spoke in favor.

Ben Fairbanks, 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-14-090 closed.

**MOTION**

A motion was made by Ms. Rogers. “Re Appeal No. A-14-090, variance application to 1) a 3-foot variance from the maximum 3-foot fence height as described in Section 35-514 (d) to allow a 6-foot solid fence in the front yard; 2) a 15-foot variance from the minimum 15-foot wide bufferyard as described in Table 510-1 to allow reduction and/or elimination of the required bufferyard; 3) an 11-foot variance from the minimum 30-foot sideyard setback as described in Table 310-1 to allow a building 19 feet from the south property line; and 4) a variance from the minimum required off-street parking stalls as detailed in Table 526-3(b) to allow a business with no off-street parking with the addition that the motion is for a food establishment., subject property description the SW 58.32 ft of Lot 17, NCB 9582, situated at 2710 St. Mary’s Street, applicant being Rex Corporation. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-14-090, 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 the goals and objectives detailed in the Tobin Hill Neighborhood Plan which encourage commercial redevelopment along this corridor, even identifying it as the cultural gateway into downtown. Therefore, the variances which would facilitate this revitalization 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 **transitioning lots platted for residential use into commercial businesses has created a neighborhood of non-conforming structures with little or no off-street parking. Literal enforcement of the ordinance would result in these structures remaining in a dilapidated state and the tedious long-term assemblage of neighboring parcels to create a developable site, resulting in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the variances requested may be considered consistent with the spirit of the ordinance because the proposed development pattern is similar to many other commercial sites along this corridor.** 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-3 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 essential character of the district, both in its current state and in its anticipated state according to the goals in the adopted Neighborhood Plan,**

envisions a mixed use area where commercial and residential uses enjoy their close association. The homes which abut this site also abut the neighboring tavern and understand the challenges associated with this proximity. There are very few businesses along St. Mary's with off-street parking and so the residential streets already experience the effects of this requested parking modification. The applicant is hoping to improve this relationship, with financial investment and a family friendly walkable business. A bufferyard and perimeter fencing will be installed to reduce the offsite impacts to adjacent properties. We also see in the plan that it will also be conducive to the children. 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 plight of the applicant is unique in that he hopes to demolish the structure, losing all non-conforming rights to the site and begin fresh, with a smaller building and outdoor seating conducive to children at play in the play area including the plan. Current ordinance provisions did not anticipate commercial development on this shape and size parcel.**" The motion was seconded by Ms. Cruz.

**AYES: Rogers, Velasquez, Kuderer, Neff, Zuniga, Britton, Cruz, Ozuna**

**NAYS: Martinez, Quijano, Camargo**

#### **SUBSTITUTE MOTION**

A motion was made by **Mr. Camargo**. "I would that in Case No. **A-14-090**, on property submitted by **Rex Corporation**, property located at **2710 St. Mary's Street**, legally described as the **SW 58.32 ft of Lot 17, NCB 9582**, that the board grant the following variances for a **food service establishment** and that being **1) a 3-foot variance from the maximum 3-foot fence height as described in Section 35-514 (d) to allow a 6-foot solid fence in the front yard; 2) a 15-foot variance from the minimum 15-foot wide bufferyard as described in Table 510-1 to allow reduction and/or elimination of the required bufferyard; 3) an 11-foot variance from the minimum 30-foot sideyard setback as described in Table 310-1 to allow a building 19 feet from the south property line; and 4) a variance from the minimum required off-street parking stalls as detailed in Table 526-3(b) to allow a business with no off-street parking as stated in Case A-14-090 for the following reasons.** 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 the goals and objectives detailed in the Tobin Hill Neighborhood Plan Association. Although there were signatures opposing the request none appeared or were able to appear to present their case before this board perhaps if they had been assured that it would not be a use that perhaps I would object to.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special conditions that exist on this piece property are the irregular shape and the width of this property and other properties that exist on St. Mary's.** The spirit of the ordinance is observed and substantial justice is done in that **it would consistent with the spirit of the ordinance and the only consistency with the spirit of the ordinance would be that this would hopefully encourage infill development in an older area that has been developed for a number of years.** 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 variance will not authorize the use that is not**

**permitted in the “C-3” zoning classification.** 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 **if in fact it is used in the manner in which it has been presented to us by the applicant.** 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 **those circumstances are shown in the information that has been submitted to us, this irregularly shaped lot, which makes it very difficult to develop.** The motion was seconded by **Mr. Martinez.**

**Mr. Camargo withdrew his motion.**

**SUBSTITUTE MOTION**

**Mr. Rogers made a motion to continue to this case until the next regularly scheduled meeting on October 6, 2014.**

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

**NAYS: None**

**THE MOTION PASSES.**

**Board members recessed for five minutes.**

**CASE NO. A-14-091**

Applicant – Julia Rosenfeld  
Lot 9, Block 1, NCB 992  
125 Muth Street  
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 14-foot variance to the 20-foot required setback in Section 35-516(g) to allow a garage to be constructed in the rear yard 6 feet from the north side property line.

Logan Sparrow, Planner, presented background and staff’s recommendation of approval of the requested fence variance and approval of the requested carport variance. She indicated 34 notices were mailed, one was returned in favor and one was returned in opposition and no response from the Government Hill Neighborhood Association

Julia Rosenfeld, applicant, stated she has heard from the neighborhood association that they are in favor. She also stated she just moved in to the house in the February. She further stated the gate will 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-14-091 closed.

**MOTION**

A motion was made by **Mr. Neff**. "Re Appeal No. A-14-091, variance application for a 14-foot variance to the 20-foot required setback in Section 35-516(g) to allow a garage to be constructed in the rear yard 6 feet from the north side property line, subject property description Lot 9, Block 1, NCB 992, situated at 125 Muth Street, applicant being Julia Rosenfeld. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-14-091, 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 to allow adequate access to air and light. The proposed garage will not negatively impact either and will in fact serve to eliminate additional on-street parking, making the streets more easily navigable to those driving through. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that in this case the special conditions existing on the property are the abnormally narrow streets. Muth Street and Quitman Street each measure about 17 ft across. The applicant is asking for the variance to eliminate her need for on-street parking, making the streets more easily passable to the surrounding community. The applicant would also like to enjoy the added security of a closing gate. It is likely that denying the variance would create unnecessary hardship not only for the applicant, but for the community, too. The spirit of the ordinance is observed and substantial justice is done in that the variance request may be considered consistent with the spirit of the ordinance because the purpose of garage setbacks is to ensure that homeowners cannot park in a fashion that blocks sidewalks. The applicant submitted in her application that she wants to be able to pull into a garage for safety of herself and of her property. As such the spirit will be observed because she will park solely in the garage. 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 the requested variance will not likely alter the character of the district because several other homes have garages existing on the property. Contrary, the variance, if approved, will add to the character of the community by removing the applicants need for on-street parking and thus making the streets more open and navigable. 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 streets are abnormally narrow. These conditions are not created by the applicant and are not merely financial in nature.**” The motion was seconded by **Ms. Cruz**.

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

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

---

**CASE NO. A-14-095**

Applicant – Gary and Theresa Poenisch  
Lot 50 and S. IRRG 121.2 of 49, Block 1, NCB 6328  
223 Laurel Heights Place  
Zoned: “R-5 H AHOD” Residential Single Family Monte Vista Historic Airport Hazard Overlay District

The applicant is requesting a 15-foot variance from the minimum 20-foot rear yard setback, as detailed in Table 310-1, to allow a building addition within 5 feet of the rear property line

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested fence variance and approval of the requested carport variance. She indicated 20 notices were mailed, 2 were returned in favor and one was returned in opposition and the Monte Vista Neighborhood Association is in favor.

Gary Poenisch, applicant, stated the new additions will not be seen by the adjacent neighbor.

Cam Carpenter, representative, stated the applicant wants to include a laundry space. She also stated the addition would be feasible to place it next to the kitchen due to the historic requiring additions to the rear of the property. She further stated the existing shed would be remodeled to an addition more modest and further away from the adjacent neighbor. The irregular part of the rear yard part of the property was sold to the adjacent neighbor in opposition for their convenience by the previous owner.

**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-14-095 closed.

**MOTION**

A motion was made by **Mr. Quijano**. “Re Appeal No. **A-14-095**, variance application for a **15-foot variance from the minimum 20-foot rear yard setback, as detailed in Table 310-1, to allow a building addition within 5 feet of the rear property line**, subject property description

**Lot 50 and S. IRRG 121.2 of 49, Block 1, NCB 6328, situated at 223 Laurel Heights, applicant being Gary and Theresa Poenisch. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-14-095, 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 maintaining the historic nature and character of the home and the community. The applicant has met with the Historic and Design Review Commission and has acted in accordance with their advice to propose the construction in the rear of the home, rather than the front. It is unlikely that neighboring properties will be adversely impacted due to existing dense vegetation and because the rear property line is separated from the neighbor by an 8 foot tall wall. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the option of constructing the addition on the front of the house is not recommended by the recently adopted design guidelines. These require that owners keep the historic nature of the façade intact. Therefore, a literal enforcement of the ordinance would likely eliminate the potential for an addition. The spirit of the ordinance is observed and substantial justice is done in that the variance request may be considered consistent with the spirit of the ordinance because the applicant is acting upon advice of the HDRC to keep in harmony with the historic nature of the community by adding onto the rear of the home. 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-5 H 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 variance will likely not alter the character of the district because the construction will be to the rear of the property which is not visible from the street. Furthermore, an 8 foot tall wall built by the rear neighbor makes it such that it will not be visible from other property owners. 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 property is located in a historic district and subject to design approval by the HDRC. According to the staff analysis during the applicant's request for conceptual approval, the staff noted: Site residential additions at the side or rear of the building whenever possible to minimize views of the addition from the public right-of-way. An addition to the front of a building would be inappropriate." The motion was seconded by Mr. Martinez.**

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

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

---

**Mr. Zuniga made a motion to move Case No A-14-092 to the end of the agenda. Ms. Rogers seconded the motion with all members voting in the affirmative.**

**CASE NO. A-14-094**

Applicant – Peter Greenblum  
Lot 2, Block 6, NCB 3081  
204 Carnahan Street

Zoned: “R-4 NCD-6 AHOD” Residential Single-Family Mahncke Park Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting a variance from the minimum 4-foot separation required between a driveway and a sidewalk, as described in Section 35-335, to allow a step stone sidewalk abutting the gravel driveway in the Mahncke Park Neighborhood Conservation District.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 25 notices were mailed, 6 were returned in favor and none were returned in opposition and no response from the Mahncke Park Neighborhood Association is in opposition.

Peter Greenblum, applicant, stated the variance will allow the owners to build a sidewalk without destroying the pecan tree in their yard.

**The following citizens appeared to speak:**

Carlynn Ricks, 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-14-094 closed.

**MOTION**

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-14-094**, variance application from the **minimum 4-foot separation required between a driveway and a sidewalk, as described in Section 35-335, to allow a step stone sidewalk abutting the gravel driveway in the Mahncke Park Neighborhood Conservation District**, subject property description **Lot 2, Block 6, NCB 3081**, situated at **204 Carnahan Street**, applicant being **Peter Greenblum**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-14-094**, 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 the standards of the NCD, meant to ensure that future development is compatible with the character of the existing neighborhood. In this case, the Board will have to determine**

**which feature contributes more to the character are not being undermined by this variance.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that **the variance request may be considered consistent with the spirit of the ordinance because the purpose of the NCD standards is to preserve the character of the neighborhood, and the tree is as significant as the repeating pattern of the sidewalk and driveway.** 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. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located. The 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 did not anticipate that the installation of the driveway would interfere with the nearby tree, however an arborist has predicted the driveway would kill the tree. Because the property is residential, the City's tree preservation ordinance does not apply and the protection of the tree is not required. If the variance is denied, the applicant will remove the tree and install the required concrete driveway and sidewalk. The tree's location creates a unique property-related hardship that exists on the property and justifies the need for the variance.**" The motion was seconded by Mr. Kuderer.

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

**NAYS: None**

**THE VARIANCE WAS GRANTED.**

---

**CASE NO. A-14-096**

Applicant – Deborah Humphries

Lot 10 & W 30FT of 9 & NE TRI 54FT of 21, Block 5, NCB 1056

302 Eleanor Avenue

Zoned: "MF-33 NCD-6 AHOD" Multi-Family, Mahncke Park Neighborhood Conservation, Airport Hazard Overlay District

The applicant is requesting a variance from the Mahncke Park Neighborhood Conservation District design requirements found in Section 35-335 to allow windows that do not match the original windows in dimensional proportions, framing, or materials

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested fence variance and approval of the requested carport variance. He indicated 32 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Mahncke Neighborhood Association.

Deborah Humphries, applicant, stated she was not aware of the protocol for the conservation district. She also stated the windows were in horrible condition when she purchased the home and decided to replace the windows. She further stated due to an unforeseen medical emergency, she had some miscommunication with her friend in regards to obtaining the permits to install the new windows.

**The following citizens appeared to speak:**

Gino Perez, citizen, spoke in favor.

Michael Lockridge, citizen, spoke in favor.

Carlynn Ricks, 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-14-096 closed.

**MOTION**

A motion was made by **Ms. Cruz**. “Re Appeal No. A-14-096, variance application from the **Mahncke Park Neighborhood Conservation District design requirements found in Section 35-335 to allow windows that do not match the original windows in dimensional proportions, framing, or materials**, subject property description Lot 10 & W 30FT of 9 & NE TRI 54FT of 21, Block 5, NCB 1056, situated at 302 Eleanor Avenue, applicant being **Deborah Humphries**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-14-096, 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 requiring replacement windows to match the original windows in dimensional proportion, framing, and materials. The applicant has submitted that windows matching the originals were difficult to find and instead installed windows that were different. To compensate for the difference the applicant has stated that she will install grid-overlays to more closely reflect the original window units. The grid- overlays will be installed on all windows facing Eleanor Avenue, the primary street, and Wesley Street, the secondary street, as required by the Mahncke Park Neighborhood Conservation District guidelines. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the special conditions present in this case are that windows matching the originals are very difficult to find. The applicant has stated that because they were so difficult to find that she installed newer windows but is making efforts to make them as similar as possible to the originals. The spirit of the ordinance is observed and substantial justice is done in that the variance request may be considered consistent with the spirit of the ordinance because the applicant has made custom modifications to the new windows to make them appear as close as possible to the original windows. 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 NCD-6 AHOD" Multi-Family Mahncke Park Neighborhood Conservation Airport Hazard 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 likely not alter the character of the local community as the applicant has altered the new windows to reflect the originals by installing a grid-overlay onto them.** 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 original windows are very difficult to replace as they are very old. As such the plight of the owner is not merely financial, but represented by the difficulty to find windows that match the originals in dimensional proportion, framing, and materials."** The motion was seconded by Mr. Velasquez.

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

**THE VARIANCE WAS GRANTED.**

Mr. Britton departed at 6:12 pm.

**CASE NO. A-14-092**

Applicant – Celeste Walkenhut  
 Lots 39 & 40, Block 3, NCB 6152  
 115 Michigan Avenue  
 Zoned: "RM-4 NCD-5 AHOD" Residential Mixed Beacon Hill Neighborhood Conservation Airport Hazard Overlay District

The applicant is requesting the elimination of three parking spaces of off-street parking required in Section 35- 526 Table 526-3b to allow a 795 square foot art gallery within a home.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 18 notices were mailed, 3 were returned in favor and 10 were returned in opposition and the Beacon Hill Neighborhood Association is in favor.

Rob Killen, representative, stated the art gallery will have customers by appointment. He also stated the owner will live upstairs. He further stated the applicant is currently requesting to add a conditional use to the zoning classification to specifically allow an art gallery.

Celeste Walkenhut, applicant, stated they will not have more visitors than a typical residence would. She also stated they represent a total of twelve artists and private art galleries.

**The following citizens appeared to speak:**

Cosima Colvin, citizen, spoke in favor.

Sharyll Tenayuca, citizen, spoke in opposition.

Maria Corona, citizen, spoke in favor.

Jessica Fuentes, 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-14-092 closed.

**MOTION**

A motion was made by **Mr. Camargo**. “In Case A-14-092, the request of Celeste Walkenhut, on property identified as **115 Michigan Avenue**, legally described as the **South 44 ft. of Lots 5 & 6, Block 48, NCB 1872**, be granted the request in **this particular case provided a conditional use permit that is spoken of in the “RM-4 NCD-5 AHOD” zoning classification is granted, that request being an elimination of three parking spaces of off-street parking which is required by a section in the Unified Developed Code to allow a 795 square foot art gallery within a home**. Specifically, we find that such variance will not be contrary to the public interest in that there is currently plenty of on-street parking from information that has been provided that is necessary to accommodate the business demands of the proposed use. It has been pointed out ever since the beginning and construction of this structure, back in the 1930 or 1940’s, it has been known that this commercial development on this property in fact would need on-street parking and has been provided as such. There have been numerous commercial uses that have been indicated or shown to us that far exceeds the need of the three parking spaces that is of our understanding that is required per the gallery. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the special conditions present on this lot is the lot size and the fact that the structure on the property occupies the entire lot. The spirit of the ordinance is observed and substantial justice is done in that it meets the spirit of the ordinance in that due to the existing availability of on street parking the spirit of the ordinance will be observed. 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 variance will not authorize the operation of a use other than that which if approved by City Council for a special use permit of an art gallery specifically and the allowance of the variance for the three parking spaces again is tied to that specific 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 the character of this local community as it is, is already very common to park along the street in this area and has for a number of years. 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 **these conditions are not created by the applicant and are not merely financial in nature but have existed for a number of years.**" The motion was seconded by **Mr. Zuniga.**

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

**Mr. Camargo made a motion to continue this case in order for the applicant to meet with the opposing side to hopefully be able to convince that if this property is going to be used that there could be some compromise. Mr. Zuniga seconded the motion.**

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

**THE MOTION PASSES.**

---

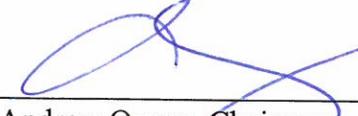
#### **Approval of the Minutes**

The August 8, 2014 minutes were approved with all members voting in the affirmative.

The August 4, 2014 minutes were approved with all members voting in the affirmative.

---

There being no further discussion, meeting adjourned at 7:27 pm.

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

DATE: 10/6/14

ATTESTED BY:  DATE: 10-6-14  
Executive Secretary