City of San Antonio

Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

April 1, 2019 **1:00PM** **1901 S. Alamo**

Board of Adjustment Members
A majority of appointive Members shall constitute a quorum.

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

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

Alternate Members
Cyra M. Trevino | Jorge Calazo | Arlene B. Fisher | Eugene A. Polendo | Roy A. Schauffele | Vacant

1:00 P.M. - Call to Order, Board Room

- **Roll Call**
- **Present: Dr. Zottarelli, Rodriguez, Schauffele, Neff, Manna, Fisher, Teel, Oroian, Bragman, Martinez**
- **Absent: Malone, Britton, Cruz**

- Gabriela Barba and Maria E. Murray, 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

Item # 1 **BOA-19-10300029:** A request by Brown & Ortiz, P.C. for 1) a 48 square foot variance from the 240 square foot area limitation to allow a single-tenant sign to be 288 square feet and 2) a 20' variance from the 40' height limitation to allow a single-tenant sign to be 60' tall, located at 5314 Thousand Oaks. Staff recommends Denial with Alternate Recommendation. (Council District 10)

Staff stated 8 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition and Hills of Park Neighborhood Association is in favor.

Andrew Perez, Chief Sign Inspector, Answered the Boards Sign questions.

James Griffin, Brown & Ortiz, gave a presentation regarding the property and placement of the sign. Mr. Griffin worked with staff and has the support of neighbors and business owners.

The Following Citizens appeared to speak.

Colleen Waguespack, 1603 Tarton Lane, spoke in opposition

Motion

Chair Martinez asked for a motion for item # **BOA-19-10300029** as presented.

Motion: Mr. Oroian made a motion to approve the case **BOA-19-10300029**

Regarding Appeal No **BOA-19-10300029**, a request 1) a 48 square foot variance from the 240 square foot area limitation to allow a single-tenant sign to be 288 square feet and 2) a **9**' variance from the **40**' height limitation to allow a single-tenant sign to be 49' tall, located at 5314 Thousand Oaks, applicant being Brown & Ortiz, P.C.

I move that the Board of Adjustment grant the applicant's request for the variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property; and.*

The applicant is seeking two sign variances to develop a vacant lot for a coffee shop. The applicant is seeking variances from the height and square footage limitations to allow for a single-tenant sign. The applicant will suffer an unnecessary hardship if the variance is not approved. The property owner requires signage in order to promote the business.

3. After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:

A. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

Businesses along major arterials around the city are afforded reasonable signage opportunities. The Board will allow the applicant to place the requested square footage with a 49' tall sign.

B. Granting the variance will not have a substantially adverse impact on neighboring properties.

Immediate properties to the North and East of the surrounding proposed development are vacant. As there are no adjacent developments to be adversely affected, the Board finds that the sign to be 288 square feet and a 49' tall is appropriate.

C. Granting the variance will not substantially conflict with the stated purposes of this article.

The legislative purposes of the adopted sign regulations are to provide minimum standards to protect the general public by regulating the design, construction, location, use and maintenance of outdoor advertising signs. They are also created to ensure that businesses have the ability to reasonably market their business to the public. As the applicant is proposing an increase of the square footage, the Board finds that some relief is in order.

Second: Teel

In Favor: Oroian, Teel, Dr. Zottarelli, Rodriguez, Fisher, Neff, Schauffele, Bragman, Martinez

Opposed: Manna

Motion Granted

Item # 2 **BOA-18-900027**: A request for a special exception to allow a predominately open fence to be 6' tall along the south and the first 300' of the west property lines, located at 2735 Austin Highway. Staff recommends Approval. (Council District 2)

Staff stated 11 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Charlie Fulton, 7373 Broadway, the request is needed for safety and security reasons. The Special Exception for height will satisfy their needs.

No Citizens appeared to speak

Motion

Chair Martinez asked for a motion for item **BOA-18-900027** as presented.

Mr. Neff made a motion for **BOA-18-900027** for approval.

Regarding Appeal No **BOA-19-10300027**, request for a special exception to allow a predominately open fence to be 6' tall along the south and the first 300' of the west property lines, situated at 2735 Austin Highway, applicant being Austin Highway Business Center Ltd.

I move that the Board of Adjustment grant the applicant's request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

A. The special exception will be in harmony with the spirit and purpose of the chapter.
The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to 8'. The additional fence height is intended to provide protection and security to the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance. No portions of the fences are in violation of the Clear Vision field.

B. The public welfare and convenience will be substantially served.
In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. The fence height was built along the south and the first 300' of the west property lines in order to provide additional security and protection for the property. This is not contrary to the public interest.

C. The neighboring property will not be substantially injured by such proposed use.
No portion of the fence is in violation of the Clear Vision field. No adjacent property owner, nor the traveling public, will be harmed by the proposed fence.

D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.
The 6' fence along the south and the first 300' of the west property lines would not significantly alter the overall appearance of the district and would be able to provide added security and protection for the property owner.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.
The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow a 6' fence in order to add security and protection for the subject property. Therefore, the requested special exception will not weaken the general purpose of the district.

Second: Ms. Bragman

In Favor: Neff, Bragman, Oroian, Dr. Zottarelli, Rodriguez, Teel, Schauffele, Fisher, Manna, Martinez

Opposed: None

Motion Granted

Item #3 **BOA-19-10300013**: A request by Slay Architecture, Madeline Slay for a parking adjustment to decrease the minimum parking for a convenience store from 23 parking spaces to 20 parking spaces, and 2) a variance from the 25' Type D landscape bufferyard requirement to allow a bufferyard to be as narrow as 5' along the north and south property line, located at 838 Bandera Road. Staff recommends Approval. (Council District 7)

Staff stated 9 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no response from the Donaldson Terrace Neighborhood Association and University Park Neighborhood Association.

Patrick Christensen, 310 S. St. Mary's Ste. 2700, gave a short presentation regarding the property and stated they met with the neighbors and agreed to their terms. Mr. Christensen requested the Boards support.

Madeline Slay , Slay Architects, stated there are increasing the current parking situation but can't meet the need of 23 spaces. They will increase the buffer as well.

No Citizens appeared to speak

Motion

Chair Martinez asked for a motion for case **BOA-19-10300013**, as presented.

Motion: Mr. Manna made a motion for **BOA-19-10300013** for approval.

Regarding Appeal No **BOA-19-10300013**, a request for a parking adjustment to decrease the minimum parking for a convenience store from 23 parking spaces to 20 parking spaces, situated at 838 Bandera Road, applicant being Slay Architecture, Madeline Slay.

I move that the Board of Adjustment grant the applicant's request for the parking adjustment to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.
Specifically, we find that:

The UDC currently requires 23 off street parking spaces; however, the applicant is going to re-build the existing convenience store. The hardship is created by this irregular shape of the lot.

Motion: Mr. Manna made a motion to approve the case **BOA-19-10300013**

Second: Mr. Schuaffele

In Favor: Manna, Schauffele, Rodriguez, Neff, Dr. Zottarelli, Oroian, Teel, Bragman, Fisher, Martinez

Opposed: None

Motion Granted

Chair Martinez asked for a motion for case **BOA-19-10300013**, as presented.

Motion: Mr. Manna made a motion for **BOA-19-10300013** for approval.

Regarding Appeal No **BOA-19-10300013**, a request for a 20' variance from the 25' Type D landscape bufferyard requirement to allow a bufferyard to be as narrow as 5' along the north and south property line, situated at 838 Bandera Road, applicant being Slay Architecture, Madeline Slay.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

The public interest is defined as the general health, safety, and welfare of the public. In this case, the 5' bufferyards are not contrary to public interest as they do not negatively impact any surrounding properties or the general public. The property does not currently benefit from any bufferyard from and even the reduced bufferyard proposed by the applicant will enhance the property. Staff finds the request is not contrary to the public interest.

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

A literal enforcement of the ordinance would result in unnecessary hardship by requiring the project to be redesigned to meet the required bufferyard requirements. Enforcing the full requirement removes developable space which may leave the development with insufficient space to operate the commercial use.

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

In this case, the reduced bufferyard will be consistent with neighboring properties.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.*

The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

Although the applicant is seeking to reduce bufferyards required by the code, the provision of landscape bufferyards will still enhance the community and the proposed project.

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

The unique circumstance in this case is the lot is a triangular shape compounded by right-of-way takings over the years to widen these streets. The property is narrow and warrants some relief to allow for development.

Motion: Mr. Manna made a motion to approve the case **BOA-19-10300013**

Second: Mr. Rodriguez

In Favor: Manna, Rodriguez, Schauffele, Neff, Dr. Zottarelli, Oroian, Teel, Bragman, Fisher, Martinez

Opposed: None

Motion Granted

The Board of Adjustment recessed at 2:15 pm and reconvened at 2:25 pm.

Item # 4 **BOA-19-10300025** A Request by Rolando Salazar for a 10' variance from the 15' Type B landscape bufferyard along the east property line to allow for a bufferyard as narrow as 5', located at 3910 IH35 South. Staff recommends Approval. (Council District 5)

Staff stated 19 notices were mailed to property owners within 200 feet, 3 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Rolando Salazar, 3910 IH 35 South, stated he owns the business next door and needs additional parking and amended his request at the podium.

No Citizens appeared to speak

After further discussions, in order to meet the Applicants request, the applicant requested to postpone the item to a later date (May 6, 2019).

No Action taken.

Mr. Oroian recused himself from BOA-19-10300026 at 2:37pm

Item # 5 **BOA-19-10300026** A request by Aero Cosmetics for a variance from the restriction of corrugated metal as a fencing material to allow for its use as fencing, located at 12122 Colwick Drive. Staff recommends Approval. (Council District 9)

Staff stated 15 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition and no registered neighborhood association.

The Applicant requested to have his item heard another time when a full quorum is present.

No Citizens appeared to speak.

Motion

Chair Martinez asked for a motion for item **BOA-19-10300026**

Motion: Mr. Neff made a motion for a **continuance of BOA-19-10300020 to April 15, 2019.**

Second: Mr. Rodriguez

In Favor: Teel, Manna, Dr. Zottarelli, Schauffele, Neff, Fisher, Rodriguez, Bragman, Martinez

Opposed: None

Recused: Oroian

Motion Granted

Mr. Oroian returned to the meeting at 2:40pm.

Item # 6 **BOA-19-10300030**: A request for a special exception to allow 2 short term rental (Type 2) units, located at 340 West Elsmere Place. Staff recommends Denial. (Council District 1)

Staff stated 22 notices were mailed to property owners within 200 feet, 0 returned in favor, and 4 returned in opposition and the Monte Vista Neighborhood Association is opposed, 4 are in favor outside the 200 sq. foot radius and 8 are opposed outside the 200 sq. foot radius.

Estela Archevala, 340 W. Elsmere Place, gave a presentation about her family and a history of the property. She stated the income from the rentals will help restoring the properties and asked for the Boards approval.

The Following Citizens appeared to speak.

Cullen Jones, 1123 Nolan, yielded time to Tony Garcia
Tony Garcia, 243 E. Huisache, read a letter into the record from the Monte Vista Historic Association in opposition
Melody Hall, 324 W. Rosewood, yielded time to Summer Greathouse
Summer Greathouse, 223 W. Agarita, spoke in opposition
Eugene Mark, 5018 Kenton View, spoke in opposition
Arnold Flather, 215 W. Lullwood, spoke in favor
Pamela Flather, 215 W. Lullwood, spoke in favor

Motion

Chair Martinez asked for a motion for item **BOA-19-10300030**, as presented.

Motion: Dr. Zottarelli made a motion to approve item **BOA-19-10300030**

Regarding Appeal No **BOA-19-10300030**, request for a special exception to allow a total of 2 short term rental (Type 2) units, situated at 340 West Elsmere Place, applicant being Estela Arechavala.

I move that the Board of Adjustment grant the applicant's request for the special exception to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

A. The special exception will not materially endanger the public health or safety.

The property appears to be well kept, there is a driveway and parking lot for guests to park as well as off-street parking of one space, and nothing about the property in question places it out of character with those in the immediate vicinity. No Code Enforcement history exists on the property.

B. The special exception does not create a public nuisance.

The Board can find no record of previous Code Enforcement activities on this property. Approval of this special exception will result a 2 additional Type 2 operating on a blockface which already includes several properties operating as a Short Term Rental Type 1 or Type 2, and may have the effect of saturating the blockface which may create a public nuisance. The applicant could provide data showing that occupancy rates for long-term rentals in the neighborhood will not be impacted which could mitigate this finding.

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

The applicant could provide data showing that occupancy rates for long-term rentals in the neighborhood and property valuations for the neighborhood will not be negatively impacted by the request, which could mitigate this finding.

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

The structure already exists with adequate utilities and plenty of off-street parking for guests of the short term rental.

E. 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 is seeking their first permit for the operation of two (2) Type-2 short term rentals for this property and no previous permit has been revoked.

F. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.

The requested special exception is not likely to alter the essential character of the district as the property is still used, primarily, as a residential use. From the street, the complex is not unlike other structures in the community.

Motion: Dr. Zottarelli made a motion for Approval of **BOA-19-10300030**

Second: Teel

In Favor: **None**

Opposed: Dr. Zottarelli, Teel, Manna, Schauffele, Neff, Fisher, Rodriguez, Oroian, Bragman, Martinez

Motion Failed

Item # 7 **BOA 19-10300008** A Request for a 4' variance from the 5' side setback requirement to allow for a detached accessory structure to be 1' from the side property line, located at 1202 Gladstone Street. Staff recommends Denial with an Alternate Recommendation. (Council District 5)

Staff stated 28 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Juana Vaquera Maltos, 1201 Gladstone Street, Interpreter requested, she wishes to resolve this case because the structure she built is too close to the fence according to the City. She stated they are storage units and would like to keep them as they are. Ms. Maltos apologized for not getting a permit and said the structure is on pier and beams.

Motion

Chair Martinez asked for a motion for item **BOA-19-10300008**, as presented.

Motion: Mr. Oroian made a motion to approve item **BOA-19-10300008**

Regarding Appeal No **BOA-19-10300008**, a request for a 2' variance from the 5' side setback requirement to allow for a detached accessory structure to be 3' from the side property line, situated at 1202 Gladstone Street, applicant being Juana Vaquera.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*

The public interest is defined as the general health, safety, and welfare of the public. In this case, the variance is not contrary to the public interest as the structure will not create water runoff on the adjacent property and will not injure the rights of the adjacent property owners.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
An unnecessary hardship would result from the enforcement of the ordinance as strict enforcement would require the owner of the property to build the structure within the required setbacks

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
Substantial justice will be done as the requested setbacks will still provide for a safe development pattern. The request provides fair and equal access to air and light, and provides for adequate fire separation.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.*
The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
In neighborhoods such as this, it is common for accessory units to be located within the rear setbacks established by the current Unified Development Code. The request will not detract from the character of the district. The unit in question is in the rear yard, not affecting the public right-of-way. The structure in question does not injure the adjacent property.

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

No Citizens appeared to speak.

Motion

Motion: Mr. Oroian made a motion for approval as presented.

Second: Mr. Teel

In Favor: Oroian, Teel, Manna, Dr. Zottarelli, Schauffele, Neff, Fisher, Rodriguez, Bragman, Martinez

Opposed: None

Motion Granted

Item # 8 **BOA 19-10300017**: A request for 1) a 4'11" variance from the 5' setback requirement to allow for an attached carport to be 1" away from the front property line, and 2) a 4'11" variance from the 5' setback requirement to allow for an attached carport to be 1" away from the side property line, located at 118 Cosgrove Street. Staff recommends Denial with an Alternate Recommendation. (Council District 3)

Item # BOA 19-10300017 has been postponed

The Board of Adjustment recessed at 3:57pm and returned at 4:03pm

Item # 9 **BOA-19-10300024**: A request by Mark Bennett for 1) a special exception to allow a privacy fence to be 8' tall on both side property lines and, 2) a variance from the restriction against corrugated metal as a fencing material to allow for the use of corrugated metal fencing, located at 109 Playmoor Street. Staff recommends Approval. (Council District 1)

Staff stated 21 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and the Lavaca Neighborhood Association is in support.

Mark Bennett, 109 Playmor St, stated he built the fence without pulling permits and apologized. He built the fence higher than before for security reasons and safety of his family. He also stated his service animal "Raja" can clear a 6 foot fence easily. He asked the Board of Adjustment for their approval.

No Citizens appeared to speak.

Motion

Motion: Ms. Bragman made a motion for approval combining both requests.

Regarding Appeal No **BOA-19-10300024**, a request for a special exception to allow privacy fence to be 8' tall on both side property lines, **and also a request for a variance from the restriction against the use of corrugated metal as a fencing material to allow for the use of corrugated metal for fencing,** situated at 109 Playmoor Street, applicant being Mark Bennett.

I move that the Board of Adjustment grant the applicant's request for the special exception a**nd the Variance** to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship

Specifically, we find that:

A. The special exception will be in harmony with the spirit and purpose of the chapter.

The spirit of the chapter is intended to provide for reasonable protections to property owners and to establish a sense of community within our neighborhoods. The request for an 8' tall fence on both sides of the subject property is in harmony with the spirit of the chapter. No portion of the fence is in violation of the Clear Vision field.

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 fence was built with solid wood framing the corrugated metal. The fence enhances aesthetics towards public view and meets the permitted fence height. If granted, this request would be harmony with the spirit and purpose of the ordinance.

The public welfare and convenience can be served by the added privacy of higher fencing, allowing the owner to create a private environment in the subject property.

In addition allowing the applicant to keep the corrugated metal fence will help create a safe and private environment while enhancing aesthetics. Therefore, the public welfare and convenience will be substantially served.

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

No portion of the fence is in violation of the Clear Vision field. No adjacent property owner, nor the traveling public, will be harmed by the proposed fence.

D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.
The side fencing will create a private environment for the subject property and is highly unlikely to injure adjacent properties.

I. The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.

The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district.

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

The property is located within the "C-3 NCD-1 AHOD" General Commercial South Presa /South St. Mary's Streets Neighborhood Conservation Airport Hazard Overlay District and permits the current use of a yoga studio. Therefore, the requested special exception will not weaken the general purpose of the district.

F. 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 corrugated metal fence contributes to the character of the community. The fence will not impose any immediate threat to adjacent properties.

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

The unique circumstance in this case is that the new fence was built with a combination of fence materials not exposing the corrugated metal. It is difficult to establish how the request could harm adjacent owners or detract from the character of the community.

Second: Mr. Rodriguez

In Favor: Bragman, Rodriguez, Oroian, Teel, Manna, Dr. Zottarelli, Schauffele, Neff, Fisher, Martinez

Opposed: None

Motion Granted

Item # 10 **BOA-19-10300028:** A request for 1) a 3' variance from the 5' rear setback requirement to allow a detached accessory dwelling unit to be 2' away from the rear property line, and 2) a **2.8'** variance from the 5' side setback requirement to allow a detached accessory dwelling unit to be 2.2' away from the side property line, located at 423 West Woodlawn Avenue. Staff recommends Approval. (Council District 1)

Staff stated 18 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no response from the Alta Vista Neighborhood Association.

Charles Herrin, 423 W. Woodlawn, stated he purchased the property and decided to remodel the interior of the structure and when he pulled permits found he now needed Variances.

Motion

Chair Martinez asked for a motion for item **BOA-19-10300028**, as presented.

Motion: Mr. Oroian made a motion to approve item **BOA-19-10300028**

Regarding Appeal No **BOA-19-10300028**, a request for 1) a 3' variance from the 5' rear setback requirement to allow a detached structure to be 2' away from the rear property line, and 2) a **2.8'** variance from the 5' side setback requirement to allow a detached structure to be 2.2' away from the side property line, situated at 423 West Woodlawn Avenue, applicant being Charles Herrin.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*
   The public interest is defined as the general health, safety, and welfare of the public. In this case, the variance is not contrary to the public interest as the structure will not create water runoff on the adjacent property and will not injure the rights of the adjacent property owners.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
   An unnecessary hardship would result from the enforcement of the ordinance as strict enforcement would require the owner of the property to demolish the existing detached accessory dwelling unit and rebuild the structure within the required setbacks

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 in the zoning district in which the variance is located.*
   The variance will not authorize the operation of a use other than those uses specifically authorized by the zoning district.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
   This variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district. Specifically, the variance would not place the structure out of character within the community. Further, the unit in question is in the rear yard, not affecting the public right-of-way. The structure in question does not injure the adjacent property.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*
   The unique circumstance existing on the property is that the detached accessory dwelling unit in question has already been constructed and structures like these are common among other homes in the neighborhood.

Second: Dr. Zottarelli

In Favor: Oroian, Dr. Zottarelli, Bragman, Rodriguez, Teel, Manna, Schauffele, Neff, Fisher, Martinez

Opposed: None

Motion Granted

Item # 11 **Appointment of a Board of Adjustment Member and Alternate to the Planning Commission Technical Advisory Committee for a two year term**

Staff asked the Board of Adjustment for Nominations to the Planning Commission Technical Advisory Committee for a two year term

Mr. Oroian Nominated **Alan Neff** for the position of **Primary** PCTAC Member

A voice vote was taken and **Alan Neff** was unanimously voted **Primary** PCTAC Member

Mr. Oroian Nominated **Seth Teel** for the Position of **Alternate** PCTAC Member

A voice vote was taken and **Seth Teel** was unanimously voted **Alternate** PCTAC Member

Approval of Minutes

Item # 11 Consideration and Approval on the Minutes from April 1, 2019.

Chair Martinez motioned for approval of the minutes and all the Members voted in the affirmative.

In Favor: Unanimous

Opposed: None

Motion Granted

Director's Report: None

Adjournment

There being no further business, the meeting was adjourned at 4:45p.m.

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: April 19, 19
Executive Secretary