

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
November 19, 2018**

Members Present: Dr. Zottarelli
Alan Neff
Cyra Trevino
Roy Schaufelle
Maria Cruz
Seth Teel
Mary Rogers
Donald Oroian
John Kuderer
Roger Martinez
Henry Rodriguez

Staff:
Catherine Hernandez, DSD Administrator
Joseph Harney, City Attorney
Logan Sparrow, Interim DS Manager
Debora Gonzalez, Senior Planner
Dominic Silva, Planner

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

Ms. Rogers made a motion to move up case #A-18-178 to the first case to be heard. Mr. Rodriguez seconded the motion. A voice vote was taken and passed unanimously.

Case Number:	A-18-178
Applicant:	Lacie Valadez, Urban Alamo Properties LLC
Owner:	Lacie Valadez, Urban Alamo Properties LLC
Council District:	2
Location:	331 East Whittier Street
Legal Description:	The South 97.5 feet of the West 38.75 feet of Lot 10, Block 1, NCB 1670
Zoning:	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District
Case Manager:	Debora Gonzalez, Senior Planner

Request

A request for a 222 square foot variance from the minimum 4,000 square foot lot size, as described in section 35-310.01, to allow a lot size to be 3,778 square feet.

Staff presented the background information and recommendations of the Variance. 25 notices were mailed, 0 returned in favor, and 1 returned in opposition and no response from the Denver Heights Neighborhood Association.

Lacie Valadez, 331 East Whittier, stated in order for her property to be in compliance and eligible to be refinanced, this variance is needed.

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-18-178 closed.

Mr. Neff made a motion. "Regarding Appeal No A-18-178, a request for a 222 square foot variance from the minimum 4,000 square foot lot size to allow a lot size to be 3,778 square feet, situated at 331 East Whittier Street, applicant being Lacie Valadez, Urban Alamo Properties 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, given the lot constraints on the subject properties, granting the variance still provides adequate accessibility to light, air, and open space.

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

The literal enforcement of the ordinance would result in unnecessary hardship, as the subject property cannot be expanded and the surrounding lots are already developed. The small lot configuration is the result of an antiquated subdivision failing to adhere to minimum lot sizes that were established 81 years ago after the home was built.

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

Substantial justice will be done as the existing home still provides a safe development pattern. The request provides access to quality light and air, and provide for adequate fire separation.

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 zoning 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 surrounding single-family dwellings will not be injured by granting the variance, because the lot size will not create incompatible development, nor will it detract from the character of the community. The character of the surrounding neighborhood will not be altered and the proposed development will be cohesive with the existing pattern of development within the immediate neighborhood.

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 condition present is that the lot was subdivided and developed 81 years before the 4,000 square foot minimum lot size was established. This is not the fault of the owner of the property, nor is the request merely financial in nature. Mr. Rodriguez seconded the motion.

AYES: Neff, Rodriguez, Dr. Zottarelli, Martinez, Cruz, Rogers, Schaufelle, Teel, Oroian, 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 1 returned in opposition and no response from the Thompson Neighborhood Association.

Daniel C. Zertuche, 215 W. Emerson Avenue, stated he spoke with staff and waited to modify the fence till after the Board Meeting. He asked for the best possible solution to his case and what is best for the Neighborhood.

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. Oroian made a motion. "Regarding Appeal No A-18-172, a request for a variance from the Clear Vision requirements to allow a solid screen fence within the Clear Vision field, 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 variances to the subject property 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 is in harmony with the Clear Vision field which does not negatively impact any surrounding properties or the general public. The Board finds that the variance request is contrary to the public interest.

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

Allowing the applicant to keep the privacy fence to be as tall as 8'5" decreasing to 4.5' tall in the front yard will help create a private environment. 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 fence 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. No complaints were received since 2008 with the previous fence.

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-6 MLOD-2 MLR-1 AHOD” Residential Single-Family 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 fence design does not detract from the character of the community. The applicant updated an older predominantly open fence with a new private one.

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 privacy fence was replaced in the same location as the previous predominantly open fence and remained in place since 2008 with no complaints. ” Mr. Rodriguez seconded the motion.

AYES: None

NAYS: Oroian, Rodriguez, Neff, Dr. Zottarelli, Martinez, Cruz, Rogers, Schaufelle, Trevino, Teel, Kuderer

THE VARIANCE FAILED

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.
- 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 subject property used to have a predominantly open fence in the front yard.
- 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 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. Mr. Oroian seconded the motion.

Mr. Oroian made an Amendment to only apply to the arches as they lie into place. Mr. Cruz seconded the motion.

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

Mr. Schuafelle left the Meeting at 2:06 pm. Mr. Kuderer then called for a short break at 2:06 pm. The Board reconvened at 2:10 pm.

Mr. Kuderer called for the Main Motion as Amended.

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

THE VARIANCE IS GRANTED



Case Number: A-18-180
Applicant: Manuela L. Rodriguez
Owner: Manuela L. Rodriguez
Council District: 1
Location: 322 Lemur Drive
Legal Description: Lot 60, Block 14, NCB 10195
Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Dominic Silva, Planner

Request

A request for a special exception, as described in Section 35-399.01, to allow a renewal of a one-operator beauty/barber shop within a home.

Staff presented the background information and recommendations of the Variance. 37 notices were mailed, 1 returned in favor, and 0 returned in opposition and no response from the Dellview Area Neighborhood Association.

Manuela L. Rodriguez, 322 Lemur Drive, stated she has been in business for 50 years and has a customer base of seniors in the neighborhood and wishes to continue to serve them.

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-18-180 closed.

Dr. Zottarelli made a motion. "Regarding Appeal No A-18-180, a request for a renewal special exception to allow a one-operator beauty/barber shop within a home, situated at 322 Lemur Drive, during the hours of 8:00am to 2:00pm Tuesday – Friday, applicant being Manuela L. 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 requested special exception will be in harmony with the spirit and purpose of the chapter in that the proposed one-operator beauty salon will follow the specified criteria established in Section 35-399.01 in the Unified Development Code.
- B. *The public welfare and convenience will be substantially served.*

The public welfare and convenience will be served with the granting of this request as it will provide a valuable and needed public service to the residents of the neighborhood and it will not negatively impact surrounding properties.

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

The subject property will be primarily used as a single-family residence. The beauty shop will occupy only a small part of the structure, and the fact that a beauty shop is being operated from the home will likely be indiscernible to passersby. As such, neighboring properties will not be substantially injured.

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 requested special exception will not alter the essential character of the district as the use will likely be indiscernible to passersby.

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 zoning district is to promote the public health, safety, and general welfare of the city. The granting of this special exception will not weaken these purposes, nor will it weaken the regulations established for this district.” Ms. Cruz seconded the motion.

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

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

The Board of Adjustment recessed for a break at 2:20pm and reconvened at 2:30pm.

Case Number:	A-18-179
Applicant:	Ralph Hernandez, Los Hermanos Investments
Owner:	Ralph Hernandez, Los Hermanos Investments
Council District:	1
Location:	829 West Ashby Place
Legal Description:	The East 26.78 feet of the South 110.31 of Lot 10 & The West of the South 110.31 of Lot 11, Block 6, NCB 1892
Zoning:	“RM-4 NCD-2 AHOD” Residential Mixed Alta Vista Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Debora Gonzalez, Senior Planner

Request

A request for an 8.45' variance from the Alta Vista Neighborhood Conservation District design requirement, of a 14.25' median front setback to allow a structure to be 5.8' from the front property line.

Staff presented the background information and recommendations of the Variance. 31 notices were mailed, 0 returned in favor, and 0 returned in opposition and no response from the Alta Vista Neighborhood Association.

Ralph Hernandez, 829 West Ashby Place, stated he wanted to add a small wooden porch level to the flooring to match the home as per the Alta Vista Conservation District.

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-18-179 closed.

Dr. Zottarelli made a motion. "Regarding Appeal No A-18-179, a request for an 8.45' variance from the Alta Vista Neighborhood Conservation District design requirement, of a 14.25' median front setback to allow a structure to be 5.8' from the front property line, situated at 829 West Ashby Place, applicant being Ralph Hernandez, Los Hermanos Investments.

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 that maintain neighborhood character. The 5.8' front setback is not contrary to public interest as it does not negatively impact any surrounding properties or the general public.

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

If enforced, the ordinance would restrict the ability to add the front porch; front porches are encouraged additions in the design document for the Neighborhood Conservation District.

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 code is to establish a cohesive design within the neighborhood.

The request to reduce the front setback observes the intent of the code because the NCD stresses the protection of front porches. The design will comply with the balance of the NCD design requirements.

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 by the zoning 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 request will not injure the rights of neighboring properties as the reduction does not detract from the character of the neighborhood.

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 for which the variance is sought is due to the front yard porch addition. The existing addition will leave space in the front yard and does not significantly alter existing conditions of the community.” Mr. Martinez seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED.

Case Number:	BOA-18-900003
Applicant:	Michael Perez
Owner:	Michael Perez
Council District:	2
Location:	817 East Josephine Street
Legal Description:	The East 43 feet of Lot 29, NCB 6300
Zoning:	“R-4 NCD-9 AHOD” Residential Single-Family Westfort Alliance Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Debora Gonzalez, Senior Planner

Request

A request for 1) a 10' variance from the 20' rear setback, as described in Section 35-310.01, to allow an addition to be 10' from the rear property line, 2) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall be located in the rear to allow a carport in the side yard, 3) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall not exceed 10' in height to allow a

carport to be taller than 10 feet, 4) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall have a flat roof, and 5) a 2' variance from the 5' side setback requirements, as described in Section 35-310.01, to allow an attached carport to be 3' away from the side property line.

Staff presented the background information and recommendations of the Variance. 33 notices were mailed, 0 returned in favor, and 0 returned in opposition and no response from the Downtown Resident, Government Hill and Westfort Alliance Neighborhood Associations.

Michael Perez, 330 Mission Street, stated he wishes to have the carport as part of the house so the owner can have an outdoor space. He submitted photos of other homes on the block with similar carports.

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 BOA -18-900003 closed.

Mr. Neff made a motion. "Regarding Appeal No BOA-18-900003, a request for 1) a 10' variance from the 20' rear setback, as described in Section 35-310.01, to allow an addition to be 10' from the rear property line, situated at 817 East Josephine Street, applicant being Michael Perez.

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:

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. The public interest is represented by preserving the unique character of this community. The applicant is requesting variances to allow the reduction of the side and rear, an attached carport taller than 10 feet without a flat roof. These variances are not contrary to public interest as they do not negatively impact surrounding properties or the general public.

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

Literal enforcement would not allow the owner to redevelop the proposed project as designed. Approval of the requested variances would mirror the requirements of the NCD, or at least the intent of them.

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 NCD is to protect the integrity of the neighborhood. The requested variances are highly unlikely to injure adjacent properties and are unlikely to detract from the character of the community.

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 by the zoning 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.*

These requests would not injure the rights of the neighboring properties as they do not detract from the essential character of the community.

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 issues faced by the applicant are not merely financial in nature. The applicant seeks to vary from specific standards to allow for the redevelopment, as proposed.” Mr. Martinez seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED

Mr. Neff made a motion. “Regarding Appeal No BOA-18-900003 2) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall be located in the rear to allow a carport in the side yard, 3) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall not exceed 10’ in height to allow a carport to be taller than 10 feet, 4) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall have a flat roof, and 5) a 2’ variance from the 5’ side setback requirements, as described in Section 35-310.01, to allow an attached carport to be 3’ away from the side property line, situated at 817 East Josephine Street, applicant being Michael Perez.

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:

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. The public interest is represented by preserving the unique character of this community. The applicant is requesting variances to allow the reduction of the side and rear, an attached carport taller than 10 feet without a flat roof. These variances are not contrary to public interest as they do not negatively impact surrounding properties or the general public.

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

Literal enforcement would not allow the owner to redevelop the proposed project as designed. Approval of the requested variances would mirror the requirements of the NCD, or at least the intent of them.

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 NCD is to protect the integrity of the neighborhood. The requested variances are highly unlikely to injure adjacent properties and are unlikely to detract from the character of the community.

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 by the zoning 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.*

These requests would not injure the rights of the neighboring properties as they do not detract from the essential character of the community.

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 issues faced by the applicant are not merely financial in nature. The applicant seeks to vary from specific standards to allow for the redevelopment, as proposed.” Mr. Schaufelle seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED



Case Number: BOA-18-900001
Applicant: Joel Martinez
Owner: Joel Martinez
Council District: 5
Location: 2014 Montezuma Street
Legal Description: Lot 23 and the East 19 feet of Lot 22, Block 1, NCB 2883
Zoning: "R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland
Military Lighting Overlay Military Overlay Region-2 Airport Hazard
Overlay District
Case Manager: Nyliah Acosta, planner

Request

A request for a 920 square foot variance from the minimum 4,000 square foot lot size to allow a lot size to be 3,080.

Staff presented the background information and recommendations of the Variance. 33 notices were mailed, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Joel Martinez, 2014 Montezuma St., stated he wishes to build a home for his grandmother with a privacy fence.

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 BOA-18-900001 closed.

Mr. Rodriguez made a motion. "Regarding Appeal No BOA-18-900001, a request for a 920 square foot variance from the minimum 4,000 square foot lot size to allow a lot size to be 3,080 square foot, situated at 2014 Montezuma Street, applicant being Joel Martinez.

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:

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, given the lot constraints on the subject properties, granting the variance does not negatively impact the public.

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

The literal enforcement of the ordinance would result in unnecessary hardship, as the subject property cannot be expanded and the surrounding lots are already developed. The small lot configuration is the result of an antiquated plat.

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 a detached single-family dwelling advances the efforts of the zoning designation.

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 zoning 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 surrounding single-family dwellings will not be injured by granting the variance, because the lot size will not create incompatible development, nor will it detract from the character of the community. The character of the surrounding neighborhood will not be altered and the proposed development will be cohesive with the existing pattern of development within the immediate neighborhood.

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 condition present is that the lot was subdivided and developed 93 years before the 4,000 square foot minimum lot size was established. This is not the fault of the owner of the property, nor is the request merely financial in nature.” Mr. Martinez seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED

The Board of Adjustment recessed for a break at 3:22pm and reconvened at 3:33pm.

Case Number: A-18-177
Applicant: Mack L. McKay
Owner: Mack L. McKay
Council District: 10
Location: 14202 Ridge Meadow Drive
Legal: Lot 39, Block 9, NCB 17809
Description:
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay
District
Case Manager: Dominic Silva, Planner

Request

A request for a 10' variance from the 20' garage setback, as described in Section 35-516(g), to allow a garage to be 10' from the property line.

Staff presented the background information and recommendations of the Variance. 38 notices were mailed, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Mack L. McKay, 14202 Ridge Meadow Drive, requested to build his garage closer to the curb for his vehicles that he will not be driving often.

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-18-177 closed.

Mr. Martinez made a motion. "Regarding Appeal No A-18-177, a request for a 10' variance from the 20' garage setback requirement to allow a garage to be 10' from the side property line, situated at 14202 Ridge Meadow Drive, applicant being Mack L. McKay.

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 proposed garage is not contrary to public interest as it does not negatively impact any surrounding properties or the general public. The garage will be surrounded by a 6' privacy fence on either side and will not be noticeable to the passersby. Further, it will be located along a road that feeds into a cul de sac.

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

Literal enforcement of ordinance would result in the applicant placing the proposed detached garage in the middle of the rear property and limiting the size of the garage to render it unusable for the applicant's specific request and would result in 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 proposed garage is not overwhelming in size compared to the principal structure and will allow the owner to store the hobby vehicles inside the garage instead of protruding beyond the property line within the front yard.

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 permitted within the property's current base zoning 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 property is located in a district characterized by large lots with ample rear yards, thus a proposed garage to store hobby vehicles will not injure the appropriate use 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 size constraints of the rear property in regard to a 20' setback from the property line. If approved, adequate space will be reserved for setbacks, maintenance of the structure without trespass, and storm water controls. Further, the proposed garage will be out of sight behind a 6' privacy fence with gate and located adjacent to a local street feeding into a cul de sac."* Mr. Oroian seconded the motion.

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

NAYS: None

THE VARIANCE IS GRANTED



Case Number: A-18-900002
Applicant: Miguel Espinoza
Owner: Miguel Espinoza
Council District: 1
Location: 234 Millwood Lane
Legal Description: Lot 24, Block 14, NCB 12082
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 a fence to be as tall as 6' within the front yard of the property.

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

Miguel Espinoza, 234 Millwood Lane, is requesting the fence for added privacy from his neighbor.

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 BOA A-18-900002.

Dr. Zottarelli made a motion. "Regarding Appeal No BOA-18-900002, a request for a special exception to allow a fence to be as tall as 6' within the front yard of the property, situated at 234 Millwood Lane, applicant being Miguel Espinoza.

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. A 6' tall

solid screen fence was built along a portion of the side property line to provide additional privacy 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 privacy for the subject property and is highly unlikely to injure adjacent properties; with a slope and retaining wall present, the 6' solid screen fence height does not seem out of character within the community. 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 special exception will not allow the operation of a use not permitted within the property's current base zoning district. The requested special exception will not weaken the general purpose of the district." Mr. Martinez seconded the motion.

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

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

Case Number:	A-18-176
Applicant:	Claudia Athens
Owner:	Claudia Athens
Council District:	10
Location:	2910 Albin Drive
Legal Description:	Lot 17, Block 2, NCB 11838
Zoning:	"NP-8 AHOD" Neighborhood Preservation 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 an 8' tall solid screen fence along east side and rear property line, and 2) a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field.

Staff presented the background information and recommendations of the Variance. 16 notices were mailed, 1 returned in favor, and 1 returned in opposition and no response from Oak Park-Northwood Neighborhood Association.

Claudia Athens, 2910 Albin Drive, stated six months ago her neighbor began construction on her fence and torn down the old fence leaving it exposed. Since then the neighbor had projects that took priority over the fence. Now, Ms. Athens cannot let her dog in the back yard due to the open fence and wants to build her own fence for her privacy and dog.

The following citizens appeared to speak

Krystine Ramirez, 100 W. Houston St. Suite 1250, stated they are in support of the neighbor and requested the applicant have a survey done to make sure the fence in on their property.

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-18-176 closed.

Mr. Martinez made a motion. "Regarding Appeal No A-18-176, a request for a special exception to allow an 8' tall solid screen fence along east side and rear property line, situated at 2910 Albin Drive, applicant being Claudia Athens.

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 8'. The additional fence height is intended to provide privacy 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 will be built along the east side property line to provide additional privacy 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 privacy 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 Board finds that an 8' solid screen fence on the east side of the property will give privacy to both neighbors. The previous side yard fence existed since 1983 but it lost its non-conforming status when it was removed.

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

The Board is supportive of an 8' solid screen fence along the east side property line as it creates privacy with adjacent property." Mr. Oroian seconded the motion.

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

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

Case Number:	BOA-18-900004
Applicant:	Tomas Mendez
Owner:	Tomas Mendez
Council District:	2
Location:	5322 and 5330 Dietrich Road
Legal Description:	P-19 and P-19B, NCB 10600
Zoning:	"R-6 AHOD" Residential Single-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 1) a 7'4" predominately open fence gate along the front property line and 2) a special exception, as described in Section 35-514, to allow a 6'4" solid screen fence in the front yard.

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 registered neighborhood association.

Tomas Mendez, requested interpreter services, 5322 and 5330 Dietrich Road, is requesting the privacy fence his since his property is the only residential in an industrial area and has been burglarized many times.

No citizens appeared to speak.

Mr. Neff made a motion. "Regarding Appeal No BOA-18-900004, a request for a special exception to allow 1) a 7'4" predominately open fence gate along the front property line, and 2) a special exception to allow a 6'4" solid screen fence in the front yard, situated at 5322 and 5330 Dietrich Road, applicant being Tomas Mendez.

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 8'. The additional fence height is intended to provide privacy and security of the applicant properties. If granted, this request would be in harmony with the spirit and purpose of the ordinance. No portions of the fences are in violation of the Clear Vision field.

- 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. These fence heights were built along the front yards to provide additional safety for the property. This is not contrary to the public interest.

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

No portions of the fences are in violation of the Clear Vision field. No adjacent property owner, nor the traveling public, will be harmed by the proposed fence.

- 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 7'4" predominately open fence gate along the front property line and the 6'4" solid screen fence would not significantly alter the overall appearance of the district and would be able to provide added security 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 a 7'4" predominately open fence gate along the front property line and the 6'4" solid screen fence in order to add security for the subject properties. Therefore, the requested special exception will not weaken the general purpose of the district." Mr. Rodriguez seconded the motion.

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

NAYS: None

THE SPECIAL EXCEPTION IS GRANTED

[REDACTED]

Mr. Kuderer made a motion to approve the November 5, 2018 minutes. Mr. Martinez seconded the motion. A voice vote was taken and passed unanimously.

THE MINUTES ARE APPROVED

[REDACTED]

Manager's report: None

Mr. Kuderer made an announcement that he was resigning from the Board of Adjustment effective November 19, 2018.

[REDACTED]

There being no further discussion, meeting convened at 4:25pm

[REDACTED]

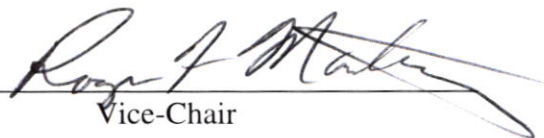
November 19, 2018

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APPROVED BY: _____

Chairman

OR


Vice-Chair

DATE: _____

ATTESTED BY: _____


Executive Secretary

DATE: _____

