



Draft

Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

May 6, 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. Schaufele | Vacant

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

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

-Nancy Frias 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-19-10300041:** A request by Laurie Cassidy for 1) a waiver from the 12 month time limitation on subsequent applications and 2) a request for a variance from the Form Based Zone (T-4) regulations that restrict parking within the first layer to allow the property to be developed with parking spaces in the first 1/3 of the lot depth, located at 715 Camden Street. Staff recommends Approval. (Council District 1) (Debora Gonzalez, Senior Planner (210) 207- 3074, debora.gonzalez@sanantonio.gov, Development Services Department)

Staff stated 16 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no response from the Downtown Residents Neighborhood Association.

Motion: Chair Martinez asked for a **motion** for case **BOA-19-10300041**

Motion: Dr. Zottarelli made a **motion** to waive the 12 month time limitation for case # **BOA-19-10300031**.

Regarding Appeal No BOA-19-10300041, a request for 1) a waiver from the 12 month time limitation on subsequent applications, situated at 715 Camden Street, applicant being Laurie Cassidy.

Second: Teel

In Favor: Dr. Zottarelli, Teel, Oroian, Polendo, Rodriguez, Cruz, Trevino, Fisher, Martinez

Opposed: Neff

Motion Granted

The Board of Adjustment then called for the applicant to present their case. Kevin Love and Albert Castillo stated that since the last meeting, the HDRC did not find the Building to be historic and was demolished. In order for the project to continue, the applicant would need 7000 square feet. They provided updated site plans along with parking to explain how they would accomplish their goal.

Motion: Chair Martinez asked for a **motion** for case **BOA-19-10300041**

Motion: Dr. Zottarelli made a **motion** for case # **BOA-19-10300041** for approval.

Regarding Appeal No BOA-19-10300041, a variance from the Form Based Zone (T-4) regulations that restrict parking within the first layer to allow the property to be developed with parking spaces in the first 1/3 of the lot depth, situated at 715 Camden Street, applicant being Laurie Cassidy.

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 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 proposed project is intending to redevelop an existing structure where parking is located within the first layer. The existing building has been at the same location since 1920, according to Bexar County Appraisal District, well before the Form Based Zone was adopted. If granted, this request would be in harmony with the spirit and purpose of the ordinance.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Literal enforcement of the ordinance would not allow the owner of the property to redevelop the building as proposed. The building would have to be demolished or moved to the front of the first layer to comply with this ordinance.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The intent of Form Based Zone District (T-4) regulations that restrict parking within the first layer is to create a visual character reinforcing community identity. The parking modification of the subject property will not significantly disrupt uniformity and will not injure the rights of adjacent property owners.
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 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.*
The redevelopment of the structure will not detract from the neighborhood as the issue is related to pre-existing building form.
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 existing building has been in the same location since 1920 and moving the entire structure would be challenging.

Second: Teel

In Favor: Dr. Zottarelli, Teel, Oroian, Polendo, Rodriguez, Cruz, Trevino, Fisher, Martinez

Opposed: Neff

Motion Granted

Item # 2 **BOA-19-10300048:** A request by Justin Petersburg for a variance from the requirement that a 6' tall solid screen fence be provided between commercial and residential properties to allow a 6' tall wrought iron fence to remain, located at 315 North General McMullen Drive. Staff recommends Approval. (Council District 5) (Mercedes Rivas, Planner, (210) 207-0215, Mercedes.Rivas2@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 and no registered neighborhood association.

Gary Smith, 2000 NW Loop 410, representative, prior to construction the applicant informed the neighbors about the project. The neighbors asked to keep their fence and incorporate it into their plans, the applicant obliged.

Motion: Chair Martinez asked for a **motion** for case **BOA-19-10300048**

Motion: Mr. Oroian made a **motion** for case # **BOA-19-10300048** for approval.

Second: Rodriguez

In Favor: Oroian, Rodriguez, Dr. Zottarelli, Teel, Polendo, Cruz, Trevino, Neff, Fisher, Martinez

Opposed: None

Motion Granted

Item #3 **BOA-19-10300043** a Request by Rosalia Vela for a special exception to allow a one-operator beauty/barber shop within a home, located at 503 Thorain Boulevard. Staff recommends Approval. (Council District 1) (Mercedes Rivas, Planner, (210) 207-0215, Mercedes.Rivas2@sanantonio.gov, Development Services Department)

Staff stated 28 notices were mailed to property owners within 200 feet, 1 returned in favor outside the 200 sq. foot radius, and 1 returned in opposition and no response from the Northmoor Neighborhood Association.

Jose Vela, 503 Thorain Blvd, spoke on behalf of his wife and asked the Board to approve the request and stated they will reside at the property. The operation will be by appointment only.

No Citizens appeared to speak

Motion: Chair Martinez asked for a **motion** for case **BOA-19-10300043**, as presented.

Motion: Mr. Teel made a **motion** for case # **BOA-19-10300043** for approval.

Regarding Appeal No BOA-18-900043, a request for a special exception to allow a one-operator beauty/barber shop within a home, situated at 503 Thorain Boulevard, applicant being Rosalia Vela.

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 spirit and purpose of the chapter, in this case, is represented by minimum requirements to ensure that the operation of a one-operator beauty/barber shop does not negatively impact the character of the community or the quality of life of neighbors. The Board sees that nothing about the home distinguishes it from others in the community with the Hours of Monday – Saturday from 9:00am to 8:00pm for a two year term. The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code. The Board finds that the special exception is in harmony with the spirit of the chapter.

B. The public welfare and convenience will be substantially served.

The applicant has already constructed the beauty/barber shop within her home and this is her first request for a special exception. Approving the request for the special exception, with limited hours, will allow the applicant to serve customers in her community and therefore the public welfare will be served.

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

The requested special exception is not likely to negatively impact adjacent property owners because the home is in character with those around it. During field visits staff noted nothing visible from the street that would indicate the presence of a beauty/barber shop. Also, the property has a driveway capable of providing any necessary parking for the proposed use.

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 requested special exception is not likely to alter the essential character of the district as the property is still used, primarily, as a single-family residence. From the street, the home is not unlike other homes in the community.

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

The primary use of the dwelling remains a single-family home. The one-operator barber/beauty shop will have restricted hours, which are established by the Board of Adjustment. The applicant has met all other requirements established by the Unified Development Code.

Motion: Teel made a **motion** for case # **BOA-19-10300043** for approval.

Second: Rodriguez

In Favor: Oroian, Rodriguez, Dr. Zottarelli, Teel, Polendo, Cruz, Trevino, Neff, Fisher, Martinez

Opposed: None

Motion Granted

The Board of Adjustment recessed for a break at 2:15pm and reconvened at 2:23pm.

Item # 4 BOA-18-10300042 A Request by COGO Investments, LLC to to allow an existing 8' fence along the side and rear property lines, located at 421 Warren Street. Staff recommends Approval. (Council District 1) (Mercedes Rivas, Planner, (210) 207-0215, Mercedes.Rivas2@sanantonio.gov, Development Services Department)

Staff stated 32 notices were mailed to property owners within 200 feet, 4 returned in favor, and 1 returned in opposition outside of the 200 sq. foot radius and no response from the Five Points Neighborhood Association.

Mr. Martinez asked if there was an inspection on the fence after it was built. Staff stated inspections are only done in Neighborhood Conservation Districts.

Abe Juarez, 421 Warren St, stated the house was renovated and all permits were pulled. The house is on pier and beam and requires a 24 inch clearance from the ground to the floor finish. If he were to construct the six foot fence then he would only get 4 feet of privacy from the fence.

Mr. Neff asked Mr. Juarez when was he was before the Board regarding the Marshall Project to which Mr. Juarez replied three months ago. Mr. Neff asked when was the fence on Warren Street built? Mr. Juarez replies two or three months ago. Mr. Neff pointed out the fence was completed after he learned that an 8 foot fence is not legal with a 6 foot permit and asked how he could develop two properties that have 6 foot permits but build 8 foot fences. Mr. Juarez stated he is temporarily staying at the property and had to get the fence built. He has dogs and had to secure them and didn't have time to wait to get approval. Mr. Neff asked about other properties he owns. Mr. Teel asked questions about abutting vacant property. Dr. Zottarelli asked about the different heights of the fence. Mr. Oroian asked about water drainage.

No Citizens appeared to speak

Motion: Chair Martinez asked for a **motion** for case **BOA-19-10300042**, as presented.

Motion: Mr. Teel made a **motion** for case # **BOA-19-10300042** for approval.

Regarding Appeal No BOA-19-10300042, a request for a special exception to allow an existing 8' fence along the sides and rear property lines, situated at 421 Warren Street, applicant being COGO Investments, LLC.

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 privacy 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 will be 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 will be built along the sides and rear property lines to provide privacy and security to the applicant's 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 will be 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 8' fence along the sides and rear property lines would not significantly alter the overall appearance of the district and would 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 an 8' 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.

Motion: Mr. Teel made a motion to approve the case **BOA-19-10300042**

Second: Rodriguez

In Favor: Teel, Rodriguez, Dr. Zottarelli, Polendo

Opposed: Trevino, Cruz, Fisher, Oroian, Neff, Martinez

Motion Failed

Item # 5 **BOA-19-10300046** A request by Nik Godbole for a 2.5' variance from the 20' rear setback requirement to allow an attached addition to have a 17.5' rear setback, located at 1815 La Sombra Drive. Staff recommends Approval. (Council District 10) (Debora Gonzalez, Senior Planner (210) 207- 3074, debora.gonzalez@sanantonio.gov, Development Services Department)

Staff stated 22 notices were mailed to property owners within 200 feet, 2 returned in favor, and 0 returned in opposition and no response from the Oak Park- Northwood Neighborhood Association.

Nick Godbole, 1818 La Sombra Dr, stated that because of the strange positioning of the existing garage the best use of the property was the configuration submitted which requires a variance.

No Citizens appeared to speak

Motion: Chair Martinez asked for a **motion** for item **BOA-19-10300046**

Motion: Mr. Oroian made a motion for case # **BOA-19-10300046** for approval.

Regarding Appeal No BOA-19-10300046, a request for a 2.5' variance from the 20' rear setback requirement to allow an attached addition to have a 17.5' rear setback, situated at 1815 La Sombra Drive, applicant being Nik Godbole.

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 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 public interest is represented by the minimum separation between homes to allow quiet enjoyment of outdoor space. With the 15 foot wide public alley and the proposed setback, the new structure will be in harmony with the neighboring properties. The Board finds that 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. Literal enforcement of the ordinance would not allow the owner of the property to remodel the dwelling as proposed. The structure would need to be redesign.*
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The intent of rear setbacks is to create an open area without crowding of structures and to establish uniform development standards to protect the rights of property owners. The rear reduction of the subject property will not significantly disrupt uniformity and will not injure the rights of adjacent property owners.*
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 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. The requested variance will not be visible from the public right of way or alter the essential character of the district. The rear reduction will not produce water runoff on adjacent properties and will not require trespass to maintain the structure.*
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 circumstance present in the case is that the property addition does meet the side setback and there are similar rear setbacks within the subdivision. This setback issue is not merely financial in nature.*

Motion: Mr. Oroian made a motion for case # **BOA-19-10300046** for approval.

Second: Neff

In Favor: Oroian, Neff, Teel, Rodriguez, Dr. Zottarelli, Fisher, Cruz, Polendo, Trevino, Martinez

Opposed: None

Motion Granted

- Item # 6** **BOA 19-10300047** A request by Daniel and Paulina Minesinger for a 3'6" from the 5' side setback requirement to allow an addition to be as close as 1'6" away from the west side property line, located at 235 Yellowstone Street. Staff recommends Approval. (Council District 5) (Mercedes Rivas, Planner, (210) 207-0215, Mercedes.Rivas2@sanantonio.gov, Development Services Department)

Staff stated 33 notices were mailed to property owners within 200 feet, 6 returned in favor, and 1 returned in opposition and no response from the Roosevelt Neighborhood Association.

Daniel Minesinger, 235 Yellowstone, brought letters of support and worked with the HDRC to find a common ground. He also submitted a list of other properties with similar variances and will be adding a second story.

No Citizens appeared to speak.

Motion: Chair Martinez asked for a **motion** for item **BOA-19-10300047**, as presented.

Motion: Ms. Cruz made a motion to approve item **BOA-19-10300047**.

Regarding Appeal No BOA-19-10300047, a request from a 3' 6" variance from the 5' side setback requirement to allow an addition to a home to be as close as 1' 6" away from the west side property line, situated at 235 Yellowstone Street, applicant being Daniel and Paulina Minesinger.

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 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 owners of the property to build the addition 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 lot is shaped oddly in that the further back you go, the narrower the lot becomes, which is why the applicants are requesting a variance.

Motion: Ms. Cruz made a motion for Approval of **BOA-19-10300047**

Second: Rodriguez

In Favor: Cruz, Rodriguez, Teel, Dr. Zottarelli, Polendo, Cruz, Trevino, Neff, Fisher, Martinez

Opposed: None

Motion Granted

Approval of Minutes

Item # 11 Consideration and Approval of the Minutes from May 6, 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 3:20 p.m.

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary

DRAFT