

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 5, 2018**

Members Present:	Dr. Zottarelli Alan Neff Cyra Trevino George Britton Jr Maria Cruz Henry Rodriguez Mary Rogers Donald Oroian John Kuderer Roger Martinez	Staff: Catherine Hernandez, DSD Administrator Joseph Harney, City Attorney Logan Sparrow, Interim DS Manager Debra Gonzalez, Senior Planner 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.

Gabriela Barba and Cesar Chavez, Seprotec, Interpreter, present

Case #A-18-170 has been Postponed

Ms. Cruz entered the meeting at 1:07pm

Case Number:	A-18-145
Applicant:	James Pool
Owner:	Jack Judson Estate, Joseph D. Judson-Executor
Council District:	10
Location:	1419 Austin Highway
Legal Description:	Lot 2, Block B, NCB 8695
Zoning:	“C-2 CD MC-3 AHOD” Commercial Austin Highway/Harry Wurzbach Metropolitan Corridor Overlay Airport Hazard Overlay District with Conditional Use for Auto/Light Truck Repair
Case Manager:	Debra Gonzalez, Senior Planner

Request

A request for a 10’ variance from the required maximum 40’ front setback, as described in the Austin Highway/Harry Wurzbach Metropolitan Corridor Overlay District design requirements, to allow a structure to be 50’ away from the front property line.

Staff presented the background information and recommendations of the Variance. 20 notices were mailed, 3 returned in favor, and 1 returned in opposition and no response from the Willshire Village Neighborhood Association.

Joseph Daniel Judson, 1419 Austin Highway, stated his request was to correct outdated conditions and asked for the Boards Approval.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-18-145 closed.

Dr. Zottarelli made a motion. "Regarding Appeal No A-18-145, a request for a 10' variance from the required maximum 40' front setback to allow a structure to be 50' away from the front property line, located at 1419 Austin Highway, applicant being Jack Judson Estate, Joseph D. Judson-Executor.

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 as the structure will be 50' from the front property line and will not injure the rights of the adjacent property owners. Some nearby business are closer or further than the 40' maximum front setback requirements, fast food restaurants across the street are approximately 70' from the front property line and the self-storage to the east of the subject property is approximately 20' from the front property line.

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

Literal enforcement of the ordinance would result in an unnecessary hardship as the Austin Highway/Harry Wurzbach Metropolitan Corridor Overlay District design requirements and the deed restriction from 1940 create a conflict, which makes development of the lot challenging.

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. In this case, the intent of the front setback is to create a more defined streetscape by locating structures closer to the front property line. The Board finds that allowing the building to be 10' further from the front is indiscernible to passersby.

- 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 “C-2 CD MC-3 AHOD” Commercial Austin Highway/Harry Wurzbach Metropolitan Corridor Overlay Airport Hazard Overlay District with Conditional Use for Auto/Light Truck Repair.

- 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 there are buildings closer than 50’ from the property line, the request to increase the maximum front setback does not negatively impact neighboring properties as adjacent properties are self-storage facilities. It is unlikely that adjacent property would be harmed by the request.

- 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 existing on the property is that the subject property has two setback requirements that have to be met and without some relief the owner wouldn’t be able to develop the property.” Mr. Rodriguez seconded the motion.

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

THE VARIANCES ARE GRANTED



Case Number: A-18-168
 Applicant: David Starr
 Owner: David Starr
 Council District: 2
 Location: 227 Rittiman Road
 Legal Description: Lot 46, NCB 8693
 Zoning: “MF-33” Multi-Family District
 Case Manager: Debora Gonzalez, Senior Planner

Request

A request for a variance from the restriction against the use of corrugated metal as a fencing material, as described in Section 35-514, to allow for the use of corrugated metal for fencing.

Staff presented the background information and recommendations of the Variance. 10 notices were mailed, 1 returned in favor, and 0 returned in opposition and no response from the Terrell Heights Neighborhood Association.

Adam Moncada, 227 Rittiman, stated they were unaware corrugated metal was not allowed in fencing the requested the Board approve his request.

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-18-168 closed.

Mr. Neff made a motion. "Regarding Appeal No A-18-168, a request for a variance from the restriction against the use of corrugated metal as a fencing material to allow for the use of corrugated metal for fencing, located at 227 Rittiman Road, applicant being David Starr.

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 fence was built with solid wood framing the corrugated metal. The fence enhances aesthetics towards public view and meets the permitted fence height. The corrugated metal is not exposed at all throughout the perimeter of the property. If granted, this request would be harmony with the spirit and purpose of the ordinance.

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

Allowing the applicant to keep the corrugated metal fence will help create a safe and private environment while enhancing aesthetics. Therefore, the public welfare and convenience will be substantially served.

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

Granting the variance will not substantially injure the neighboring properties as the fence will enhance safety and privacy for the subject property and is highly unlikely to injure adjacent properties.

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" Multi-Family 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 corrugated metal fence contributes to the character of the community. The fence will not impose any immediate threat to adjacent properties.

- 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 in this case is that the new fence was built with a combination of fence materials not exposing the corrugated metal. It is difficult to establish how the request could harm adjacent owners or detract from the character of the community.” Mr. Oroian seconded the motion.

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

THE VARIANCE IS GRANTED

Case Number: A-18-172
 Applicant: Daniel C. Zertuche
 Owner: Daniel C. Zertuche
 Council District: 5
 Location: 215 West Emerson Avenue
 Legal Description: Lot 19, Block 11, NCB 7398
 Zoning: “R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
 Case Manager: Debora Gonzalez, Senior Planner

Request

A request for 1) a special exception, as described in Section 35-514, to allow a privacy fence to be as tall as 8’5" decreasing to 4.5’ tall in the front yard and 2) a variance from the Clear Vision requirements to allow a solid screen fence within the Clear Vision field.

Staff presented the background information and recommendations of the Variance. 34 notices were mailed, 0 returned in favor, and 2 returned in opposition and no response from the Thompson Neighborhood Association.

Daniel C. Zertuche, 215 West Emerson, stated he built the fence believing he did not need a permit since he was rebuilding it.

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-18-172 closed.

Mr. Martinez made a motion. "Regarding Appeal No A-18-172, a request for a special exception to allow a privacy fence to be as tall as 8'5" decreasing to 4.5' tall in the front yard, situated at 215 West Emerson Avenue, applicant being Daniel C. Zertuche.

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 privacy 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. The 8'5" foot tall fence decreasing to 4.5' on the front yard is intended to provide additional privacy of 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.*

Granting the requested special exception will not substantially injure the neighboring properties as the fence will enhance privacy for the subject property and is highly unlikely to injure adjacent properties.

- E. *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 subject property used to have a predominantly open fence in the front yard.

The property is located within the “R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District and permits the current use. The requested special exception will not weaken the general purpose of the district.” Ms. Cruz seconded the motion.

Mr. Martinez requested a continuance to November 19, 2018. Ms. Cruz seconded the motion. A voice vote was taken and passed unanimously.

AYES: Martinez, Cruz, Dr. Zottarelli, Rogers, Rodriguez, Oroian, Neff, Trevino, Britton, Kuderer

NAYS: None

THE CONTINUANCE IS GRANTED



Case Number:	A-18-174
Applicant:	Sharon Barnes
Owner:	Sharon Barnes
Council District:	1
Location:	2108 La Manda Boulevard
Legal Description:	Lot 4 and the West 18 Feet of Lot 5, Block 4, NCB 10376
Zoning:	“R-5 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 1) a privacy fence to be 6’ tall in the east side of the front yard and 2) a predominately open fence to be 6’4” tall in the front yard.

Staff presented the background information and recommendations of the Variance. 23 notices were mailed, 1 returned in favor, and 1 returned in opposition and no response from the Dellview Neighborhood Association.

Sharon Barnes, 2108 La Manda Blvd, stated her property has had 5 vehicle break ins and one home break in and feels this fence gives her added security.

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-18-174 closed.

Dr. Zottarelli made a motion. “Regarding Appeal No A-18-174, a request for a special exception to allow 1) a privacy fence to be 6’ tall in the east side of the front yard and 2) a predominately

open fence to be 6'4" tall in the front yard, situated at 2108 La Manda Boulevard, applicant being Sharon Barnes.

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 privacy fence and 6'4" tall wrought iron fence is proposed along a portion of the side and front property 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. 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-5 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. Martinez seconded the motion.

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

THE VARIANCE IS GRANTED.

The Board of Adjustment recessed at 2:02pm for a break and reconvened at 2:16pm.

Case Number: A-18-164
Applicant: Ann Hicks
Owner: Allen S. Hicks
Council District: 6
Location: 2020 Air Lawn Street
Legal Description: Lot 9, Block 1, NCB 16322
Zoning: "I-1 GC-2 MLOD-2 MLR-1 AHOD" General Industrial Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager: Debora Gonzalez, Senior Planner

Request

A request for an 8.4' variance from the 30' front setback requirement, as described in Section 35-310.01, to allow a structure to be 21.6' away from the front property line.

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 response from the Community Workers Council Neighborhood Association.

Alana Brown, 8023 Vantage Suite 1200, stated the building has been at its location for 30 years and wish to comply with today's setback rules for any future sales of the 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-18-164 closed.

Ms. Trevino made a motion. "Regarding Appeal No A-18-164, a request for 8.4' variance from the 30' front setback requirement to allow a structure to be 21.6' away from the front property line, located at 2020 Air Lawn Street, applicant being Ann Hicks.

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 setbacks to prevent fire spread and to protect adjacent property owners. The requested 21.6' setback from the front property line is not contrary to public interest as it does not negatively impact any surrounding properties or the general public. The Board 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 present in this case is the non-conforming status of the existing structure. While redevelopment of the structures would not meet the strict letter of the law, the placement since being built has not generated any problems with adjacent properties.

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

The intent of front setbacks is to create an open area without crowding of structures and to establish uniform development standards to protect the rights of property owners. In this case, the proposed setback will not injure the rights of adjacent property owners, which observes the intent of the code.

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

The requested variances will not authorize the operation of a use on the subject property other than those specifically permitted in the "I-1 GC-2 MLOD-2 MLR-1 AHOD" General Industrial Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 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 requested variance does not detract from the essential character of the community, especially considering that is an industrial area.

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 in this case is the nonconforming status of the existing structure. The Board finds that allowing this setback reduction is not merely financial in nature, nor is it the fault of the property owner." Mr. Rodriguez seconded the motion.

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

THE SPECIAL EXCEPTION IS GRANTED



Case Number: A-18-175
Applicant: Jorge and Martha Rodriguez
Owner: Jorge and Martha Rodriguez
Council District: 3
Location: 350 Cosgrove Street
Legal Description: Lot 25 and 26, Block 26, NCB 3820
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Debora Gonzalez, Senior Planner

Request

A request for 1) a 4' variance from the 5' side setback, as described in Section 35-310.01, to allow a carport to be 1' from the side property line, 2) a 9' variance from the 10' front setback, as described in Section 35-310.01, to allow a carport to be 1' from the front property line and 3) a 8" variance from the maximum 5' front yard fence height, as described in Section 35-514, to allow a fence to be 5'8" tall.

Staff presented the background information and recommendations of the Variance. 28 notices were mailed, 1 returned in favor, and 1 returned in opposition and no response from the Highland Park Neighborhood Association.

Martha and Jorge Rodriguez, 350 Cosgrove St, stated crime has increased and their property has been vandalized and property stolen. They fear for their daughter's safety when she parks in the street.

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-18-175 closed.

Mr. Martinez made a motion. "Regarding Appeal No A-18-175, a request 1) a 4' variance from the 5' side setback to allow a carport to be 1' from the side property line, 2) a 9' variance from the 10' front setback to allow a carport to be 1' from the front property line, situated at 350 Cosgrove Street, applicant being Jorge and Martha Rodriguez.

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 "R-6 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 Board finds that the carport, 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 unique circumstance existing on the site was created by the original design of the lots within the subdivision." Mr. Rodriguez seconded the motion.

Mr. Oroian made a friendly amendment to change from a 9' to a 5' variance from the 10' front setback to allow a carport to be 1' from the front property line.

AYES: Martinez, Rodriguez, Rogers, Cruz, Oroian, Dr. Zottarelli
NAYS: Neff, Britton, Trevino, Kuderer

MOTION CARRIES BY MAJORITY

Mr. Kuderer then asked for a roll call vote on the main Motion.

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

THE VARIANCE IS GRANTED

Mr. Martinez made a motion. "Regarding Appeal No A-18-175, a request for an 8" variance from the maximum 5' front yard fence height to allow a fence to be 5'8" tall, situated at 350 Cosgrove Street, applicant being Jorge and Martha Rodriguez.

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 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. The 5'8" predominantly open fence on the west side on the front yard is intended to provide additional security of 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.*

Granting the requested special exception will not substantially injure the neighboring properties as the fence will enhance security for the subject property and is highly unlikely to injure adjacent properties.

- 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 5'8" predominantly open fence in the front yard would not significantly alter the overall appearance of the district and would be able to provide added 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 property is located within the "R-6 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, Rodriguez, Rogers, Cruz, Dr. Zottarelli, Neff, Britton, Trevino, Kuderer
NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

Case Number: A-18-163
 Applicant: Rubio Porfirio
 Owner: Rubio Porfirio
 Council District: 5
 Location: 2020 San Fernando Street
 Legal Description: Lots 2A and 2B, Block 1, NCB 2423
 Zoning: "R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
 Case Manager: Dominic Silva, Planner

Request

A request for 1) a 13' variance from the 20' rear setback, as described in Section 35-310.01, to allow an attached carport to be 7' from the rear property line, and 2) a 16' variance from the 20' rear setback requirement to allow a structure to be 4' away from the rear property line.

Staff presented the background information and recommendations of the Variance. 53 notices were mailed, 0 returned in favor, and 0 returned in opposition and no response from the Guadalupe Westside Neighborhood Association.

Porfirio Rubio, 2020 San Fernando St. requested Interpretation Services, stated he bought the house as is, uncompleted and decided to finish constructing it. He decided to build the house to meet the needs and size of his family and asked for approval.

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-18-163 closed.

Mr. Rodriguez made a motion. "Regarding Appeal No A-18-163, a request for 1) a 13' variance from the 20' rear setback to allow an attached carport to be 7' from the rear property line, and 2) a 16' variance from the 20' rear setback requirement to allow a structure to be 4' away from the rear property line, situated at 2020 San Fernando Street, applicant being Rubio Porfirio.

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 for the carport and structure is not contrary to the public interest. The carport is in line with many attached carports within the district and the applicant has adhered to the front and side setbacks. Further, the structure within the rear allows adequate space for maintenance and increases fire separation.

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

Many properties in the district lack adequate parking space and, because of compact lot design, park curbside. The applicant has designed the carport and rear property structure to adhere to the required setbacks thereby minimizing storm water runoff and maximizing fire separation considerably.

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 intent of the setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. The applicant has followed all intents of this law maintaining the carport and rear property structure.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized*

The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family 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.*

The requested variance to allow a carport to be 7’ away from the rear property line does not substantially injure the appropriate use of adjacent conforming properties or alter the character of the district. The carport and structure within the rear follows setback requirements, minimizes fire and storm water control concerns and follow a district norm of compact lots and attached carports.

- 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 circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature. The character of smaller lot sizes within the district is uniform, leaving little room for proper building setbacks. This is created by the proliferation of older, outdated substandard lots currently zoned “R-4.” The applicant has adhered to the side and front setback, leaving only the rear setback for the Board to consider relief from.” Mr. Oroian seconded the motion.

AYES: Rodriguez, Cruz, Martinez, Oroian, Rogers, Neff, Trevino, Britton, Dr. Zottarelli, Kuderer

NAYS: None

THE VARIANCE IS GRANTED

The Board of Adjustment recessed at 3:26pm and reconvened at 3:40pm.

Case Number: A-18-165
Applicant: Marietta J. Hill
Owner: Marietta J. Hill
Council District: 10
Location: 2702 North Loop 1604 East
Legal Description: Lot 1, Block 5, NCB 15675
Zoning: “C-2 MLOD-1 ERZD” Commercial Camp Bullis Military Lighting Overlay Edwards Recharge Zone District
Case Manager: Dominic Silva, Planner

Request

A request for 1) a 29.5' variance from the 30' rear setback, as described in Section 35-370, to allow sheds to be 6" from the rear property line, and 2) a variance from the restriction that commercial accessory structures may not be located within the rear setback when abutting single-family zone or uses.

Staff presented the background information and recommendations of the Variance. 36 notices were mailed, 1 returned in favor, and 1 returned in opposition and no response from Highland Hills Neighborhood Association.

Marietta J. Hill, 2606 Melrose Canyon, stated one shed was there when she purchased the property. She built the small shed and was able to move it. The variance is needed to leave the medium shed.

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-18-165 closed.

Mr. Martinez made a motion. "Regarding Appeal No A-18-165, a request for 1) a 29.5' variance from the 30' rear setback to allow sheds to be 6" from the rear property line, and 2) a variance from the restriction that commercial accessory structures may not be located within the rear setback when abutting single-family zone or uses, situated at 2702 North Loop 1604 East, applicant being Marietta J. Hill.

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 as the structures have been in place since 2012 with no issues thus far. Although all three shed roofs are sloped towards the adjacent property, adequate storm water runoff prevention measures have been observed by staff utilizing aluminum gutters and downspouts directing runoff away from the adjacent property. There is also a retaining wall present between the sheds and the principal structure. Additionally, there is more than a 100' distance between any residential structures located to the rear of the subject property and the applicant's sheds.

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

Strict enforcement would result in the removal of the structure. As the sheds are built between large mature trees and an adjacent property fence line coupled with the substantial size of the sheds, moving them to the north and over a 2' retaining wall could potentially be unsafe and result in 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 the intent of the requirement, rather than the strict letter of the law. The intent of setback limitations is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage as well as, in this case, separate commercial and residential uses. A requirement of the permitting process is to fire rate the material closest to the adjacent property; the sheds has remain unchanged since 2012; storm water drainage prevention controls are currently in place; lastly, the commercial property observes the essential character of the district. In this case, the proposed setback reduction will not injure the rights of adjacent property owners, which observes the intent of the code.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized*

The variance will not authorize the operation of a use other than those uses specifically authorized in the "C-2 MLOD-1 ERZD" Commercial Camp Bullis Military Lighting Overlay Edwards Recharge Zone 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 variance for the sheds, which has been in place since 2012, is unlikely to injure the appropriate use of adjacent conforming properties. The sheds is located behind a 6' privacy fence and bounded by large mature trees that obscure view from the right-of-way. Additionally, there is more than a 100' distance between the sheds and any residential structures to the rear.

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 existing include a substantial change in grade from north to south that result in the applicant having to build a large retaining wall. This makes it difficult to place storage sheds for the applicant's landscape business without undue hardship." Mr. Oroian seconded the motion.

AYES: Martinez, Rogers, Neff, Trevino, Cruz, Britton, Rodriguez, Dr. Zottarelli, Kuderer
NAYS: Oroian

THE VARIANCE IS GRANTED

Case Number: A-18-169
 Applicant: Marquis Builders
 Owner: Joshua and Rachel Moczygemba
 Council District: 10
 Location: 519 Robinhood Place
 Legal Description: The West 33.33 Feet of Lot 19 and the East 50 Feet of Lot 20, Block 23, NCB 10423
 Zoning: "NP-8 AHOD" Neighborhood Preservation Airport Hazard Overlay District
 Case Manager: Debora Gonzalez, Senior Planner

Request

A request for an 8.5' variance from the 20' rear setback, as described in Section 35-310.01, to allow an addition to have an 11.5' rear setback.

Staff presented the background information and recommendations of the Variance. 30 notices were mailed, 4 returned in favor, and 0 returned in opposition and no response from Oak Park-Northwood Neighborhood Association.

Dustin Franco, 17890 Blanco Road, stated the variance is needed for any potential growth in the future to the home.

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-18-169 closed.

Mr. Martinez made a motion. "Regarding Appeal No. A-18-169, a request for an 8.5' variance from the 20' rear setback to allow an addition to have an 11.5' rear setback, located at 519 Robinhood Place, applicant being Marquis Builders.

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 attached addition will have an 11.5' setback and the addition will align with the existing 5' side setback. The Board finds the request is not contrary to the public interest, especially considering that the majority of residential districts permit a 10' rear setback.

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

The literal enforcement of the ordinance would not allow the owner of the property to expand the primary dwelling without encroaching upon the rear setback limitations.

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

The intent of rear setbacks is to create an open area without crowding of structures and to establish uniform development standards to protect the rights of property owners. The rear addition will not significantly disrupt uniformity and will not injure the rights of adjacent property owners.

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 "NP-8 AHOD" Neighborhood Preservation 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 addition will not detract from the neighborhood as the rear addition will not significantly deviate from the rear setback. The rear addition is unlikely to go noticed. The rear addition will not produce water runoff on adjacent properties and will not require trespass to maintain the structure.

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 in this case is the lot size which restricts the owners' ability to construct any addition without encroaching into the rear setback. Ms. Cruz seconded the motion.

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

THE VARIANCE IS GRANTED

Mr. Kuderer made a motion to approve the October 15, 2018 minutes. Mr. Martinez seconded the motion. A voice vote was taken and passed unanimously.

THE MINUTES ARE APPROVED

There being no further discussion, meeting recessed at 4:13pm until Executive Session.

Executive Session

The time is now 5:25pm Monday, November 5, 2018. At this time the Board of Adjustment will recess and convene in the Tobin Room for executive session, to consult with the City Attorney's office regarding legal issues relating to contemplated or anticipated litigation involving decisions made by the Board.

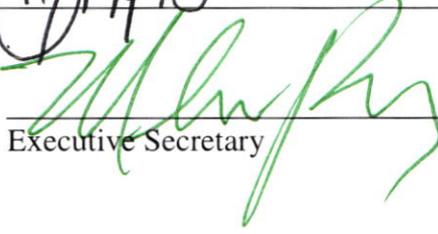
The time is now 6:14 pm, Monday, November 5, 2018. The Board of Adjustment is now reconvening its meeting, having concluded the executive session, consulting with the City Attorney's office. No official business was conducted.

The meeting is adjourned."

Manager's report: None

APPROVED BY:  OR _____
Chairman Vice-Chair

DATE: 11/19/18

ATTESTED BY:  DATE: 11/21/18
Executive Secretary