

City of San Antonio



**Draft**

**Board of Adjustment Minutes**

Development and Business Services  
Center  
1901 South Alamo

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**March 2, 2020**

**1:00PM**

**1901 S. Alamo**

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Board of Adjustment Members

A majority of appointive Members shall constitute a quorum.

Roger F. Martinez, District 10, Chair  
Vacant, District 2, Vice Chair  
Donald Oroian, District 8, Pro-Tem

Dr. Zottarelli, District 1 | Reba N. Malone, District 3 | George Britton, District 4 | Maria Cruz, District 5  
| Seth Teel, District 6 | Phillip Manna, District 7 | Kimberly Bragman, District 9 |  
Andrew Ozuna, Mayor

Alternate Members

Cyra M. Trevino | Anne Englert | Arlene B. Fisher | Frank A. Quijano |  
Seymour Battle III | Kevin W. Love | Johnathan Delmer

**1:06 P.M. - Call to Order, Board Room**

- **Roll Call**
- **Present:** Teel, Zottarelli, Bragman, Cruz, Oroian, Britton, Ozuna, Englert, Manna, Trevino, Martinez, Quijano
- **Absent:** Malone

Jaqueline Payan and Cesar Chavez, SeproTec translators were present.

**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*

**Pledge of Allegiance****Election of Officers to fill vacancies**

**Chair Martinez** asked for **Staff** to take nominations for election of officers. **Staff** asked for nominations for Vice-Chair. **Mr. Oroian** nominated **Dr. Zottarelli**. Members voted in the affirmative.

**Consideration of an appointment of a member of the Board of Adjustment, to serve as an Alternate for the Planning Commission Technical Advisory Committee for the remainder of a term to expire 04/26/2021.**

**PTAC vote:**

**Ms. Bragman, self-nominated**

**In Favor:** Teel, Bragman, Britton, Manna, Martinez

**Opposed:** Zottarelli, Cruz, Oroian, Ozuna, Englert, Trevino

**Nomination Failed**

**Dr. Zottarelli nominated Mr. Oroian**

**In Favor:** Teel, Zottarelli, Cruz, Oroian, Britton, Ozuna, Englert, Manna, Trevino, Martinez

**Opposed:** Bragman

**Nomination Granted**

**Item #1**      **(Continuance from 02/17/2020) BOA-19-10300156:** A request by Yma Luis for a request for 1) a variance from the restriction of corrugated metal as a fencing material to allow for its use as a fencing material and 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 1638 Santa Monica Street. Staff recommends Denial. (Council District 1) (Kayla Leal, Senior Planner, (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 37 notices were mailed to property owners within 200 feet, 3 returned in favor, and 0 returned in opposition. No response from Los Angeles Heights Neighborhood Association.

**Yma Luis, 1638 Santa Monica Street** – Spoke of her intention to put the gate on a track. She is also working on getting the medal part of the fence protected.

**No Citizens appeared to speak**

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300156, as presented

Mr. Teel made a **motion** for BOA-19-10300156 for approval

“Regarding Case No. BOA-19-10300156, I move that the Board of Adjustment grant a request for 1) a variance from the restriction of corrugated metal as a fencing material to allow for its use as a fencing material, **as presented with top cap**, and 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, **as presented with a rolling gate track**, situated at 1638 Santa Monica Street, applicant being Yma Luis, 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 instance, the variance is not contrary to the public interest. The fence is built with material and a design that is complimentary to surrounding properties. The request is consistent with the neighborhood and is not contrary to the public interest.**
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*  
**Literal enforcement of the ordinance would result in the applicant removing the material and fence that is within the Clear Vision. This 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 Board finds granting the request will result in substantial justice with the requested material, placement of the fence, and the placement of tracks or an inward-opening gate. These changes to the gate will provide for a safe development pattern and the spirit of the ordinance will be 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 Board finds that fence is within character within the community. The impact of the Clear Vision encroachment does not impact the alleyway users and adjacent property owners.**
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. Due to the presence of the alleyway and the gate being proposed to be on a track or opening inward, the Board finds the request to be the result of the surrounding area in which the property is located.”**

**Second:** Dr. Zottarelli

**In Favor:** Teel, Zottarelli, Bragman, Cruz, Oroian, Britton, Ozuna, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

- Item # 2**     **BOA-19-10300167:** A request by Fernando De Leon for a request for a 34'11" variance from the maximum 35' front setback requirement to allow a new building to be 69'11" from the front property line, located at 10603 West Avenue. Staff recommends Approval. (Council District 9) (Kayla Leal, Senior Planner, (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department).

Staff stated 12 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the Greater Harmony Hills Neighborhood Association.

**Fernando Del Leon, 10603 West Avenue** – Spoke of need of variance because the lot is surrounded by R6 zoning and the setbacks are 30' back, and 20' sides. The building size proposed has been cut from 4700 sq. ft. building to a 4200 sq. ft. building.

**No Citizens appeared to speak**

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300167, as presented

Mr. Ozuna made a **motion** for BOA-19-10300167 for approval

“Regarding Case No. BOA-19-10300167, I move that the Board of Adjustment grant a request for a 34'11" variance from the 35' front setback requirement to allow a building to be 69'11" from the front property line, situated at 10603 West Avenue, applicant being Fernando De Leon, 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 instance, the variance is not contrary to the public interest as it is being requested to preserve a heritage tree on the subject property.**
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*  
**The Board has found a special condition on the property to include a heritage tree near the front property line. A literal enforcement of the ordinance would result in the unnecessary hardship of tree removal in order to construct.**

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 as the requested variance will allow the property owner to preserve an appropriate design that is consistent with the surrounding community. The request will not negatively affect the surrounding community and will maintain 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 Board has found the request to maintain the character of the district through the preservation of the existing tree canopy.*
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 are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature.”*

**Second:** Mr. Oroian

**In Favor:** Ozuna, Oroian, Teel, Bragman, Zottrelli, Cruz, Britton, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

**Item #3** **BOA-20-10300014:** A request by Steve Markham for a special exception to allow one (1) Type 2 short term rental unit, located at 326 Lexington Avenue. Staff recommends Denial. (Council District 1) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 11 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the Downtown Residents' Neighborhood Association.

**Steven Markham, 326 Lexington** – Spoke of request for special exception to allow him to use property as a short term rental unit, as a duplex.

**Following Citizens appeared to speak**

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300014, as presented

Mr. Oroian made a **motion** for BOA-19-10300014 for approval

“Regarding Case No. BOA-20-10300014, I move that the Board of Adjustment grant a special exception to allow for (1) Type 2 short term rental unit, situated at 326 Lexington Avenue, Unit 101, applicant being Steve Markham, 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. The subject property appears to be well-kept and recently renovated. There is nothing obvious that would distinguish a short term rental versus a long term rental at this facility.**
2. *The special exception does not create a public nuisance.*  
**The Board finds that there are a total of two (2) residential units on this blockface and the special exception would permit a total of two (2) Type 2 short term rentals, resulting in 100% of the blockface. With no single-family residences directly abutting the property, a public nuisance does not seem likely to be created.**
3. *The neighboring property will not be substantially injured by such proposed use.*  
**The neighboring properties consist of a vacant residential structure and a law office, neither of which seem likely to be substantially injured by the proposed use of 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 Board finds the subject property to 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 has one 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 downtown and surrounded by a mixture of commercial, residential, and office uses. With the property owner provided off-street parking per unit, 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:** Mr. Ozuna

**In Favor:** Oroian, Ozuna, Teel, Zottarelli, Bragman, Cruz, Britton, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

**Mr. Teel** stepped out of the **Board of Adjustment** meeting at 2:05 pm, recusing himself from case BOA-19-10300020. **Mr. Quijano** joined the board to review the case.

**Item #4**

**BOA-20-10300020:** A request by Raymond Gonzales for a special exception to allow one (1) Type 2 short term rental unit, located at 221 Ira Avenue. Staff recommends Denial. (Council District 2) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 26 notices were mailed to property owners within 200 feet, 0 returned in favor, and 2 returned in opposition. 6 outside the 200' radius were in favor. No response from the Mahnke Park Neighborhood Association.

**Raymond Gonzales, 221 Ira Avenue** – Spoke of request for special exception to allow property to be used as a short term rental. Due to cost, it was more reasonable to keep property as a duplex and use as a short term rental.

**No Citizens appeared to speak**

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300020, as presented

Mr. Ozuna made a **motion** for BOA-19-10300020 for approval.

“Regarding Case No. BOA-20-10300020, I move that the Board of Adjustment grant a special exception to allow for (1) Type 2 short term rental unit, situated at 221 Ira Avenue, applicant being Raymond Gonzales, 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 facility.**

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

**The Board finds that there are a total of eight (8) residential units on this blockface and the special exception would permit a total of two (2) Type 2 short term rentals, resulting in 25% of the blockface. A public nuisance does not seem likely to be created.**

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

**The neighboring properties consist of a single-family residential uses which do not seem likely to be substantially injured by the proposed use of 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 Board finds the subject property to 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 has one 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 in close proximity to Broadway Street. With the property owner provided off-street parking per unit, 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:** Mr. Manna

**In Favor:** Ozuna, Oroian, Britton, Englert, Martinez

**Opposed:** Manna, Quijano, Zottarelli, Bragman, Cruz, Trevino

**Motion Failed**

**Mr. Quijano** left the **Board of Adjustment** meeting at 2:28 pm. **Mr. Teel** rejoined the board at 2:28 pm.

**Item #5**

**BOA-20-10300006:** A request by Magaly Fernandez Cera for 1) a special exception to allow a solid screen fence to be 6' tall within the front property and 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 223 Zabra Drive. Staff recommends Denial. (Council District 4) (Dominic Silva, Senior Planner (210) 207-0120, dominic.silva@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. The Rainbow Hills Neighborhood Association is in opposition.

**Magaly Fernandez Cera, 223 Zabra Drive** – Spoke of need for fence to protect her property. The fence also provides protection for her grandchildren to play outside safely.



**No Citizens appeared to speak**

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300006, as presented

Mr. Oroian made a **motion** for BOA-19-10300006 for approval.

“Regarding Case No. BOA-20-10300006, I move that the Board of Adjustment grant a special exception to allow a solid screen fence to be 6’ tall within the front property, situated at 223 Zabra, applicant being Magaly Fernandez Cera, 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 UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height is intended to provide safety and privacy of the applicant’s property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.**

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

**In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. A 6’ tall solid screen fence is proposed within the front property along the side property lines to provide additional privacy 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 create enhanced privacy for the subject property and is highly unlikely to injure adjacent properties as other properties within the residential neighborhood has similar fences that provide enhanced security and safety.**

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 fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.**

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.”**

**Second:** Dr. Zottarelli

**In Favor:** Oroian, Zottarelli, Teel, Bragman, Cruz, Britton, Ozuna, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

**Motion:** Chair Martinez asked for a motion for the variance for item BOA-19-10300006, as presented

Mr. Oroian made a **motion** for BOA-19-10300006 for approval.

“Regarding Case No. BOA-20-10300006, I move that the Board of Adjustment grant a **5’** variance from the Clear Vision standards to allow a fence to be within **15’** the Clear Vision field, situated at 223 Zabra, applicant being Magaly Fernandez Cera, 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 fence placement, the variance to Clear Vision is not contrary to the general health and safety of passersby as view is not entirely obstructed.**
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*  
**The requirement to reduce the fence height would have placed the home safety and privacy at risk, resulting in an unnecessary hardship.**
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*  
**The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. The intent of the code is to establish cohesive development that preserves the public interest. The request to reduce the clear vision field observes the intent of the code as the property complies with other requirements.**
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 will not injure adjacent properties as there is still adequate distance between the driveway fence and the street will not harm other motorists or pedestrians.**

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 is due to the general layout of the property; this is not the fault of the property owner and is not the result of the general conditions in the community.”**

**Second:** Dr. Zottarelli

**In Favor:** Oroian, Zottarelli, Teel, Bragman, Cruz, Britton, Ozuna, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

**Chair Martinez** called for the **Board of Adjustment** to take a recess at 3:02 pm. Board resumed at 3:13 pm.

**Mr. Ozuna** left the **Board of Adjustment** meeting at 3:12 pm. **Mr. Quijano** joined the board at 3:12 pm

**Item #6**

**BOA-20-10300018:** A request by Alicia King for 1) a special exception to allow an open screened fence to be up to 6’ tall within the front property and 2) a request for a special exception to allow a solid screen fence to be up to 7’5” tall within the front, side, and rear of a vacant property, located at 16240 San Pedro Avenue. Staff recommends Approval. (Council District 9) (Dominic Silva, Senior Planner (210) 207-0120, dominic.silva@sanantonio.gov, Development Services Department)

Staff stated 35 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. 1 outside the 200’ radius was in favor.

**Alicia King, 16240 San Pedro Avenue** – Spoke of need of the fence for safety. She spoke about safety concerns from dogs, crime, and transients. She is elderly and disable, the fence makes her feel safe.

**The following Citizens appeared to speak**

**Tim Schwarz, 16240 San Pedro** - supports Ms. King’s request. There is a lot of theft in the area.

**Lori Branson, 16240 San Pedro** - President of the HOA, in support of Ms. King’s request to keep the fence as is. Crime is high in the area.

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300018, as presented

Ms. Bragman made a **motion** for BOA-19-10300018 for approval.

“Regarding Case No. BOA-20-10300018, I move that the Board of Adjustment grant a special exception to allow 1) a special exception to allow an open screened fence to be up to 6’ tall within the front property and 2) a request for a special exception to allow a solid screen fence to be up to 7’5” tall within the front, side, and rear of a vacant property, situated at 16240 San Pedro Avenue, applicant being Alicia King, 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 UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height is intended to provide safety and security of the applicant’s property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.**

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

**In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. A 6’ tall open screen fence along the front property line and 7’5” tall solid screen fence is installed within the front, side, and rear of a vacant property to 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 create enhanced security for the subject property and is highly unlikely to injure adjacent properties and serves as the Manufactured Home Planned Unit Development’s entrance lots. Further, the fencing does not violate Clear Vision standards.**

*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 fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.**

*5. 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 “PUD MH MLOD-1 MLR-2 AHOD ERZD” Planned Unit Development Manufactured Housing Camp Bullis Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay Edwards Recharge Zone District and permits the current use. The requested special exception will not weaken the general purpose of the district.”**

**Second:** Mr. Oroian

**In Favor:** Bragman, Oroian, Teel, Zottarelli, Cruz, Britton, Quijano, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

**Item #7**      **BOA-20-10300004:** A request by Margaret Sanchez for a 4' variance from the 5' side setback requirement to allow an attached carport to be 1' away from the side property line, located at 1611 Schley Avenue. Staff recommends Denial. (Council District 3) (Justin Malone, Planner (210) 207-0157, justin.malone@sanantonio.gov, Development Services Department)

Staff stated 34 notices were mailed to property owners within 200 feet, 6 returned in favor, and 2 returned in opposition. No response from the Highland Park Neighborhood Association.

**Margaret Sanchez, 1611 Schley Avenue** – Spoke of her need for the carport to protect against bad weather. When it rains, the steps off the porch get slippery and she could fall.

**Charles Jones, Attorney for Ms. Sanchez** – Spoke of Ms. Sanchez's need to keep her completed carport for her safety.

**The following Citizens appeared to speak**

**Domingo Senten, 1610 Schley** – Spoke in favor of Ms. Sanchez's request

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300004, as presented

Mr. Teel made a **motion** for BOA-19-10300004 for approval.

“Regarding Case No. BOA-20-10300004, I move that the Board of Adjustment grant a request for a 4' variance from the 5' side setback requirement to allow an attached carport to be 1' from the side property line, situated at 1611 Schley Avenue, applicant being Margaret 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 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 instance, the variance is not contrary to the public interest. There is adequate space between the carport and the adjacent property and provides room for maintenance and proper mitigation of storm water.**

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

**Literal enforcement of the ordinance would result in the applicant removing both the carport from the side setback. This 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. Granting the request will result in substantial justice as the requested setbacks will still provide for a safe development pattern. Both requests provide fair and equal access to air, light, and adequate fire separation.*
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.*  
**If the requested variance is approved, the carport structure will not alter the character of the district, which in older neighborhoods such as this, it is common for structures to be located within the side setbacks established by the current Unified Development Code.**
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. Due to the layout of the existing driveway and limited size of the lot, establishing the carport would need approval due to the limited amount of space within the side property.”**

**Second:** Mr. Quijano

**In Favor:** Teel, Quijano, Zottarelli, Bragman, Cruz, Britton, Englert, Martinez

**Opposed:** Oroian, Manna, Trevino

**Motion Failed**

**Motion:** Chair Martinez asked for a motion to reconsider item BOA-19-10300004, as presented

Mr. Oroian made a **motion** to reconsider BOA-19-10300004

**Second:** Manna

**In Favor:** Oroian, Manna, Teel, Zottarelli, Bragman, Cruz, Quijano, Englert, Trevino, Martinez

**Opposed:** Britton

**Motion Granted**

**Chair Martinez** asked for a change in **motion** for item BOA-19-10300004, as presented

Mr. Oroian made the change in motion for item BOA-19-10300004

“Regarding Case No. BOA-20-10300004, I move that the Board of Adjustment grant a request for a **3’** variance from the 5’ side setback requirement to allow an attached carport to be **2’** from the side property line, situated at 1611 Schley Avenue, applicant being Margaret 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 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 instance, the variance is not contrary to the public interest. There is adequate space between the carport and the adjacent property and provides room for maintenance and proper mitigation of storm water.**
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*  
**Literal enforcement of the ordinance would result in the applicant removing both the carport from the side setback. This 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.*  
**Granting the request will result in substantial justice as the requested setbacks will still provide for a safe development pattern. Both requests provide fair and equal access to air, light, and adequate fire separation.**
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.*  
**If the requested variance is approved, the carport structure will not alter the character of the district, which in older neighborhoods such as this, it is common for structures to be located within the side setbacks established by the current Unified Development Code.**
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. Due to the layout of the existing driveway and limited size of the lot, establishing the carport would need approval due to the limited amount of space within the side property.”**

**Second: None**

**Motion** dies due to lack of second, Original motion fails

**Item #8**      **BOA-20-10300015:** A request by Rafael Sanchez for a 1’10” variance from the 5’ side setback requirement to allow a residential dwelling unit to be 3’2” away from the side property line, located at 1133 91st Street. Staff recommends Approval. (Council District 3) (Justin Malone, Planner (210) 207-0157, justin.malone@sanantonio.gov, Development Services Department)

Staff stated 17 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No Neighborhood Association.

**Rafael Sanchez, 1133 91<sup>st</sup> Street** – Requesting the variance in order to keep the two large trees in the yard.

**No Citizens appeared to speak**

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300015, as presented

Mr. Teel made a **motion** for BOA-19-10300015 for approval.

“Regarding Case No. BOA-20-10300015, I move that the Board of Adjustment grant a 1’10” variance from the 5’ side setback requirement to allow a residential dwelling unit to be 3’2” from the side property line, situated at 1133 91st Street, applicant being Rafael 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 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 variances are not contrary to the public interest as the structure will provide room for maintenance, will not create water runoff on the adjacent property, and will not injure the rights of the adjacent property owners. The proposed structure abides by all other setback guidelines and no portion of the structure will be in violation of the Clear Vision field.**

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

**The literal enforcement of the ordinance would require the owner to demolish a large portion of the attached addition.**

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

**The granting of the requested variances would be in harmony with the spirit of the ordinance. The intent of the setback requirements is to prevent unnecessary trespass on adjacent property and allow for maintenance, fire safety, and ensure proper storm water management. All of these intents will still be maintained with the granting of this request.**



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.*

**This variance would not substantially injure or alter the use or character of adjacent conforming property or 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. The character of the rear and side yards within the district are predominantly compact, leaving little room for proper building setbacks.”**

**Second:** Mr. Oroian

**In Favor:** Teel, Oroian, Zottarelli, Bragman, Cruz, Britton, Quijano, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

**Item #9**

**BOA-20-10300019:** A request by Christine Young for a 2’10” variance from the 5’ side setback requirement to allow a deck, carport, and detached accessory dwelling unit to be as little as 2’2” away from the side property line, located at 222 Brightwood Place. Staff recommends Approval. (Council District 10) (Dominic Silva, Senior Planner (210) 207-0120, dominic.silva@sanantonio.gov, Development Services Department)

Staff stated 13 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition. No response from the Oak Park - Northwood Neighborhood Association.

**Christine Young, 222 Brightwood Place** - Spoke in need of variance to allow a detached dwelling, carport, and deck. She is in the Military and has no family. Her son is suffering from PTSD due to his father passing away, and her deployment. Her mother will be coming to stay to help with the children and she would like a space for her to stay comfortably.

**No Citizens appeared to speak**

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.

**Motion:** Chair Martinez asked for a motion for item BOA-19-10300019, as presented

Ms. Cruz made a **motion** for BOA-19-10300019 for approval.

“Regarding Case No. BOA-20-10300019, I move that the Board of Adjustment grant a 2’10” variance from the 5’ side setback requirement, to allow a deck, carport, and detached accessory dwelling unit to be as little as 2’2” away from the side property line, situated at 222 Brightwood Place, applicant being Christine Young, 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 accessory detached dwelling unit provides adequate habitable living space while also maintaining a rear and side setback for accessibility to light, air, and open space. The attached deck and carport also maintains adequate space for fire separation.**
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*  
**The community is characterized by detached accessory structure, built circa 1949, within setbacks established after their development. Literal enforcement of the ordinance would result in unnecessary hardship by prohibiting the owner to utilize the accessory detached dwelling unit as a habitable space as it was 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 intent of the setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. All intents of this law will be observed if approved.**
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.*  
**This variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district. Specifically, the structures are located within the rear of the primary residence and not visible from the front property. The structures the variances are requested for follows a district norm of reduced setbacks built within the area.**
7. *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. The character of reduced lot sizes within the district is uniform, leaving little room for proper building setbacks.”**

**Second:** Mr. Quijano

**In Favor:** Cruz, Quijano, Teel, Zottarelli, Bragman, Oroian, Britton, Englert, Manna, Trevino, Martinez

**Opposed:** None

**Motion Granted**

**Consideration and approval of the February 17, 2020 Board of Adjustment Minutes.**

Chair Martinez **motioned** for approval of the February 3, 2020 as presented. Correction to minutes, page 3. Mr. Oroian recused **himself from case BOA-19-10300002**. No other corrections.

Members voted in the affirmative

**Director's Report:**

Upcoming worksessions. First worksession will be held on March 16<sup>th</sup> at 10:30 am in the Tobin Room before the Board of Adjustment meeting.

**Adjournment**

There being no further business, the meeting was adjourned at 4:46 p.m.

APPROVED BY: \_\_\_\_\_ OR \_\_\_\_\_  
Chairman Vice-Chair

DATE: \_\_\_\_\_

ATTESTED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Executive Secretary

DRAFT