

City of San Antonio



Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

April 19, 2021

1:00PM

Videoconference

Board of Adjustment Members

A majority of appointive Members shall constitute a quorum.

Donald Oroian, District 8, Chair
Andrew Ozuna, Mayor, Vice Chair
Seth Teel, District 6, Pro-Tem

Anisa Schell, District 1 | Seymour Battle III, District 2
Abel Menchaca, District 3 | George Britton, District 4 |
Maria Cruz, District 5 | Phillip Manna, District 7
Kimberly Bragman, District 9 | Jonathan Delmer, District 10

Alternate Members

Cyra M. Trevino | Vacant | Arlene B. Fisher | Vacant | Vacant |
Kevin W. Love | Vacant

1:07 P.M. - Call to Order

- **Roll Call**
- **Present:** Schell, Menchaca, Cruz, Manna, Bragman, Fisher, Teel, Ozuna, Oroian, Battle, Love
(Mr. Love joined the Board of Adjustment meeting at 1:30 pm)
- **Absent:** Britton, Delmer

2 Translators from SeproTec were present to assist with translating.

**THE FOLLOWING ITEMS MAY BE CONSIDERED AT ANY TIME DURING THE
REGULAR BOARD OF ADJUSTMENT MEETING:**

*Public Hearing and Consideration of the following Variances, Special Exceptions, Appeals,
as identified below*

- Item #8** **BOA-21-10300025**: A request by Olga Saldana for 1) 2' 10" variance from the minimum 5' side setback requirement to allow an addition with 1' 6" overhang to be 2' 2" away from the side property line and 2) an 8% variance from the 50% maximum impervious cover limitation in the front yard to allow up to 58% impervious cover, located at 374 Langford Place. Staff recommends Approval. (Michael Pepe, Planner, (210) 207-8208, Michael.Pepe@sanantonio.gov, Development Services Department) (Council District 3)

Staff stated 33 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No registered Neighborhood Association.

Olga Saldana, 374 Langford Place – Requesting variance to keep the addition to home. Did not know she needed a permit to enclose the carport.

No Public Comment

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item BOA-20-10300025, as presented

Mr. Teel made a **motion** for BOA-20-10300025 for approval

“Regarding Case No. BOA-20-10300025, I move that the Board of Adjustment grant a request to allow for 1) a 2' 10" variance from the minimum 5' side setback requirement to allow an addition with 1' 6" overhang to be 2' 2" away from the side property line and 2) an 8% variance from the 50% maximum impervious cover in the front yard to allow up to 58% impervious cover, situated at 374 Langford Place, applicant being Olga Saldana, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*
The public interest is defined as the general health, safety, and welfare of the public. In this case, the variance being requested is for a building encroachment into the side setback and for the front yard impervious cover. The requests do not seem to be contrary to the public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The Board finds that any special conditions that, if enforced, would result in an unnecessary hardship. By imposing a literal enforcement, the existing living space would need be altered significantly to meet the 5' side setback.
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 defined as the intent of the code, rather than the exact letter of the law. The intent of the setbacks is to provide spacing between neighboring structures. By reducing the setback to 2'2", the applicant will maintain about 7.5' between structures with a 2' 10" variance to the side setback, which is not uncommon in this neighborhood.

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.*

No uses other than those allowed within the district will be allowed with this variance.

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 to reduce a portion of the side setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the district. This property is located within an older neighborhood where it is common to find non-conforming dwellings in which parts of the building or carports encroach into the side setbacks.

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 Board finds that the applicant is requesting the variance to receive a permit for a building already completed on the property. The unique circumstances existing on the property were created by the owner of the property as they would have been informed of the setback requirements while pulling a permit.”

Second: Fisher

In Favor: Teel, Fisher, Schell, Menchaca, Cruz, Manna, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted

Mr. Love joined the Board of Adjustment meeting at 1:30 pm.

Item #2

BOA-21-10300029: A request by Jack R Bernal for 1) a 7’ variance to the 30’ minimum side setback to allow a structure to be 23’ away from the side property line and 2) a variance from the fencing material to allow a corrugated metal fence along the side property line, located at 1263 Bandera Road. Staff recommends Denial with an Alternate Recommendation. (Council District 7) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 15 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the University Park Neighborhood Association. No response from Donaldson Terrace Neighborhood Association.

Jack Bernal, 1263 Bandera Road – Requesting setback variance to allow for 23’ between foundation and residential line.

No Public Comment

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item BOA-20-10300029, as presented

Mr. Manna made a **motion** for BOA-20-10300029 for approval

“Regarding Case No. BOA-21-10300029, I move that the Board of Adjustment grant a request for 1) a 7’ variance to the 30’ minimum side setback to allow a structure to be 23’ away from the side property line, situated at 1263 Bandera Road, applicant being Jack R. Bernal, 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 request to allow a 7’ encroachment into the side setback is not contrary to the public interest as the applicant has adequate space from the adjacent structure.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The Board finds that any special conditions that, if enforced, would result in an unnecessary hardship. The applicant was informed of the zoning of the property and the proximity of the concrete slab to the side property line upon an inspection.
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 defined as the intent of the code, rather than the exact letter of the law. The intent of the setbacks is to provide spacing between neighboring structures which is still being observed.
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 variance will not authorize the operation of a use other than those uses specifically authorized by the 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 to reduce a portion of the side setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the district. The property owner is still willing to provide the necessary buffer yard to mitigate effects on adjacent properties.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

The Board finds the unique circumstances existing on the property were not created by the owner of the property nor are they merely financial.”

Second: Cruz

In Favor: Manna, Cruz, Schell, Menchaca, Love, Bragman, Fisher, Teel, Ozuna, Oroian

Opposed: None

Motion Granted

Mr. Manna recused himself from the Board of Adjustment meeting at 1:46 pm.

Item # 1 Due to lack of quorum for **BOA-21-10300023**, item moved to the end of the meeting for review.

Mr. Manna rejoined the Board of Adjustment meeting at 2:10 pm.

Item #3 **BOA-21-10300031**: A request by Lee Mangum for 1) a 14’11” variance from the 15’ Type B landscape bufferyard requirement to allow a bufferyard to be 1” along the north property line, and 2) a 9’11” variance from the 10’ Type A landscape bufferyard requirement to allow a bufferyard to be 1” along the east property line, located at 1511 Northwest Crossroads. Staff recommends Approval. (Council District 6) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 16 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. No registered Neighborhood Association.

Lee Mangam, Pape Dawson Engineers, 2000 NE Loop 410 -Requesting bufferyard variances for new Information Technology building. The traffic off Potranco Road is very congested.

Submitted Public Comment

Tim Kloewer, ATC, LAT, Stevens High School, 7526 Kentisbury Dr – In opposition

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item **BOA-20-10300031**, to be continued to the May 3, 2021 Board of Adjustment meeting.

Mr. Manna made a **motion** for **BOA-20-10300031** to be continued to May 3rd

Second: Cruz

In Favor: Manna, Cruz, Schell, Menchaca, Bragman, Fisher, Teel, Ozuna, Oroian

Opposed: None

Motion Granted

Mr. Battle joined the Board of Adjustment meeting at 2:36 pm

Item #4 **BOA-21-10300024:** A request by Brandon Sanchez for a special exception to exceed the Type 2 Short Term Rental density limitation to allow one Type 2 Short Term Rental Permit, located at 314 Delaware Street. Staff recommends Denial. (Council District 1) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 22 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the Lavaca Neighborhood Association.

Brandon Sanchez, 314 Delaware St – Requesting a special exception for a Type 2 short term rental. The property is located near highly commercial properties and this would work best for property.

Submitted Public Comment

Lynda Crosby – Comments

Erika Almazan, 409 Florida St. – In opposition

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item BOA-20-10300024, as presented

Mr. Teel made a **motion** for BOA-20-10300024 for approval

“Regarding Case No. BOA-20-10300024, I move that the Board of Adjustment grant a special exception to allow for (1) Type 2 short term rental unit, situated at 314 Delaware Street, applicant being Brandon Sanchez, 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 special exception will not materially endanger the public health or safety.*
The Board finds that the request to operate a short term rental is unlikely to materially endanger the public health, safety, or welfare. There is nothing obvious that would distinguish a short term rental versus a long term rental at this property.

2. *The special exception does not create a public nuisance.*

The Board finds that there are a total of seven (7) residential units on this blockface and the special exception would permit a total of two (2) Type 2 short term rentals, resulting in 28.6% of the blockface.

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

The neighboring properties consist of single-family residences and duplexes. The subject property is located in close proximity to the commercial corridor of S. Presa Street and S. St. Mary's Street. This unique scenario does not cause reason to believe it will substantially injure neighboring property as a Type 2 Short Term Rental.

4. *Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary faculties have been or are being provided.*

The subject property provide off-street parking and appears to have adequate utilities, access, and open space.

5. *The applicant or owner for the special exception does not have any previously revoked short term rental licenses, confirmed citations, or adjudicated offenses convictions for violations of Chapter 16, Article XXII of the City Code within one year prior to the date of the application.*

The applicant currently holds a Short Term Rental Permit and does not have any history of revocation, citations, or convictions for violations of Chapter 16.

6. *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 subject property is located near Southtown and in close proximity to commercial, recreational, and other residential uses. With the property owner providing off-street parking and maintaining it from the neighboring property, the special exception does not appear to alter the essential character of the district and location in which the property is seeking the special exception."

Second: Ozuna

In Favor: Battle, Cruz, Bragman, Teel, Ozuna, Oroian

Opposed: Schell, Menchaca, Manna, Fisher

Motion Fails

Item #5

BOA-21-10300021: A request by Jay Pruski for a 14'6" variance from the Whispering Oaks Neighborhood Conservation District maximum driveway width requirement of 19'2" to allow the total driveway width to be 33'8", located at 11402 Whisper Green. Staff recommends Denial. (Council District 9) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 26 notices were mailed to property owners within 200 feet, 4 returned in favor, and 0 returned in opposition. The Whispering Oaks HOA is in favor.

Jay Pruski, 11402 Whisper Green – Requesting variance to extend the driveway. The width extension would result in a horseshoe driveway. Home is located at the bottom of a hill and backing into the street sometimes has a lot of traffic.

Submitted Public Comment

Albert & Nancy Karem, 11418 Whisper Green St – In favor
 Louis Bixenman, 11302 Whisper Willow St – In favor
 Tom & Susan Ginnity, 11310 Whisper Glen – In favor
 James & Suzanne Stewart, 11426 Whisper Green – In favor
 Janis, Whispering Oaks HOA – In favor

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item BOA-20-10300021, as presented

Ms. Bragman made a **motion** for BOA-20-10300021 for approval

“Regarding Case No. BOA-21-10300021, I move that the Board of Adjustment grant a request for a 14’6” variance from the Whispering Oaks Neighborhood Conservation District maximum driveway width requirement of 19’2” to allow the total driveway width to be 33’8”, situated at 11402 Whisper Green, applicant being Jay Pruski, 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 requested variance for constructing an additional driveway for a property being a corner lot and not having a sidewalk on the south is not contrary to public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The Board finds that a literal enforcement would result in unnecessary hardship and the applicant can not build an additional driveway while other neighbors enjoy their utilized horseshoe driveway.
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 Whispering Oaks NCD design guideline is to promote consistency within the neighborhood. The horseshoe driveway is common within the neighborhood and the requested variance will not stray far from the spirit of the ordinance.
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 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 the request to exceed the allowable driveway width do not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the Whispering Oaks NCD.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial and are not due to or the result of general conditions in the district in which the property is located.*

The unique circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature. Since the other design standards are consistent with the NCD, the requested variance will not distract the uniformity of community.”

Second: Teel

In Favor: Bragman, Teel, Schell, Battle, Menchaca, Cruz, Manna, Fisher, Ozuna, Oroian

Opposed: None

Motion Granted

Chair Oroian called for the Board of Adjustment to take a recess at 3:21 pm. The Board of Adjustment returned at 3:30 pm.

Item #6

BOA-21-10300026: A request by Michael Friz Baird for 1) a 3’7” variance to the minimum 5’ side setback requirement to allow a carport with 1’2” overhang to be 1’5” away from the side property line, and 2) a 2’ special exception to allow a side yard fence to be 8’ tall, located at 124 West Summit Avenue. Staff recommends Denial with an Alternate Recommendation. (Council District 1) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 17 notices were mailed to property owners within 200 feet, 5 returned in favor, and 0 returned in opposition. The Monte Vista Historical Association is in favor.

Michael Baird, 124 West Summit Ave – Requesting variance requests to build a carport and to continue the side privacy fence at 8’ tall.

Submitted Public Comment

Steven Sinkin, 119 West Summit – In favor

Martha Doty Freeman, 128-130 West Summit Ave – In favor

Joe Freeman, 128-130 West Summit Ave – In favor

Allison & Scott Singleton, 120 W Summit Ave – In favor

Janet Murphy, 125 W Summit Ave – In favor

Monte Vista Historical Association, P.O. Box 12386 – In favor

Carrie Sinkin, 119 W Summit Ave – In favor

George Spencer, 202 West Summit Ave – In favor

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item BOA-20-10300026, as presented

Ms. Schell made a **motion** for BOA-20-10300026 for approval

“Regarding Case No. BOA-21-10300026, I move that the Board of Adjustment grant a request for 1) a 3’7” variance to the minimum 5’ side setback requirement to allow a carport with 1’2” overhang to be 1’5” away from the side property line, situated at 124 West Summit Avenue, applicant being Michael Friz Baird, 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 proposed metal carport will have gutters installed to control the storm water runoff. The requested variance is not contrary to public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. A literal enforcement would result in unnecessary hardship and the applicant can not build the carport as intended.
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 requested variance to allow for a carport to have lesser side setback would allow adequate space for maintenance.
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.*
No uses other than those permitted within the district will be allowed with this variance.
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 for the side setback encroachment of the carport does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to 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 circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature.”

Second: Manna

In Favor: Schell, Manna, Battle, Menchaca, Cruz, Bragman, Fisher, Teel, Ozuna, Oroian

Opposed: None

Motion Granted

Chair Oroian asked for a motion for item BOA-20-10300026, special exception, as presented

Ms. Schell made a **motion** for BOA-20-10300026 for approval

“Regarding Case No. BOA-21-10300026, I move that the Board of Adjustment grant 2) a 2’ special exception to allow a side yard fence to be 8’ tall, situated at 124 West Summit Avenue, applicant being Michael Friz Baird, 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 special exception will be in harmony with the spirit and purpose of the chapter.*
The additional fence height is intended to provide security of the applicant’s property. The requests to install an 8’ tall fence on the side property lines would be in harmony with the spirit and purpose of the ordinance.
2. *The public welfare and convenience will be substantially served.*
The property is abutting an alley on the rear side, which allows for an 8’ tall fence for that portion. An 8’ tall fence along the side yards will provide additional security for the applicant’s property. This is not contrary to the public interest.
3. *The neighboring property will not be substantially injured by such proposed use.*
The fence will enhance security and privacy for the subject property and is highly unlikely to injure adjacent properties.
4. *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 for the fence height does not detract from the character of the neighborhood.

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

The current zoning permits the current use of a single-family home. The requested special exception will not weaken the general purpose of the district.”

Second: Manna

In Favor: Schell, Manna, Battle, Menchaca, Cruz, Bragman, Fisher, Teel, Ozuna, Oroian

Opposed: None

Motion Granted

Item #7

BOA-21-10300032: A request by Carmen Groth for a 10’ variance from the minimum 20’ rear setback requirement to allow an addition to be 10’ away from the rear property line, located at 13066 North Hunters Circle. Staff recommends Approval. (Council District 8) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 24 notices were mailed to property owners within 200 feet, 5 returned in favor, and 10 returned in opposition. 4 in favor and 1 in opposition outside the 200’. The Hunters Creek Neighborhood Association is in opposition.

Carmen Groth, 13066 N Hunters Circle – Requesting setback variance to allow for an addition to accommodate elderly mother and son.

Submitted Public Comment

Paul A. Barrera, 13107 Hunters Spring St – In opposition
 Elaine Stallknecht, 13059 N Hunters Cir – In opposition
 Michael Swanson, 13055 N Hunters Cir – In opposition
 David N. Fitzhugh, 13074 N Hunters Cir – In opposition
 John Randolph, President, Hunters Creek NA, 13108 Hunters Ledge St – In opposition
 Jay & Maria Hayden, 13075 N Hunters Circle – In favor
 Cory Fujimoto, 13206 Hunters Breeze St – In opposition
 Nick Reynolds, 3507 Hunters Sound St – In opposition
 Patricia A. Kuentz, 13031 Hunters Ridge – In opposition
 Sergio & Ingrida Dickerson, 13058 N Hunters Circle – In favor
 Adrian & Tricia Ruiz, 13067 N Hunters Circle – In favor
 Isabel Cervantes, 13034 Hunters Ledge- In favor
 Linda Rowland, 13047 N Hunters Circle – In favor
 Harvey Abend, 13071 N Hunters Circle – In opposition
 James Hall, 13079 N Hunters Circle – In favor
 Clay & Brianna Swanson, 13050 N Hunters Circle – In favor
 Megan Hedges Poole, 3634 Hunters Circle St – In favor
 Alice & Shan Barsoumain, 3610 Hunters Circle - In favor
 Robert Trottmann, 3502 Hunters Sound – In opposition
 Ellen Pfeiffer, 13062 N Hunters Circle – In opposition
 Asher & Jill Lewis, 13103 Hunters Spring St – In opposition

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item BOA-20-10300032, as presented

Mr. Ozuna made a **motion** for BOA-20-10300032 for approval

“Regarding Case No. BOA-21-10300032, I move that the Board of Adjustment grant a request for a 8’ variance from the minimum 20’ rear setback requirement to allow an addition to be 12’ away from the rear property line, situated at 13066 North Hunters Circle, applicant being Carmen Groth, 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 property owner has maintained a 12’ rear setback and has more than 22’ between the addition and the northern side property line.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The Board finds that any special conditions that, if enforced, would result in an unnecessary hardship. The applicant did obtain a residential building permit before construction, and if a literal enforcement of the ordinance was applied she would need to remove about 2’ of the mostly-constructed addition.
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 defined as the intent of the code, rather than the exact letter of the law. The intent of rear setbacks is to allow for adequate space between structures. It appears as though the addition is about 22’ from the structure on the abutting property to the rear.
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 variance will not authorize the operation of a use other than those uses specifically authorized by the 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 to reduce a portion of the rear setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the district. The structure on the property to the rear appears to have a similar setback for a covered patio.

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 Board finds the unique circumstances existing on the property were not created by the plight of the owner and are not merely financial as a residential building permit was issued in March.”

Second: Cruz

In Favor: Ozuna, Cruz, Schell, Battle, Menchaca, Manna, Bragman, Fisher, Teel, Oroian

Opposed: None

Motion Granted

Mr. Manna recused himself from the Board of Adjustment for Item #1 **BOA-21-10300023** at 4:53 pm

Item # 1 **BOA-21-10300023**: A request by Marius Perron for a 40’ variance from the 80’ maximum front setback requirement in order to allow a front setback of 120’, located at 8555 Abe Lincoln. Staff recommends Approval. (Council District 7) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department

Staff stated 15 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. The Alamo Farmstead/Babcock Road Neighborhood Association in favor.

Marius Perron, 8555 Abe Lincoln & Charles Gates, Architect – Requesting setback variance to allow for new building to be moved back, away from tree. The setback is needed to protect the 100 year old Heritage Oak tree.

Submitte Public Comment

Phillip Manna, Vice President, Alamo Farmstead/Babcock Road NA – In favor
Stephen Becher, 8464 Barron, Mother Earth Daycare – In opposition

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Chair Oroian asked for a motion for item **BOA-20-10300023** as presented

Ms. Fisher made a **motion** for **BOA-20-10300023** for approval

“Regarding Case No. BOA-21-10300023, I move that the Board of Adjustment grant a request for a 40’ variance from the 80’ maximum front setback requirement in order to allow a front setback of 120’, situated at 8555 Abe Lincoln, applicant being Merion Perron, 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 removal of a heritage tree of this size would be contrary to the public interest and the tree canopy of San Antonio.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The Board finds that any special conditions that, if enforced, would result in an unnecessary hardship. In order to construct the building at the maximum setback distance, the property owner would need to remove a large Heritage Live Oak.
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 defined as the intent of the code, rather than the exact letter of the law. The intent of the front setback in the “O-2” District is to provide spacing between the right-of-way and a high-rise office building, however land constraints cause conflict and moving the building farther back will still observe the spirit of the ordinance.
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 variance will not authorize the operation of a use other than those uses specifically authorized by the 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 to increase the maximum front setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the district. The property owner is still willing to provide all other necessary setbacks and landscape buffer yards to mitigate effects on adjacent properties.
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*
The Board finds the unique circumstances existing on the property were not created by the owner of the property nor are they merely financial. The plight of the owner was created by the location of the Heritage Tree on the property.”

Second: Schell

In Favor: Fisher, Schell, Battle, Menchaca, Cruz, Bragman, Teel, Ozuna, Oroian

Opposed: None

Motion Granted

Mr. Manna rejoined the Board of Adjustment meeting at 5:09 pm.

Item #9 Consideration and approval of April 5, 2021 Board of Adjustment meeting minutes.

Motion: Chair Oroian asked for a motion for approval of April 5, 2021 minutes as presented

Mr. Teel made a **motion** for approval of April 5, 2021 minutes as presented

Second: Cruz

In Favor: Teel, Cruz, Schell, Battle, Menchaca, Manna, Bragman, Fisher, Ozuna, Oroian

Opposed: None

Minutes approved

Adjournment

There being no further business, the meeting was adjourned at 5:12 p.m.

APPROVED BY:  OR _____
Chairman Vice-Chair

DATE: 5-6-2021

ATTESTED BY:  DATE: May 6, 2021
Executive Secretary