

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
October 15, 2018**

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| Members Present: | Dr. Zottarelli<br>Alan Neff<br>Eugene Polendo<br>George Britton Jr<br>Maria Cruz<br>Seth Teel<br>Mary Rogers<br>Donald Oroian<br>John Kuderer<br>Roger Martinez<br>Henry Rodriguez<br>Roy Schuafelle | Staff:<br>Catherine Hernandez, DSD Administrator<br>Joseph Harney, City Attorney<br>Logan Sparrow, Interim DS Manager<br>Debora Gonzalez, Senior Planner<br>Dominic Silva, Planner |
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**Call to Order**

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

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

German Perez, 234 W. Sunset, World Wide Languages-Interpreter, present. Four citizens utilized interpretation equipment.

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Dr. Zottarelli arrived at 1:10pm and replaced Mr. Schaufelle.

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|                    |   |
|--------------------|---|
| Case Number:       | A-18-160  |
| Applicant:         | JD Dudley   |
| Owner:             | JD Dudley   |
| Council District:  | 2   |
| Location:          | 1842 North Foster Road  |
| Legal Description: | Lot 1, Block 1, NCB 17983                                     |
| Zoning:            | "C-3 AHOD" General Commercial Airport Hazard Overlay District |
| Case Manager:      | Dominic Silva, Planner  |

**Request**

A request for a 49' variance from the maximum 50' sign height, as described in Section 28-241, to allow a sign to be 99' tall.

Staff presented the background information and recommendations of the Variance. 6 notices were mailed, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

JD Dudley, 1842 North Foster Road, gave a brief description of his business and explained the need for the signs height and square footage. Mr. Dudley stated there will not be a carwash at the site and asked for approval.

No Citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-160 closed.

Mr. Neff made a motion. "Regarding Appeal No A-18-160, a request for a request for a 15' variance from the maximum 50' sign height to allow a sign to be 65' tall, situated at 1842 North Foster Road, applicant being JD Dudley.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property.*

**The applicant states the increased sign height is necessary to advertise the property along the I-10 corridor to safely allow trucks to exit. Traveling from the east, the proposed location is beyond the exit, creating a disadvantage in view. Further, topographical challenges of the site limit visibility of the proposed pole sign.**

3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*
  - A. *Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.*

**The Board finds a 65' tall sign height that will allow adequate visibility from I-10 corridor travelling from both the west and east due to disparities in elevation of the site and adjacent properties within the area is not contrary to other similarly situated lots. The request is not out of character within the district in which it is located.**

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

**The proposed variance will not have an adverse impact on neighboring properties as many adjacent properties or other commercial properties within the district have similar signage.**

*C. Granting the variance will not substantially conflict with the stated purposes of this article.*

**The requested variance does not conflict with the stated purpose of the chapter. The requested height provides reasonable limits on signage within the area. Further, the requests will not create traffic hazards by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs.” Mr. Martinez seconded the motion.**

**AYES: Neff, Martinez, Cruz, Dr. Zottarelli, Rogers, Teel, Britton, Rodriguez, Polendo, Oroian Kuderer**

**NAYS: None**

**THE VARIANCES IS GRANTED**

|                    |  |
|--------------------|--|
| Case Number:       | A-18-154   |
| Applicant:         | Mary Pierson   |
| Owner:             | Mary Pierson   |
| Council District:  | 2  |
| Location:          | 515 & 517 Moten Alley  |
| Legal Description: | Lots 24, 25, and 26, Block 2, NCB 6057                               |
| Zoning:            | “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District |
| Case Manager:      | Debora Gonzalez, Senior Planner                                      |

### **Request**

A request for 1) a 10’ variance from the minimum 20’ garage setback, as described in Section 35-516 (g), to allow a garage 10’ from the front property line and 2) a 10’ variance from the minimum 20’ rear setback, as described in Table 35-310-1, to allow a new house to be 10’ from the rear property line.

Staff presented the background information and recommendations of the Variance. 36 notices were mailed, 2 returned in favor, and 0 returned in opposition and no response from the Harvard Place/East Lawn Neighborhood Associations.

Mary Pierson, 1010 Lock Street, applicant stated this was the final stage in her project and was not prepared before but is now ready to break ground.

**No citizens appeared to speak.**



Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-154 closed.

Mr. Oroian made a motion. "Regarding Appeal No A-18-154, a request for 1) a 10' variance from the minimum 20' garage setback to allow a garage 10' from the front property line and 2) a 10' variance from the minimum 20' rear setback to allow a new house to be 10' from the rear property line, situated at 515 & 517 Moten Alley, applicant being Mary Pierson.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

**The public interest is defined as the general health, safety, and welfare of the public. In this case, the lot is only 72' deep, making it difficult to provide two 20' setbacks. The proposed 10' setback will be adequate to provide area for fire separation and long-term maintenance.**

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

**The special circumstance present on the subject property is narrow depth. In addition, the neighborhood is hampered by its industrial zoning. Therefore, literal enforcement of the deep setbacks is an unnecessary hardship.**

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

**The spirit of the ordinance is defined as the intent of the code rather than the letter of the law. The intent of the setback regulation is to allow for air, light and room to maintain the structure. Since 10' is an acceptable rear setback in most of the zoning districts, the spirit of the code is observed by granting the requested variances.**

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.*

**The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-4 AHOD" Single-Family Residential Airport Hazard Overlay District.**

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

**The neighborhood is characterized by small lot houses. Because of the industrial zoning, building permits would not be issued unless and until the house registered as a**

**non-conforming use. The applicant's property was rezoned to allow this construction project to proceed. Therefore, if the variance is granted, the new house will not negatively alter the character of the district.**

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

**The unique circumstance on this property is it was platted in 1911 with 72' deep lots, which restrict housing options, given an attached garage."** Mr. Neff seconded the motion.

**AYES: Oroian, Neff, Teel, Dr. Zottarelli, Martinez, Cruz, Rogers, Britton, Rodriguez, Polendo, Kuderer**

**NAYS: None**

### **THE VARIANCE IS GRANTED**

|                    |  |
|--------------------|--|
| Case Number:       | A-18-153   |
| Applicant:         | Rosalba Rojas  |
| Owner:             | Rosalba Rojas  |
| Council District:  | 5  |
| Location:          | 2012 Guadalupe Street  |
| Legal Description: | Lot 7, Block 1, NCB 6111   |
| Zoning:            | "C-2 MLOD-2 MLR-2 AHOD" Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District |
| Case Manager:      | Debora Gonzalez, Senior Planner  |

### **Request**

A request for a 10' variance from the 20' rear setback, as described in section 35-310.01, to allow a house to be built 10' from the rear property line.

Staff presented the background information and recommendations of the Variance. 43 notices were mailed, 0 returned in favor, and 0 returned in opposition and no response from Avenida Guadalupe Community Association.

Rosalba Rojas, 142 Maple Valley, requested interpreter services and equipment, stated they bought the property to build their first home and are requesting the variance in order to add parking.

**No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-153 closed.



Ms. Cruz, made a motion. "Regarding Appeal No A-18-153, a request for a 10' variance from the 20' rear setback to allow a house to be built 10' from the rear property line, situated at 2012 Guadalupe Street, applicant being Rosalba Rojas.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

**The public interest is represented by setbacks to provide separation between incompatible uses and to ensure fair and equal access to air and light. The proposed living space meets the five foot side setback requirements. The ten foot rear setback will be in harmony with the neighboring residential properties. Staff finds that the request is not contrary to the public interest.**

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

**The special condition in this case is that the current lot is only 1,850 square feet in area and the applicant is only seeking to reduce the rear setback requirement. The Board finds that a literal enforcement of the ordinance would result in unnecessary hardship.**

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

**Granting the request will result in substantial justice, because the proposed development of detached single-family dwellings advances the efforts of the zoning designation. The variance will promote infill development on this lot.**

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.*

**The variance will not authorize the operation of a use other than those uses specifically authorized in the "C-2 MLOD-2 MLR-2 AHOD" Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District.**

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

**As the proposed construction will provide a ten foot rear setback and the adjacent rear lot is vacant, it is unlikely that adjacent property will be harmed by the proposed development. There are several districts that permit a 10' rear setback.**

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

**The unique circumstance present in the case is the small lot size that forces the applicant to reduce the rear setback to accommodate the structure. This setback issue is not merely financial in nature.”** Mr. Martinez seconded the motion.

**AYES: Cruz, Martinez, Oroian, Neff, Teel, Dr. Zottarelli, Rogers, Britton, Rodriguez, Polendo, Kuderer**

**NAYS: None**

## **THE VARIANCE IS GRANTED**

|                    |  |
|--------------------|--|
| Case Number:       | A-18-140   |
| Applicant:         | Antonio Plascencia   |
| Owner:             | Antonio Plascencia   |
| Council District:  | 9  |
| Location:          | 1127 and 1143 East Bitters Road  |
| Legal Description: | Lot 59 and the Southwest 318.7 feet of Lot 9 OR Lot 9C & Northwest Irregular 121.3 feet of Lot 9 OR 9A1, NCB 12061 |
| Zoning:            | “R-20 AHOD” Residential Single-Family Airport Hazard Overlay District  |
| Case Manager:      | Dominic Silva, Planner   |

### **Request**

A request for a special exception, as described in Section 35-514, to allow a 6’ tall solid screen fence along a portion of the front property.

Staff presented the background information and recommendations of the Variance. 21 notices were mailed, 2 returned in favor, and 0 returned in opposition and no response from the Countryside San Pedro Neighborhood Association.

Brandon Wilson, 1127 East Bitters Road, stated Bitters Road is a high traffic area and is requesting the special exception to minimize accidents and will only use one driveway.

### **No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-140 closed.

Mr. Martinez made a motion. “Regarding Appeal No A-18-140, a request for a special exception to allow a 6’ tall solid screen fence along a portion of the front property, situated at 1127 and 1143 East Bitters Road, applicant being Antonio Plascencia.

I move that the Board of Adjustment grant the applicant’s request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal



enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

*A. The special exception will be in harmony with the spirit and purpose of the chapter.*

**The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height is intended to provide safety and security of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.**

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

**In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. A 6' tall solid stone fence is proposed along a portion of the front property line to provide additional security and noise reduction for the applicant's property. This is not contrary to the public interest.**

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

**The fence will create enhanced security and noise reduction for the subject property and is highly unlikely to injure adjacent properties due to the placement of 30' away from the curb. Further, the fencing does not violate Clear Vision standards.**

*D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*

**The fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.**

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

**The property is located within the "R-20 AHOD" Residential Single-Family Airport Hazard Overlay District and permits the current use. The requested special exception will not weaken the general purpose of the district." Mr. Oroian seconded the motion.**

**AYES: Martinez, Oroian, Neff, Teel, Dr. Zottarelli, Cruz, Rogers, Britton, Rodriguez, Polendo, Kuderer**

**NAYS: None**

**SPECIAL EXCEPTION IS GRANTED**

**The Board of Adjustment recessed at 2:04pm and reconvened at 2:14pm.**



Case Number: A-18-155  
Applicant: Bosque de Los Lomas, LLC  
Owner: Bosque de Los Lomas, LLC  
Council District: 2  
Location: 1502 Holbrook Road  
Legal Description: Lot 12 and the North Irregular 399.53 feet of Lot 3, Block 1, NCB 12523  
Zoning: "MH MC-3 AHOD" Mobile Home Austin Highway/Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay District  
Case Manager: Dominic Silva, Planner

### **Request**

A request for a special exception, as described in Section 35-514, to allow a 6' open screen fence along the front property line.

Staff presented the background information and recommendations of the Variance. 12 notices were mailed, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Wade Easten, 831 Cord St, stated crime and homeless people are a problem and wish to protect their property.

### **No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-155 closed.

Mr. Neff made a motion. "Regarding Appeal No A-18-155, a request for a special exception to allow a 6' open screen fence along the front yard property line, situated at 1502 Holbrook Road, applicant being Bosque de Los Lomas, LLC.

I move that the Board of Adjustment grant the applicant's request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter. **The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height is intended to provide safety and security of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.***
- B. *The public welfare and convenience will be substantially served.*

**In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. A 6' tall open screen fence is proposed along the front property line to provide additional security for the applicant's property. This is not contrary to the public interest.**

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

**The fence will create enhanced security for the subject property and is highly unlikely to injure adjacent properties due to the placement of the fence adjacent to a creek and greenway. Further, the fencing does not violate Clear Vision stand.**

*D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*

**The fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.**

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

**The property is located within the "MH MC-3 AHOD" Mobile Home Austin Highway/Harry Wurzbach Metropolitan Corridor Airport Hazard Overlay District and permits the current use. The requested special exception will not weaken the general purpose of the district." Mr. Rodriguez seconded the motion.**

**AYES: Neff, Rodriguez, Teel, Dr. Zottarelli, Cruz, Rogers, Martinez, Britton, Oroian, Polendo, Kuderer**

**NAYS: None**

## **THE VARIANCE IS GRANTED**

|                    |   |
|--------------------|---|
| Case Number:       | A-18-158  |
| Applicant:         | Abimael Gomez   |
| Owner:             | Abimael Gomez   |
| Council District:  | 1   |
| Location:          | 901 Delgado Street  |
| Legal Description: | The South 93 feet of Lot 22, NCB 2147                     |
| Zoning:            | "MF-33 AHOD" Multi-Family Airport Hazard Overlay District |
| Case Manager:      | Debora Gonzalez, Senior Planner                           |

### **Request**

A request for a special exception, as described in Section 35-514, to allow an 8' solid screen fence along the rear property line.



Staff presented the background information and recommendations of the Variance. 33 notices were mailed, 0 returned in favor, and 1 returned in opposition and no response from the West End Hope in Action Neighborhood Association.

Sharon Sato, 9706 Kriewald Road, stated the fence is needed to protect the family from neighbors throwing trash, wine, beer bottles, syringes and other drug paraphernalia.

**No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-158 closed.

Dr. Zottarelli made a motion. "Regarding Appeal No A-18-158, a request a special exception to allow an 8' solid screen fence along the rear property line, situated at 901 Delgado Street, applicant being Abimael Gomez.

I move that the Board of Adjustment grant the applicant's request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter.*  
**The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height is intended to provide safety and security of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.**
- B. *The public welfare and convenience will be substantially served.*  
**In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. An 8' tall solid screen fence was built along the rear property line to provide additional security for the property. This is not contrary to the public interest.**
- C. *The neighboring property will not be substantially injured by such proposed use.*  
**The fence will create enhanced security for the subject property and is highly unlikely to injure adjacent properties. Further, the fencing does not violate Clear Vision standards.**
- D. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*  
**The 8' tall solid wood fence in the property line would not significantly alter the overall appearance of the district and would be able to provide added privacy and protection for the property owner.**

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

**The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow an 8' tall solid wood fence in the property line in order to add privacy for the owner. Therefore, the requested special exception will not weaken the general purpose of the district."** Mr. Teel seconded the motion.

**AYES: Dr. Zottarelli, Teel, Oroian, Neff, Martinez, Cruz, Rogers, Britton, Rodriguez, Polendo, Kuderer**

**NAYS: None**

### **SPECIAL EXCEPTION IS GRANTED**

Case Number: A-18-159  
Applicant: Jeremy Jenkins Restorations  
Owner: Brooke Mazzella  
Council District: 3  
Location: 123 McDougal Avenue  
Legal Description: Lot 28, Block 13, NCB 9578  
Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District  
Case Manager: Dominic Silva, Planner

#### **Request**

A request for a 2' variance from the 5' side setback, as described in Section 35-370, to allow a carport to be 3' from the side property line.

Staff presented the background information and recommendations of the Variance. 32 notices were mailed, 0 returned in favor, and 1 returned in opposition and no response from Highland Hills Neighborhood Association.

Scott Butler, 1681 River Road, stated the applicant wishes to rebuild the carport to its original state before the fire.

#### **No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-159 closed.

Mr. Polendo made a motion. "Regarding Appeal No A-18-159, a request for a 2' variance from the 5' side setback to allow a carport to be 3' from the side property line, situated at 123 McDougal Avenue, applicant being Brooke Mazzella.



I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

**The public interest is defined as the general health, safety, and welfare of the public. In this case, the variance is not contrary to the public interest. The original carport has been in the same location since 1948 with no registered complaints and the new carport is within the original footprint.**

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

**The new carport is built within the same footprint as the original carport that was temporarily removed to provide room for demolition and restoration of the residence after the December arsonist attempt. Literal enforcement of the ordinance would result in the applicant removing that portion of the carport that extends beyond the side setback, leaving the carport unusable in its current format due to space limitations.**

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

**The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. The new carport is not overwhelming in size and follows the same footprint as the original carport that was built in 1948 with no registered complaints.**

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.*

**The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District.**

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

**The carport is not noticeably out of character within the district in which it is located. The carport provided 3' of setback, equal to the requirement when the structure was originally built. The district is characterized by small lots and attached carports within the side yard. The variance requested will not substantially injure the appropriate uses of adjacent conforming properties or alter the character of the district.**

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The variance being sought is due to the restoration of the primary residence after an attempted arson. The existing carport was temporarily removed during demolition and restoration in order to provide room for the restoration team and placement of a dumpster on site. The new carport follows the same footprint as the previous. The unique circumstances were not created by the owner and are not merely financial in nature, and are not due to or the result of general conditions in the district.” Mr. Martinez seconded the motion.

**AYES:** Polendo, Martinez, Teel, Dr. Zottarelli, Cruz, Rogers, Neff, Britton, Rodriguez, Oroian, Kuderer  
**NAYS:** None

## THE VARIANCE IS GRANTED

|                    |   |
|--------------------|---|
| Case Number:       | A-18-161  |
| Applicant:         | Business 4 All Investments, LLC                               |
| Owner:             | Business 4 All Investments, LLC                               |
| Council District:  | 2   |
| Location:          | 1118 Wyoming Street   |
| Legal Description: | Lot 5, Block East ½ of 21, NCB 619                            |
| Zoning:            | “RM-4 AHOD” Residential Mixed Airport Hazard Overlay District |
| Case Manager:      | Debora Gonzalez, Senior Planner                               |

### Request

A request for 1) a 4’6” variance from the 5’ side setback, as described in Section 35-310.01, to allow a carport to be 6” from the side property line and 2) a 9’6” variance from the 10’ front setback, as described in Section 35-310.01, to allow a carport to be 6” from the front property line.

Staff presented the background information and recommendations of the Variance. 30 notices were mailed, 1 returned in favor, and 0 returned in opposition and no response from Denver Heights Neighborhood Association.

Donicio Flores, 1118 Wyoming St, requested interpreter services, stated he needs the carport to protect his vehicles and because of the lack of parking on the street. There was a carport prior to rebuilding and felt he didn’t need a permit.

### **No citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-161 closed.

Mr. Martinez made a motion. “Regarding Appeal No A-18-161, a request for 1) a 4’6” variance from the 5’ side setback to allow a carport to be 6” from the side property line and 2) a 9’6” variance from the 10’ front setback to allow a carport to be 6” from the front property line, and



**the Alternate recommendation for approval is a 2 foot variance from 5 foot side setback to allow a carport to be 3 feet from the side property line, also to allow a 5 foot variance to the 10 foot front setback to allow the carport to be no closer than 3 feet from the front property line including the overhang, situated at 1118 Wyoming Street, applicant being Business 4 All Investments, LLC.**

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

**The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by required setbacks to ensure equal access to air, light, and distance for fire separation, including the protection of vehicles from weather conditions.**

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

**Literal enforcement of the ordinance would require that the applicant remove those portions of the carport that infringes into the side and front setbacks which would result in unnecessary financial hardship.**

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

**The spirit of the ordinance is the intent of the Code, which in this case, is the allowance for the protection of vehicles under adequate shelter. The intent of the setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. By granting the variance, the spirit and intent of the code will be observed.**

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.*

**The variance will not authorize the operation of a use other than those uses specifically authorized in the RM-4 AHOD" Residential Mixed Airport Hazard Overlay District.**

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

**The Board finds that the carport, as 3 feet from the side and 5 feet from the front with a 2 foot over hang as designed, prevents storm water runoff onto adjacent properties and does not alter the essential character of the district.**

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by*

*the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

**The plight of the owner is due to the compact lots of the district and lack of developable space within the front and side of the property, leaving little room for a carport of adequate size.”** Mr. Oroian seconded the motion.

**AYES: Martinez, Oroian, Dr. Zottarelli, Cruz, Rogers, Rodriguez, Polendo, Kuderer**

**NAYS: Teel, Neff, Britton**

## **THE VARIANCE FAILED**

|                    |  |
|--------------------|--|
| Case Number:       | A-18-162   |
| Applicant:         | Noe Pena   |
| Owner:             | Noe Pena   |
| Council District:  | 4  |
| Location:          | 1215 Hunter Boulevard  |
| Legal Description: | Lot 39, Block 79, NCB 11055  |
| Zoning:            | “MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military<br>Lighting Overlay Airport Hazard Overlay District |
| Case Manager:      | Debora Gonzalez, Senior Planner  |

### **Request**

A request for 1) a 9’11” variance from the 10’ front setback, as described in Section 35-310.01, to allow a carport to be 1” away from the front property line and 2) a 4’11” variance from the side setback, as described in Section 35-310.01, to allow a carport to be 1” away from the side property line.

Staff presented the background information and recommendations of the Variance. 24 notices were mailed, 0 returned in favor, and 1 returned in opposition and no neighborhood association.

Aracelli and Noe Pena, 1215 Hunter Blvd., stated her carport was built in 1999 and is made of metal and have not had any problems.

### **The following citizens appeared to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No A-18-162 closed.

Mr. Teel made a motion. “Regarding Appeal No A-18-162, a request for 1) a 9’11” variance from the 10’ front setback to allow a carport to be 1” away from the front property line and 2) a 4’11” variance from the side setback to allow a carport to be 1” away from the side property line, situated at 1215 Hunter Boulevard, applicant being Business 4 Noe Pena.

I move that the Board of Adjustment grant the applicant’s request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we



have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

**The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by required setbacks to ensure equal access to air, light, and distance for fire separation, including the protection of vehicles from weather conditions.**

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

**Literal enforcement of the ordinance would require that the applicant remove that portion of the carport that infringes into the front and side setback which would result in unnecessary financial hardship.**

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

**The spirit of the ordinance is the intent of the Code, which in this case, is the allowance for the protection of vehicles under adequate shelter. The intent of the setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. By granting the variance, the spirit and intent of the code will be observed.**

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.*

**The variance will not authorize the operation of a use other than those uses specifically authorized in the "MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland Military Lighting Overlay Airport Hazard Overlay District.**

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

**The Board finds that the carport, as designed, prevents storm water runoff onto adjacent properties, prevents fire spread, and does not alter the essential character of the district.**

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

**The plight of the owner is due to the size of lot and location of the driveway, which leaves inadequate room for a carport of any substantial size. Mr. Rodriguez seconded the motion.**

Mr. Martinez stated he does not support the variance and wants to stay consistent with his votes.

**AYES: Teel, Oroian, Neff, Dr. Zottarelli, Cruz, Rogers, Britton, Rodriguez, Polendo, Kuderer**

**NAYS: Martinez**

**THE VARIANCE IS GRANTED**

Mr. Kuderer made a motion to approve the 2019 Zoning Board of Adjustment meeting Calendar. Mr. Martinez seconded the motion. Mr. Kuderer called for a roll call Vote.

**AYES: Martinez, Cruz, Britton, Rodriguez, Polendo, Oroian, Neff, Teel, Dr. Zottarelli, Rogers, Kuderer**

**NAYS: None**

**THE MOTION IS APPROVED**

Mr. Kuderer made a motion to approve the September 17, 2018 minutes. Mr. Martinez seconded the motion. A voice vote was taken and passed unanimously.

Manager's report: BuildSA

There being no further discussion, meeting adjourned at 3:40pm.



October 15, 2018

19

APPROVED BY:

  
Chairman

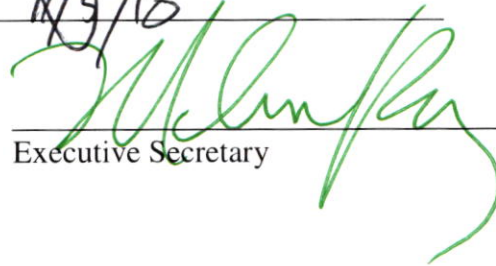
OR

Vice-Chair

DATE:



ATTESTED BY:

  
Executive Secretary

DATE:

