



## ZONING BOARD OF ADJUSTMENTS

**WEDNESDAY, AUGUST 5, 2020 AT 12:00 P.M.  
VIA VIDEOCONFERENCE, HARLINGEN, TX**

**This is not a Meeting of the Harlingen Elective Commission; however, a quorum of the City Commission may be present. Other City Board members may also be present.**

Notice is hereby given that the Zoning Board of Adjustments of the City of Harlingen, Texas will hold a Regular Meeting on Wednesday, August 5, 2020 at 12:00 p.m. via videoconference, while providing the public the ability to view the meeting via internet live streaming at [www.myharlingen.us](http://www.myharlingen.us).

In accordance with the order of the Office of the Governor issued March 16, 2020, the City of Harlingen, Texas will conduct the meeting via videoconference and provide viewing for the public using live stream in order to advance the public health goal of limiting face-to-face meetings (also called "social distancing") to slow the spread of the Coronavirus (COVID-19). To view the Zoning Board of Adjustments meeting live, go to [www.myharlingen.us](http://www.myharlingen.us) and click on "Zoning Board of Adjustments Live."

The public will be permitted to offer citizen communication or participate in terms listed as public hearings telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. Written comments may also be submitted for City staff to read aloud during the meeting.

To offer citizen communication or participate in scheduled public hearings telephonically, go to [www.myharlingen.us](http://www.myharlingen.us) and click on "PUBLIC HEARING AND CITIZEN COMMUNICAITON FORM." Fill out the form and indicate the item you wish to address and submit the form.

Please indicate (1) the agenda item on which you wish to speak, (2) whether you prefer to speak on the item during citizen communication or at the time the agenda item is brought for consideration before the Zoning Board of Adjustments, (3) a working telephone number at which you may be reached to submit your comments. The City will then call you when the item you wish to address is being considered. You will then address the Zoning Board of Adjustments through speakerphone, and your call will be made audible to the Zoning Board of Adjustments and to the public through the live stream. Please submit the request before 4 p.m. on the day of the meeting.

To submit written comments for City staff to read aloud during the meeting, go to [www.myharlingen.us](http://www.myharlingen.us) and click on "Public Hearing and Citizen Communication Form" write your comments (limited to 400 words or less) and submit the form.

Please submit written comments before 4 p.m. the day of the meeting.

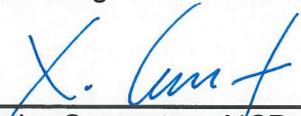
A recording of the meeting will be made and will be available to the public in accordance with the Texas Open Meetings Act.

City of Harlingen meetings are available to all persons regardless of disability. If you require special assistance, please contact the City Secretary's Office at (956)216-5001. Or submit request to Post Office Box 2207, Harlingen, Texas 78550 at least 48 hours in advance of the meeting.

#### **PLEDGE OF ALLEGIANCE/WELCOME**

1. Approval of Minutes: Meeting of July 1, 2020
2. Petition to allow a variance to allow the use of an accessory building without a main structure in a General Retail ("GR") District, located on the east side of Dixieland Road, south of Garrett Road, bearing a legal description of 9.6463 acres out of Bock 53, Howard Dixieland Heights Subdivision No. 1. Applicant: Lionel H. Hernandez.

POSTED this 31<sup>th</sup> day of July 2020, at 4:00 p.m. in compliance with Chapter 551 of the Government Code and continuously remaining posted for at least 72 hours prior to meeting time and date.

  
\_\_\_\_\_  
Xavier Cervantes, AICP  
Planning and Development Director

## **ZONING BOARD OF ADJUSTMENTS**

**July 1, 2020**

The regular meeting of the Zoning Board of Adjustments was held at 12:08 P.M., July 1, 2020 at City Hall Town Hall located at 118 E. Tyler with the following present:

### **BOARD MEMBERS PRESENT:**

Ernesto Flores	Member
Rudy Martinez	Member
Frank Garcia	Member
Elizandro Muñoz	Member
Ruby Cantu	Member

### **BOARD MEMBERS NOT PRESENT:**

Cesar Perez	Chairman
Minerva Simpson	Vice Chairman
Robert Garza	Member
Michael Boland	Member

### **CITY STAFF**

Xavier Cervantes	Planning and Development Director
Joel Olivo	Assistant Planning and Development Director
Jennifer Prado	Planning and Development Executive Secretary
Albert Molina	City Planner
Johanna Maldonado	City Planner
Gabriel Gonzalez	Assistant City Manger

### **PLEDGE OF ALLEGIANCE/WELCOME**

Mr. Flores called the meeting to order with a quorum present on July 1, 2020 at 12:08 p.m. and led the Pledge of Allegiance.

### **APPROVAL OF THE MINUTES: MEETING OF JUNE 10, 2020**

There was a motion by Ms. Cantu to approve the minutes. Mr. Martinez seconded. The motion carried unanimously.

**Public hearing and take action to consider a variance to the Code of Ordinances, Section 111-329 (a) to allow liquefied petroleum gas tanks to be installed within 500 feet of any school in a General Retail (“GR”) District,**

**located at 902 East Harrison, bearing a legal description of Lots 1 & 2, Block 1, City Savings Subdivision. Applicant: Melden & Hunt Inc.**

Ms. Johanna Maldonado summarized the following:

- Pursuant to the City of Harlingen Code of Ordinances, Section 111-329 (a), Gasoline stations, gasoline pumps, underground tanks, and other storage and dispensation facilities are prohibited within 500 feet of any building in which public or private school classes are conducted. This measurement shall be taken in a straight line measurement from the nearest property line of a property developed with a gasoline station to the nearest property line of any building in which public or private school
- The subject property is located at 902 East Harrison. The subject properties consists of two lots and are corner lots, with frontage along Tyler Ave 170 feet, Harrison Avenue 188 feet, Ninth Street 300 feet and a depth of 300 feet. There is an existing 14,300 sq. ft. building which the applicant is proposing to demolish.
- The applicant is requesting a variance to allow the installation of liquefied petroleum gas tanks to be installed within 150 feet of St. Anthony Catholic Church, with said 500 feet to be measured from the nearest property line on school grounds to the nearest property line of the person requesting such installation.
- Based on the site plan, the applicant is proposing to construct a convenience store with gasoline pumps on the subject property. The proposed building will be 4,000 sq. ft. and will be constructed on the north part of the property along Harrison Avenue. The gas tanks will be located on the South part of the property which is a further distance from the existing school, and approximately 450 sq. ft. from the said school.
- The surrounding zoning is General Retail (GR) District. The surrounding land use consist of three churches and one school. North of the subject property there is a vacant building which was previously used as a convenient store.
- The Building Inspections Department and Fire Prevention reported objections to the variance being granted.
- There is no case history of a variance being granted in the area. However, a similar variance was granted on December 14, 2011 for the H.E.B. fuel station on Morgan Blvd.
- To the present, staff has not received any calls from property owners in objection to the variance request. The Catholic Dioceses of Brownsville signed of no objection to the proposed project.

A concurring vote of four regular or alternate ZBA members is required to grant any variance.

Staff recommends denial of the variance request as:

1. The request does not meet the standards for the issuance of a variance as described in the City of Harlingen Code of Ordinances; and
2. The Building Inspections Department and Fire Prevention reported objections to the variance being granted.

Mr. Flores asked if there were any questions for staff.

Mr. Garcia asked if the other gas station, which is located across the street from the property, had underground tanks that were buried.

Ms. Maldonado responded that yes, the gas station no longer exists. There was a general discussion of the proposed construction work and demolition work at the site. She clarified that there are two ordinances on the matter. One ordinance measures the distance from property line to property line, and the other ordinance measures from building to tank. They contradict each other, and staff is recommending denial because one of the ordinance is more restrictive. We are looking to revisit the ordinance.

Ms. Cantu asked if there has been an objection from the church.

Ms. Maldonado responded no, there was a letter asking the church if they were in objection, and they signed off that they are ok with it.

Mr. Martinez asked what the Fire Marshall was recommending.

Ms. Maldonado responded that they are recommending denial because of the ordinance.

Mr. Flores asked if there were any questions for staff.

Mr. Flores opened this item for public hearing.

Mr. Mario Reyna on behalf of Circle "K" Stores stated that they have a good safety track record. All their employees go through a state training to have a Class "C" operating license. Every store has a manager that has a license of Class "A" and Class "B". These tanks are underground, and they are new modern tanks that are fiberglass and have leak detecting system between the walls. If there is any leak between the first wall and second wall, the system will shut the store down. The distribution will shut down, it will sound the alarm, and

the store will not be able to open until the issue has been addressed. Circle "K" hasn't had any accidents, such as explosions. We did coordinate with Father Rios and the principle of the School, Kathleen Stapleton, and we also met with the bishops, Daniel Flores and Mario Alvarez. All four of them have expressed support, and they actually have signed off on the TABC permit for beer and alcohol. I think this might be an older ordinance that needs to be looked at. I've met with the City Manager on Monday, and I think he has directed staff to revisit the ordinance. We are 450 feet away and almost meet the ordinance. I think we have everything in line to submit a building permit for staff to review and make an assessment in regards to the tanks.

Mr. Flores asked if there were any questions from the Board.

Mr. Martinez asked if the property has been purchased for this project.

Mr. Reyna responded that the property is being sold by the Harlingen School District to Circle "K", and it is contingent on today's meeting. Harlingen School District is in support of the request. As soon as this gets approved, we will be going through the subdivision process. We think it will be a good look for downtown Harlingen.

Mr. Flores asked if there were any questions from the Board.

Mr. Flores closed the public hearing.

Mr. Martinez stated that staff was going to revisit the ordinance, and I wanted to know where staff stood on that.

Mr. Cervantes responded that we will revisit this ordinance because we think it is outdated. We will be conducting a survey of cities in the Rio Grande Valley. Since gas tanks are regulated by the state for safety, we may just remove this section from the ordinance because the state regulates the installation of the gas tanks.

Ms. Cantu asked what does the state regulation indicate for the distance requirement.

Mr. Cervantes responded that the Circle "K" will be in compliance with the state, so they just need this variance for this project to go through.

Mr. Muñoz asked if other cities have similar restrictions to the distance.

Mr. Cervantes responded that San Juan doesn't, and not all cities have this type of regulations. I'm going to be doing a survey, and I will check with the Texas Municipal League (TML). They will know what cities in Texas have. If most cities

don't have something, then we could probably remove it from our code, since the state already regulates the installation and safety of the tanks.

Mr. Martinez asked what the time period will be on the removal of that ordinance.

Mr. Cervantes responded that the research could take 2-3 weeks, and then will go to the Planning and Zoning Commission. Once the research is done, then we will put it on the Agenda for the Planning and Zoning Commission to consider changes or to just remove it.

Mr. Flores stated that he did spend some time looking at TxDOT's code and regulations. One of their items says, 100 feet from property line from an established school, hospital, nursing home, daycare center, preschool, nursing school, or other. If we had a similar ordinance, then obviously we would be in compliance in this specific case. If we go from the tanks to the closest classroom, it will be 450 feet.

Mr. Garcia stated that the gas trucks delivering combustibles to the site is what concerns me. If this ordinance was put in place, then there must have been a reason. That could be the reason why, and I have seen delivery trucks driving through the neighborhoods. I have a concern of the proximity of a school being so close to a gas station with a 10,000 gallon truck delivering gas.

Ms. Cantu stated that given the church has given their blessing, that it complies with state regulation, and that we hope to change that ordinance or eliminate it, I think it would be good to proceed. Although staff is recommending denial, their hands are tied because they have to stick with the ordinance.

Mr. Flores stated that he is looking forward to staff to review the ordinance and coming back with a report.

There was a discussion on tabling the item to allow staff to look into the ordinance prior to the variance and Gabriel Gonzalez, Assistant City Manager, clarified that the motion would not be an option. There could only be a motion of approving or denying the variance.

Ms. Cantu stated that considering that the building is not in use and will be sold, and that there is a time constraint, and that the issue will be addressed to less stringent guidelines in line with the state guidelines, I think we should proceed.

Ms. Cantu made a motion to approve the variance request. There was not second.

There was general discussion regarding the time frame of the request and not being able to table the item, that the general idea is to not approve the variance

request. The time for staff to amend the ordinance would take more than a month or so and have an impact on the progress that's being made on the development. The regulations from TxDOT gave some insight on how city codes vary from what the state has.

Ms. Cantu motioned to approve the variance request, which was seconded by Mr. Muñoz. Three board members voted aye and two voted nay. Board members Ruby Cantu, Ernesto Flores, and Elizandro Munoz voted aye and board members Frank Garcia and Rudy Martinez voted nay. Four aye votes were required for the variance to be approved. The variance request was denied as a result.

Ms. Cantu made a motion to adjourn and was seconded by Mr. Martinez. The motion passes unanimously

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Cesar Perez, Chairman  
Zoning Board of Adjustments

**AGENDA ITEM  
EXECUTIVE SUMMARY**

Meeting Date: **August 5, 2020**

**Agenda Item:**

Petition to allow a variance to allow the use of an accessory building without a main structure in a General Retail ("GR") District, located on the east side of Dixieland Road, south of Garrett Road, bearing a legal description of 9.6463 acres out of Block 53, Howard Dixieland Heights Subdivision No. 1. Applicant: Lionel H. Hernandez.

Prepared By: Albert Molina

Title: City Planner

Signature: *Albert Molina*

**Brief Summary:**

Project Timeline

- July 20, 2020 – Application for variance submitted to the City (**Attachment I**).
- July 25, 2020 – In accordance with Statute and local law, notice of required public hearings published in the Valley Morning Star and mailed to all property owners within 200 feet of subject tract.
- August 5, 2020 – Public hearing and consideration of requested variance by the Zoning Board of Adjustment (ZBA).

Summary

- Pursuant to the City of Harlingen Code of Ordinances, Section 111-302(b)(3), "[An] accessory building is a subordinate building, smaller in both size and scale than the main building, the use of which is incidental to and used only in conjunction with the main building."
- As per the City of Harlingen Code of Ordinances, Section 111-302(c), "Detached accessory buildings shall be located in the area defined as the rear yard."
- The spirit of the ordinance is to prevent unoccupied buildings on an empty lot and to have accessory buildings located behind the main building.
- The applicant is requesting a variance to use an accessory building (barn) without a main building. Accessory buildings are outdoor structures such as a garage, greenhouse, workshop, playhouse, storage building, pergola, pool house, or other similar residential buildings. A main building means the building on a lot which is occupied by the primary user. (**Attachment II**)
- The subject property is not subdivided and has approximately 331 feet of frontage on Dixieland Road and a depth of 1315 feet, with an area of 9.6463 acres. The proposed barn will have a length of 20 feet and a depth of 40 feet, and the barn will be located approximately 150 feet from the road. (**Attachment III**)
- The requested variance was reviewed by the Building Inspections Department and Fire Prevention Department. The Fire Prevention reported no objection to the variance being granted. However, in order to obtain a building permit, the water line may need be extended and a fire hydrant may need to be installed. The

Building Inspections Department reported objection. **(Attachment IV)**

- There is no case history of a variance being granted in the area or in the city.
- To the present, staff has not received any calls from property owners in objection to the variance request.
- The City of Harlingen Code of Ordinances Chapter 111-Zoning states the ZBA may:
  - “Permit the reconstruction, extension, or enlargement of a building occupied by an non-conforming use on the lot or tract occupied by such building provided such reconstruction does not prevent the return of such property to a conforming use”, and
  - “Authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done.”
  - A concurring vote of four regular or alternate ZBA members is required to grant any variance.

**Staff Recommendation:**

Staff recommends **disapproval** of the variance request as:

1. The request does not meet the standards for the issuance of a variance as described in the City of Harlingen Code of Ordinances. There is no special circumstance preventing the construction of a main building; and
2. This is a self imposed hardship; and
3. There is no case history of a similar case being granted in the area or in the city. If a variance is granted, it would set a precedent for future cases; and
4. The request would be against the spirit of the ordinance to prevent unoccupied buildings on empty lots; and
5. The Building Inspections Department reported objection

**Attachment I—Application**

**CITY OF HARLINGEN PLANNING AND ZONING DIVISION  
MASTER APPLICATION**

**PROPERTY INFORMATION: (Please PRINT or TYPE)**

Project Address BLOCK 53 Nearest Intersection \_\_\_\_\_  
(Proposed) Subdivision Name HOWARD DIXIE LAND HEIGHTS Lot \_\_\_\_\_ Block \_\_\_\_\_  
Existing Zoning Designation \_\_\_\_\_ Future Land Use Plan Designation \_\_\_\_\_

**OWNER/APPLICANT INFORMATION: (Please PRINT or TYPE)**

Applicant/Authorized Agent LIONEL H. HERNANDEZ Phone 956-970-8360 FAX \_\_\_\_\_  
Email Address (for project correspondence only): \_\_\_\_\_  
Mailing Address 21064 ESPINOZA RD. City SAN BENITO State TX. Zip 78586  
Property Owner SAME Phone \_\_\_\_\_ FAX \_\_\_\_\_  
Email Address (for project correspondence only): \_\_\_\_\_  
Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

**Select appropriate process for which approval is sought. Attach completed checklists with this application.**

- |   |  |
|---|--|
| <input type="checkbox"/> Annexation Request..... <u>No Fee</u>              | <input type="checkbox"/> Preliminary Plat..... <u>\$100.00</u>                   |
| <input type="checkbox"/> Administrative Appeal (ZBA)..... <u>\$125.00</u>   | <input type="checkbox"/> Final Plat..... <u>\$50.00</u>                          |
| <input type="checkbox"/> Comp. Plan Amendment Request... <u>\$250.00</u>    | <input type="checkbox"/> Minor Plat..... <u>\$100.00</u>                         |
| <input type="checkbox"/> Re-zoning Request..... <u>\$250.00</u>             | <input type="checkbox"/> Re-plat..... <u>\$250.00</u>                            |
| <input type="checkbox"/> SUP Request/Renewal..... <u>\$250.00</u>           | <input type="checkbox"/> Vacating Plat..... <u>\$50.00</u>                       |
| <input type="checkbox"/> Zoning Variance Request (ZBA)..... <u>\$250.00</u> | <input type="checkbox"/> Development Plat..... <u>\$100.00</u>                   |
| <input type="checkbox"/> PDD Request..... <u>\$250.00</u>                   | <input type="checkbox"/> Subdivision Variance Request..... <u>\$25.00 (each)</u> |
| <input type="checkbox"/> License to Encroach..... <u>\$250.00</u>           |  |

Please provide a basic description of the proposed project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I hereby certify that I am the owner and/or duly authorized agent of the owner for the purposes of this application. I further certify that I have read and examined this application and know the same to be true and correct. If any of the information provided on this application is incorrect the permit or approval may be revoked.

Applicant's Signature: Lionel H Hernandez Date: 7-20-20  
Property Owner(s) Signature: Lionel H. Hernandez Date: 7-20-20  
Accepted by: \_\_\_\_\_ Date: \_\_\_\_\_

**ZONING VARIANCE REQUEST (for ZBA)  
SUBMITTAL CHECKLIST**

*Please submit the following items along with the completed master application and appropriate fees. The project cannot be scheduled for consideration unless all items are marked complete. Citations come from the City of Harlingen Code of Ordinances Chapter 111-Zoning.*

Complete

- When the variance request relates to the development, redevelopment, occupancy, or re-occupancy of a specific tract of land, ten (10) copies of a site plan drawn to scale showing existing and proposed development of the property in question.
- City and School Tax Certificates.
- A written statement describing the requested variance and an explanation of the special conditions that result in the unnecessary hardship for which the variance is requested.
- Any other information (drawings, pictures, etc.) the applicant would like to submit in support of the subject request.

- 
- I understand that the variance requested will not be scheduled for Zoning Board of Adjustments (ZBA) review unless all items on this list are completed.
  - I understand that variances cannot be granted for height exceptions in the Airport Overlay zones. (Section 111-443.5)
  - I understand that in accordance State law and the City of Harlingen Code of Ordinances, Chapter 111-Zoning, no later than ten (10) day prior to ZBA consideration:
    - A notice will be published in the Valley Morning Star describing the request and the date, time, and location of the public hearing before the ZBA; and
    - Notices will be mailed to all property owners within 200 feet of the tract for which the variance is requested describing the request and the date, time, and location of the public hearing before the ZBA.
  - I understand that the ZBA may only grant variances:
    - as may be necessary to secure appropriate development of a parcel of land which differs from other parcels in the district by being of such restricted area, shape, or slope that it cannot be appropriately developed without such modifications; and
    - only if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in an unnecessary hardship. (Section 111-443)
  - I have read and understand in its entirety the City of Harlingen Code of Ordinances, Chapter 111- Zoning and understand that the requirements of a variance request are subject to the terms and conditions therein.
  - I understand that while all requirements for the submittal of a variance request may be complete, the ZBA is the sole authority for the consideration and approval or denial of the request.
  - I understand that a 4/5-majority vote (a "super-majority") of the ZBA is required to grant any variance.
  - I understand that the decision of the ZBA is final and any appeals to said decision shall be in accordance with § 211.011 ("Judicial Review of Board Decision") of the Texas Local Government Code.

Owner: LIONEL H. HERNANDEZ Date 7-20-20

Owner Address: 21064 ESPINOZA Rd. SAN BENITO TX 78586

Phone/Fax: \_\_\_\_\_

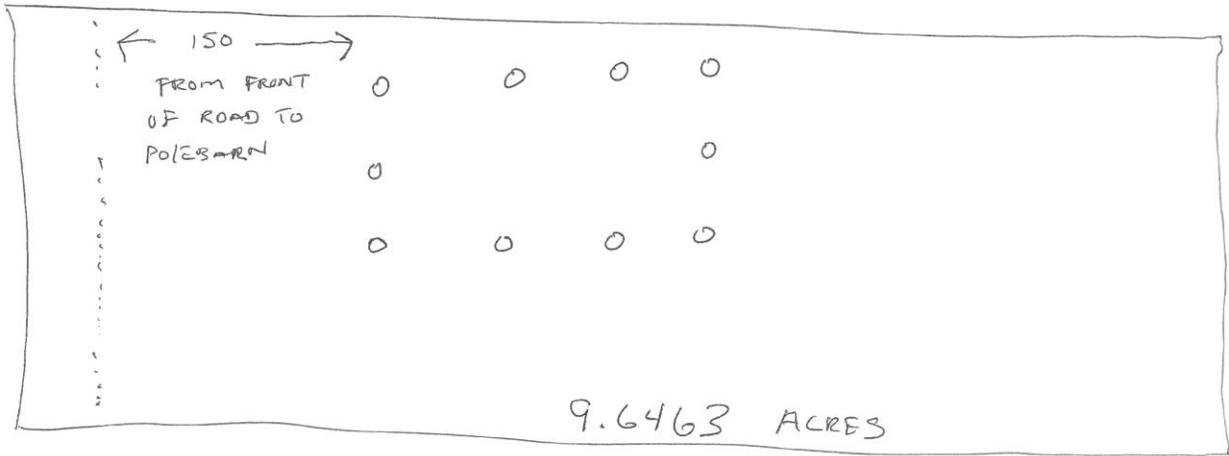
Signature: Lionel H Hernandez

Attachment II—Site Plan

L      w      #  
20' x 40' x 14'

4x4"      STEEL SQUARE TUBING

DIXIE LAND ROAD



**Attachment III—Street View and Aerial View**

Street View on Dixieland Road facing north



Aerial View





**Zoning Variance Comment Report**

**Applicant:** Lionel H. Hernandez

**Phone No.:** 956-970-8360

**Variance Request:** Petition to allow a variance to allow the use of an accessory building without a main structure in a General Retail ("GR") District

**Location:** East side of Dixieland

**Department:** Building Inspections Department

**Approval:**  YES  NO

**Comments:** **1. As per ordinance section 111-302(b)(3), A main structure must be in place prior to accessory structure.**

  
**Esmael Ortega Jr.**

**Signature**

**7/31/2020**

**Date**



**ZBA Variance Request Routing Slip**

**Applicant:** Lionel H. Hernandez

**Phone No.:** (956) 970-8360

**Location:** East side of Dixieland

**Project Description:** **Petition to allow a variance to allow the use of an accessory building without a main structure in a General Retail ("GR") District.**

**Department:** Fire Prevention Bureau

**Approval:**  YES  NO

**Comments:** **Applicant will have to meet any codes, regulations, ordinances, and standards required for the project.**

**Fire Marshal Juan Saucedo Jr.**

Juan Saucedo Jr

**Date: July 24, 2020**