

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
December 3, 2018**

Members Present: Dr. Zottarelli  
Alan Neff  
Cyra Trevino  
Roy Schaufele  
Maria Cruz  
Seth Teel  
Mary Rogers  
George Britton  
Donald Oroian  
Roger Martinez  
Henry Rodriguez  
Arlene Fisher

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

---

**Call to Order**

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

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

Gabriela Barba and Cesar Chavez, Seprotec, Interpreter, present

---

Case Number: BOA-18-900006  
Applicant: Claudia Silveira  
Owner: Claudia Silveira  
Council District: 10  
Location: 127 Middlebury Drive  
Legal Description: Lot 3, Block 1, NCB 3561  
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District  
Case Manager: Nylih Acosta, Planner

**Request**

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

Staff presented the background information and recommendations of the Variance. 27 notices were mailed, 0 returned in favor, and 2 returned in opposition and no registered neighborhood association.

Claudia Siveira, 127 Middlebury Drive, stated after working at multiple businesses she could no longer afford the rent and decided to work from home. This will help save money for her children's college fund.

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-18-900006 closed.

Mr. Rodriguez made a motion. "Regarding Appeal BOA-18-900006, a request for a special exception to allow a one-operator beauty/barber shop within a single-family home, situated at 127 Middlebury Drive, applicant being Claudia Silveira

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 spirit and purpose of the chapter is to ensure that the operation of a one-operator beauty/barber shop does not negatively impact the character of the community or the quality of life of neighbors. The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code.**

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

**The public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood. The proposed hours of operation will be limited to Monday, Tuesday, Wednesday, and Thursday from 9:00AM to 5:00PM, Friday from 9:00AM to 4:00 PM and Saturday from 9:00AM to 3:00PM.**

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

**The requested special exception is not likely to negatively impact adjacent property owners because the home is in character with those around it.**

*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 is not likely to alter the essential character of the district as the property is still used, primarily as a residence.**

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

**The primary use of the dwelling remains a residence. The one-operator barber/beauty shop will have restricted hours, which are established by the Board of Adjustment. The**

applicant has met all other requirements established by the Unified Development Code.” Mr. Teel seconded the motion.

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

**NAYS:** None

**THE SPECIAL EXCEPTION IS GRANTED**

Case Number:	BOA-18-900011
Applicant:	Maximiliano Garcia
Owner:	The Rodcel Group LP
Council District:	4
Location:	11307 Gaylord Drive
Legal Description:	Lot 13, Block 15, NCB 14565
Zoning:	“R-6 MLOD-2 MLR-2 AHOD” Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Debora Gonzalez, Senior Planner

**Request**

A request for an 866 square foot variance from the minimum 6,000 square foot lot size, as described in section 35-310.01, to allow a lot size to be 5,134 square feet.

Staff presented the background information and recommendations of the Variance. 36 notices were mailed, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Maximiliano Garcia, 11307 Gaylord Drive, the Board of Adjustment hearing was a quicker and less expensive option in order get the variance needed to move forward with their project.

**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-18-900011 closed.

Mr. Neff made a motion. “Regarding Appeal No BOA-18-900011, a request for an 866 square foot variance from the minimum 6,000 square foot lot size to allow a lot size to be 5,134 square feet, situated at 11307 Gaylord Drive, applicant being Maximiliano Garcia.

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. The new structure will meet all required setbacks. The Board finds 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 new structure footprint is very small and the applicant is trying to develop this vacant lot for a small home. A literal enforcement of the ordinance would render the property undevelopable. The Board finds that relief is warranted.**

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 provides 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 before the 6,000 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. Oroian seconded the motion.

**AYES: Neff, Rodriguez, Dr. Zottarelli, Cruz, Rogers, Schaufelle, Britton, Trevino, Teel, Martinez**

**NAYS: Oroian**

## **THE VARIANCE IS GRANTED**

Case Number:	A-18-170
Applicant:	Rene Yazguirre
Owner:	Rene Yazguirre
Council District:	3
Location:	142 Shasta Avenue
Legal Description:	Lot 11, Block 3, NCB 9832
Zoning:	“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Dominic Silva, Planner

### **Request**

A request for a 4’ variance from the 5’ side setback requirement, as described in Section 35-310.01, to allow a carport to be 1’ from the side property line.

Staff presented the background information and recommendations of the Variance. 30 notices were mailed, 2 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Rene Yazguirre, 142 Shasta Avenue, stated he hired a contractor that had not pulled a permit and built it wrong. In July he hired another contractor to correct the work 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-18-170 closed.

Mr. Oroian made a motion. “Regarding Appeal No A-18-170, a request for a 4’ variance from the 5’ side setback requirement to allow a carport to be 1’ from the side property line, situated at 142 Shasta Avenue, applicant being Rene Yazguirre.

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 setback which would result in unnecessary financial hardship.**

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

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

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

**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 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. The character of smaller lot sizes within the district is uniform, leaving little room for proper building setbacks” Mr. Rodriguez seconded the motion.**

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

**NAYS: None**

**THE VARIANCE IS GRANTED**

Case Number: A-18-181  
Applicant: Robert A. Herrera  
Owner: Robert A. Herrera  
Council District: 3  
Location: 5000 South Flores Street  
Legal Description: Lot 5, Block 10, NCB 7754  
Zoning: "C-2S MLOD-2 MLR-2 AHOD" Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District with Specific Use Authorization for a Bar and/or Tavern Without Cover Charge 3 or more days per week  
Case Manager: Debora Gonzalez, Senior Planner

### **Request**

A request for a special exception, as described in Section 35-514, to allow a predominantly open steel fence to be 7' tall in the south side and rear yard.

Staff presented the background information and recommendations of the Variance. 26 notices were mailed, 0 returned in favor, and 1 returned in opposition and no registered neighborhood association.

Robert A. Herrera, 9006 Julip, stated the prior six foot fence was not enough protection. Once a seven foot fence was erected the trespassing stopped.

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-18-181 closed.

Mr. Teel made a motion. "Regarding Appeal No. A-18-181, a request for a special exception to allow a predominantly open steel fence to be 7' tall in the south side and rear yard, situated at 5000 South Flores Street, applicant being Robert A. Herrera.

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'. In this case, the predominantly open fence is built with steel and is**



not exposed throughout the perimeter of the property. The additional fence height is intended to provide a safe outdoor environment to the bar. If granted, this request would be 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 business owners while still promoting a sense of community. The fence height was built along the side and rear yard to provide a safe outdoor space. This is not contrary to the public interest.

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

No portion of the fence is 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' predominately open fence would not significantly alter the overall appearance of the district and would be able to provide an added safe outdoor space for the public.

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' predominately open fence along the side and rear property line for the subject property. Therefore, the requested special exception will not weaken the general purpose of the district. " Mr. Rodriguez seconded the motion.

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

NAYS: None

**THE VARIANCE IS GRANTED.**

**The Board of Adjustment recessed for a break at 2:26pm and reconvened at 2:40pm.**



Case Number: BOA-18-900005  
Applicant: Raul Martinez  
Owner: Raul Martinez  
Council District: 1  
Location: 944 Ruiz Street  
Legal Description: Lot 3, Block 1, NCB 3561  
Zoning: "MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland Military  
Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay  
District  
Case Manager: Nyliah Acosta, Planner

### **Request**

A request for a 4' variance from the 5' side setback requirement to allow a carport to be 1' from the side property line as described in Section 35-310.01.

Staff presented the background information and recommendations of the Variance. 35 notices were mailed, 0 returned in favor, and 0 returned in opposition and no response from the West End Hope in Action Neighborhood Association.

Raul Martinez, 944 Ruiz Street, stated the carport is necessary for his elderly sister and provided a letter of support from his neighbors and showed photos of other similar carports in the neighborhood.

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 BOA -18-900005 closed.

Mr. Rodriguez 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.” Dr. Zottarelli seconded the motion.**

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

**NAYS: None**

**THE VARIANCE IS GRANTED**





Case Number: A-18-900009  
Applicant: Reyes Montemayor  
Owner: Reyes Montemayor  
Council District: 6  
Location: 6911 Brookfield Drive  
Legal Description: Lot 3, Block 12, NCB 18632  
Zoning: "R-6 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 4'3" privacy fence on the side property line within the front yard, and 2) a 6' privacy fence on the side property line within the front yard.

Staff presented the background information and recommendations of the Variance. 31 notices were mailed, 3 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Reyes Montemayor, 6911 Brookfield Drive, read a statement into the record about having trouble with his neighbor. After building the fence he no longer has issues with his neighbor and asked to keep the fence as is.

The following citizens appeared to speak.

Henry Digiovanni, 4706 Valley Brook Drive, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case BOA-18-900009 closed.

Mr. Teel 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.” Ms. Rogers seconded the motion.**

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

**NAYS: None**

**THE SPECIAL EXCEPTION IS GRANTED**

**Mr. Oroian recused himself from BOA-18-900008 at 3:18pm and was replaced by Ms. Fisher.**



Case Number: BOA-18-900008  
Applicant: Peter J. DeWitt, Adapt Architecture and Construction LLC  
Owner: Bart Wilson  
Council District: 1  
Location: 106 East Sunset Road  
Legal Description: The West 124.8 feet of Lot 35 Exc the Northwest 15 feet TR, NCB 11889  
Zoning: "O-1 AHOD" Office Airport Hazard Overlay District  
Case Manager: Debora Gonzalez, Senior Planner

### **Request**

A request for 1) a 7' variance from the 10' Type A landscape bufferyard along the west property line, as described in Section 35-510, to allow for a 3' deep bufferyard, 2) a 12' variance from the 15' Type B landscape bufferyard along the east property line, as described in Section 35-510, to allow for a 3' deep bufferyard, 3) a 21' variance from the 30' rear setback requirement, as described in Section 35-310.01, to allow a structure to be 9' away from the rear property line, 4) a 20' variance from the required maximum 35' front setback, as described in Section 35-310.01, to allow a structure to be 55' away from the front property line, and 5) a request for a variance, as described in Section 35-310.01, to allow for parking spaces to be located in front of the structure.

Staff presented the background information and recommendations of the Variance. 14 notices were mailed, 1 returned in favor 0 returned in opposition. There was no response from the Oak Park- Northwood registered neighborhood association.

Peter J. Dewitt, 106 East Sunset Road, stated the owner would like to rezone the property for his business since he lives in the neighborhood. He gave a brief description of the project and his plans and asked for approval of his variances.

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-18-900008 closed.

Mr. Neff made a motion. "Regarding Appeal No BOA-18-900008, a request for 1) a 7' variance from the 10' Type A landscape bufferyard along the west property line to allow for a 3' deep bufferyard, 2) a 12' variance from the 15' Type B landscape bufferyard along the east property line to allow for a 3' deep bufferyard, 3) a 21' variance from the 30' rear setback requirement to allow a structure to be 9' away from the rear property line, 4) a 20' variance from the required maximum 35' front setback to allow a structure to be 55' away from the front property line, and 5) a request for a variance to allow for parking spaces to be located in front of the structure., situated at 1106 East Sunset Road, applicant being Peter J. DeWitt, Adapt Architecture and Construction 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 owner of the property is trying to develop a small corner office tract that has long been vacant. With the adjacent residential use, the code triggers large bufferyards, as well as setbacks. In order to make the site useable, the applicant requires some relief. The 3' bufferyards are not contrary to public interest as it does not negatively impact any surrounding properties or the general public. The Board finds that, as a result of the proposed office use, the public interest would not be harmed by the requested reductions.**

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

**Literal enforcement would not allow the development of the now vacant property as proposed due to the unique configuration of the lot and establishing new bufferyards and setbacks as required. The applicant is proving bufferyards that do not currently exists. Lastly, the proposed use of an office is unlikely to harm adjacent properties, especially after business hours.**

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

**The intent of the setback 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 development as proposed will increase the overall landscaping area and will replace a vacant lot with a building, proving a service to the community.**

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 variances 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 front and rear reduction for a new building and the three foot buffers would only enhance the overall appearance of the site, streetscape, and 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 circumstance in this case is that the proposed infill development abuts a residential zoning use which prompts larger setbacks and is normally intended for larger properties. These conditions were not created by the owner and are not merely financial in nature.”** Mr. Schaufelle seconded the motion.

**AYES: Neff, Schaufelle, Rodriguez, Cruz, Rogers, Trevino, Teel, Britton, Dr. Zottarelli, Fisher, Martinez**

**NAYS: None**

**RECUSED: Oroian**

**THE VARIANCE IS GRANTED**

**Mr. Oroian returned to the Board of Adjustment meeting and replaced Ms. Fisher at 3:44pm.**

Case Number:	BOA-18-00010
Applicant:	Eloy Rosales
Owner:	Andrew W. McCurdy
Council District:	10
Location:	235 Dashiell Street
Legal Description:	Lot 18, Block 20, NCB 617
Zoning:	“RM-4 AHOD” Residential Mixed 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 8’ tall on both side property lines and on the rear property line and, 2) a variance from the restriction against corrugated metal as a fencing material, as described in Section 35-514, to allow for the use of corrugated metal fencing, and 3) 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. 37 notices were mailed, 0 returned in favor, and 1 returned in opposition and no response from the Alamo Dome Gardens Neighborhood Association.

Eloy Rosales, 130 Carolina St., stated the property was vacant when purchased to rehab. He wanted to address all code issues and is willing to work on the clear vision problems. He also explained the reason for the height and material of the fence was because of crime.

The Following citizens appeared to speak.

Denise McVea, 1006 Wyoming, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case BOA A-18-900010.

Mr. Neff made a motion. "Regarding Appeal No BOA-18-00010, a request for a 1) special exception to allow a privacy fence to be 8' tall on both side property lines and on the rear property line, situated at 235 Dashiell Street, applicant being Eloy Rosales.

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 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' tall fence 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 6' solid wood fence in both sides of the property and the rear 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 "RM-4 AHOD" Residential Mixed 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: Neff, Oroian, Dr. Zottarelli, Britton, Rogers, Trevino, Cruz, Teel, Schaufelle, Rodriguez, Martinez**  
**NAYS: None**

**THE SPECIAL EXCEPTION IS GRANTED**

Ms. Rogers made a motion to continue case BOA-18-900010 to January 14, 2018. Dr. Zottarelli seconded the motion.

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

**THE MOTION IS GRANTED**

Mr. Martinez made a motion to approve the November 19, 2018 minutes. A voice vote was taken and passed unanimously.

**THE MINUTES ARE APPROVED**

Manager's report: Development Services Director, Michael Shannon read a letter from the City Attorney into the record regarding Ms. Ojeda's complaint.

There being no further discussion, meeting convened at 4:45pm

APPROVED BY: \_\_\_\_\_ OR Rosa F. Martinez  
Chairman Vice-Chair

DATE: \_\_\_\_\_  
ATTESTED BY: M. L. [Signature] DATE: 1-15-19  
Executive Secretary