

# CASE SUMMARY

APPLICATION TYPE: SUBDIVISION

FINAL PLAT



File Number: 5-SI-26-F                      Related File Number:  
Application Filed: 4/8/2026              Date of Revision:  
Applicant: CATHY BENTLEY

## PROPERTY INFORMATION

General Location: East side of Whirlwind Way, south of Mascot Rd  
Other Parcel Info.:  
Tax ID Number: 42 19576                      Jurisdiction: County  
Size of Tract: 5.01 acres  
Accessibility:

## GENERAL LAND USE INFORMATION

Existing Land Use: Rural Residential  
Surrounding Land Use:  
Proposed Use:                                      Density:  
Planning Sector: Northeast County      Plan Designation: RL (Rural Living)  
Growth Policy Plan: Planned Growth Area  
Neighborhood Context:

## ADDRESS/RIGHT-OF-WAY INFORMATION (where applicable)

Street: 1920 WHIRLWIND WAY  
Location:  
Proposed Street Name:  
Department-Utility Report:  
Reason:

## ZONING INFORMATION (where applicable)

Current Zoning: A (Agricultural)  
Former Zoning:  
Requested Zoning:  
Previous Requests:  
Extension of Zone:  
History of Zoning:

## PLAN INFORMATION (where applicable)

Current Plan Category:  
Requested Plan Category:

**SUBDIVISION INFORMATION (where applicable)**

**Subdivision Name:** Final Plat of Beverly Turner & Cathy L Bentley Property  
**No. of Lots Proposed:** 2                      **No. of Lots Approved:** 2  
**Variences Requested:** 1. Variance from Section 3.03.E of the Subdivision Regulations to allow an additional lot to be created without requiring the existing Joint Permanent Easement to be subject to the applicable requirements of Section 3.03.D of the Subdivision Regulations.  
2. Variance from Section 3.03.G of the Subdivision Regulations to allow an additional lot to use the existing Joint Permanent Easement without updating the legal documentation.  
**S/D Name Change:**

**OTHER INFORMATION (where applicable)**

**Other Bus./Ord. Amend.:**

**PLANNING COMMISSION ACTION AND DISPOSITION**

**Planner In Charge:** Spencer Schmudde  
**Staff Recomm. (Abbr.):** Approve the variance from Section 3.03.E of the Subdivision Regulations to allow an additional lot to be created without requiring the existing Joint Permanent Easement to be subject to the applicable requirements of Section 3.03.D of the Subdivision Regulations based on the following evidence of hardship.  
**Staff Recomm. (Full):** 1. The existing Joint Permanent Easement is owned and maintained by ASARCO. ASARCO's assets have been sold and transferred multiple times and it has undergone bankruptcy, making it unclear who is responsible for maintaining the current easement.  
2. The property owner did not create the Joint Permanent Easement and does not have the legal right to improve it to meet the current subdivision regulation standards.  
3. The Joint Permanent Easement and the two homes are pre-existing and the variance allows the homes to be on separate lots so they can be sold independently of each other. The traffic is established resulting in no additional impact to health and safety.  
Approve the variance from Section 3.03.G of the Subdivision Regulations to allow an additional lot to use the existing Joint Permanent Easement without updating the legal documentation based on the following evidence of hardship.  
1. The property is served by a Joint Permanent Easement created by ASARCO in 1987. ASARCO has undergone several reorganizations, sales, and bankruptcies but the ownership information for the easement has not changed. There is no ability to obtain an updated easement agreement.  
2. The property owner did not create the easement ownership issue and the resulting impossibility of obtaining an updated easement agreement by ASARCO.  
3. The Joint Permanent Easement and the two homes are pre-existing and the variance allows the homes to be on separate lots so they can be sold independently of each other. The traffic is established resulting in no additional impact to health and safety.  
Approve the final plat for 2 lots in the A district.  
**Comments:** There is an existing Joint Permanent Easement agreement recorded in Instrument 198710200027379 by ASARCO that was subsequently platted in Instrument 198710200051316. The property is located along the easement and has two houses as allowed by right in the A zone, and the proposed subdivision would allow each house to be on its own lot. Subdividing a property along the existing Joint Permanent Easement per the requirements of Sections 3.03.E and 3.03.G is not possible due to ASARCO undergoing several sales of assets and bankruptcies resulting in an inability for the property owner to obtain an updated easement agreement.  
VARIANCE FROM SUBDIVISION REGULATIONS, ARTICLE 3.03, PREVIOUSLY APPROVED JOINT PERMANENT EASEMENT, SUBSECTION E:  
A subdivision may be considered that would create additional lots on a previously approved joint permanent easement, or create additional lots that would require the extension of a previously approved joint permanent easement. Such subdivision of land shall be subject to the applicable requirements of Section 3.03.D.  
In this case, improving the Joint Permanent Easement to Private Right-of-Way Standards required by Section 3.03.D is not possible due to the property owner not having the legal right to improve an easement they do not own.

VARIANCE FROM SUBDIVISION REGULATIONS, ARTICLE 3.03, LEGAL DOCUMENTATION, SUBSECTION G:

Where access to a lot is provided by a proposed easement, private right-of-way or other approved means of access in lieu of direct frontage on a public street, such approved access shall be shown on the subdivision plat along with all engineering data, or reference to recorded documents, necessary to locate the approved access on the ground. The deed or other legal document establishing the easement, private right-of way, or other approved means of access, must be approved by the appropriate law department, city or county, as to legality and permanence of access rights, and a written statement of the law department's approval must be submitted prior to certification for recording. The document must also address property ownership and maintenance responsibilities for the approved access. Reference to such deed or other legal document shall also be shown on the plat.

If a new lot(s) is added to an existing easement, the easement agreement shall be updated to include the new property owners and establish updated maintenance responsibilities. This documentation must be reviewed and approved by the appropriate law department, as provided above.

In this case, there is no ability to contact ASARCO due to reorganizations, sales, and bankruptcies making it impossible for the property owner to obtain updated legal documentation for the additional lot on the Joint Permanent Easement.

**Action:** Approved

**Meeting Date:** 5/14/2026

**Details of Action:**

**Summary of Action:**

Approve the variance from Section 3.03.E of the Subdivision Regulations to allow an additional lot to be created without requiring the existing Joint Permanent Easement to be subject to the applicable requirements of Section 3.03.D of the Subdivision Regulations based on the following evidence of hardship. 1. The existing Joint Permanent Easement is owned and maintained by ASARCO. ASARCO's assets have been sold and transferred multiple times and it has undergone bankruptcy, making it unclear who is responsible for maintaining the current easement. 2. The property owner did not create the Joint Permanent Easement and does not have the legal right to improve it to meet the current subdivision regulation standards. 3. The Joint Permanent Easement and the two homes are pre-existing and the variance allows the homes to be on separate lots so they can be sold independently of each other. The traffic is established resulting in no additional impact to health and safety.

Approve the variance from Section 3.03.G of the Subdivision Regulations to allow an additional lot to use the existing Joint Permanent Easement without updating the legal documentation based on the following evidence of hardship.

- 1. The property is served by a Joint Permanent Easement created by ASARCO in 1987. ASARCO has undergone several reorganizations, sales, and bankruptcies but the ownership information for the easement has not changed. There is no ability to obtain an updated easement agreement.
- 2. The property owner did not create the easement ownership issue and the resulting impossibility of obtaining an updated easement agreement by ASARCO.
- 3. The Joint Permanent Easement and the two homes are pre-existing and the variance allows the homes to be on separate lots so they can be sold independently of each other. The traffic is established resulting in no additional impact to health and safety.

Approve the final plat for 2 lots in the A district.

**Date of Approval:** 5/14/2026

**Date of Denial:**

**Postponements:**

**Date of Withdrawal:**

**Withdrawn prior to publication?:**  **Action Appealed?:**

**LEGISLATIVE ACTION AND DISPOSITION**

**Legislative Body:** Court of Competent Jurisdiction

**Date of Legislative Action:**

**Date of Legislative Action, Second Reading:**

**Ordinance Number:**

**Other Ordinance Number References:**

**Disposition of Case:**

**Disposition of Case, Second Reading:**

**If "Other":**

**If "Other":**

**Amendments:**

**Amendments:**

**Date of Legislative Appeal:**

**Effective Date of Ordinance:**