

City of San Antonio



Draft

Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

October 19, 2020

1:00PM

Videoconference

Board of Adjustment Members

A majority of appointive Members shall constitute a quorum.

Roger F. Martinez, District 10, Chair
Donald Oroian, District 8, Vice Chair
Andrew Ozuna, Mayor, Pro-Tem

Anisa Schell, District 1 | Vacant, District 2
Andrew Menchaca, District 3 | George Britton, District 4 |
Maria Cruz, District 5 | Seth Teel, District 6
Phillip Manna, District 7 | Kimberly Bragman, District 9

Alternate Members

Cyra M. Trevino | Anne Englert | Arlene B. Fisher | Vacant
Seymour Battle III | Kevin W. Love | Jonathan Delmer

1:04 P.M. - Call to Order

- **Roll Call**
- **Present:** Schell, Cruz, Teel, Manna, Oroian, Bragman, Martinez, Love, Delmer
- **Absent:** Britton, Menchaca, Ozuna

2 Translators from SeproTec were present to assist with translating.

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

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

Item #1 **(WITHDRAWN) (CONTINUED from 9-21-2020) BOA-20-10300077:** A request by Connie High for 1) a 2'11" special exception to allow the privacy fence to be up to 5'11" tall in the front yard, and 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 2313 Edison Drive. Staff recommends Denial with an Alternate Recommendation. (Council District 1) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Item # 2 **BOA-20-10300090:** A request by Patrick Attwater for a 4' 3" variance to the minimum setback requirement of 5' to allow a detached carport to be 9" away from the rear property line, located at 901 Mason Street. Staff recommends Approval. (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, 4 returned in favor, and 0 returned in opposition. No response from the Government Hill Neighborhood Association is in opposition.

Patrick Attwater, 901 Mason Street – Requesting setback variance to allow for a detached carport to be 9" away from property line. The carport will also hold solar panels to power occupants.

No Public Comment

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

Motion: Chair Martinez asked for a motion for item BOA-20-10300090, as presented

Mr. Teel made a **motion** for BOA-20-10300090 for approval

“Regarding Case No. BOA-20-10300090, I move that the Board of Adjustment grant a request for a request for a 4' 3" variance to the minimum setback requirement of 5' to allow a detached carport to be 9" away from the rear property line, situated at 901 Mason Street, applicant being Patrick Attwater, 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 applicant is proposing to add covered off-street parking for employees of the business and will still maintain some distance to the adjacent structure.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The Board finds that any special conditions that, if enforced, would result in an unnecessary hardship. The applicant is proposing to construct the carport 9 inches away from the property line in order to maintain a safe amount of space for the vehicles to park and reverse.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. The intent of the accessory structure setbacks is to provide spacing between neighboring structures. The applicant will still maintain some space between structures with a downward-sloping angle.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*
The variance will not authorize the operation of a use other than those uses specifically authorized by the district.
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
The request to reduce the side setback does not pose a risk of substantially injuring the use of adjacent properties and is not likely to alter the essential character of the district.
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*
The Board finds that the location of the accessory structure and proposed plans for the lot shall warrant the granting of this request. The applicant was informed of the limitations incurred by the ordinance and submitted the request for a variance.”

Second: Mr. Oroian

In Favor: Teel, Oroian, Schell, Love, Delmer, Cruz, Manna, Bragman, Martinez

Opposed: None

Motion Granted

Item #3 **BOA-20-10300086:** A request by Lisa McCorquodale-Robalin for a Special Exception to allow one (1) Type 2 Short Term Rental, located at 430 East Myrtle 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, 4 returned in favor, and 2 returned in opposition, 1 in favor outside 200'. The Tobin Hill Community Association is in opposition.

Lisa McCorquodale-Robalin & Alfonso Robalin, 430 E. Myrtle – Requesting a special exception to operate a Type 2 Short Term Rental. As a short-term rental, it will be easier to maintain since they live next door.

Submitted Public Comments

Martin Kushner, 405 E. Myrtle – In opposed

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

Chair Martinez informed Applicants of option to continue to next meeting. Applicant accepted the option.

Chair Martinez asked for a motion for item BOA-20-10300086, to be continued until the November 2, 2020 Board of Adjustment meeting.

Mr. Oroian made a **motion** for BOA-20-10300086 to be continued until November 2, 2020

Second: Mrs. Cruz

In Favor: Oroian, Cruz, Schell, Love, Delmer, Teel, Manna, Bragman, Martinez

Opposed: None

Motion to continue case to November 2, 2020 granted

Item #4

BOA-20-10300083: A request by Ella Bree Homes for 1) a variance from the minimum lot size of 4,000 square feet to allow a lot to be 2,304 square feet, and 2) a 15’ variance from the required 20’ rear setback to allow a new residential structure to be 5’ away from the rear property line, located at 727 South Trinity Street. Staff recommends Approval. (Council District 5) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 41 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the Historic Westside Residents Association.

Jose Sepulveda, 727 S. Trinity St. – Requesting variance to have space to build a residence. Property is small and without variance setback the property will be unusable.

No Public Comment

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

Motion: Chair Martinez asked for a motion for item BOA-20-10300083 as presented

Mr. Manna made a **motion** for BOA-20-10300083 for approval.

“Regarding Case No. BOA-20-10300083, I move that the Board of Adjustment grant a request for 1) a variance from the minimum lot size of 4,000 square feet to allow a lot to be 2,304 square feet, 2) a 15’ variance from the required 20’ rear setback to allow a new residential structure to be 5’ away from the rear property line, situated at 727 South Trinity Street, applicant being Ella Bree Homes, 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 lot constraints, granting the variances still provides adequate accessibility to light, air, and open space. The neighborhood is predominantly surrounded by single-family residential, so the requested variances are consistent with the existing uses in the community.
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 due to significantly reducing the amount of developable space on the lot. The lot square footage is below the minimum code requirement, so the intended development on the lot will require variances.
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 setbacks and lot dimensions limitation is to create a uniform neighborhood and protect the public health, safety, and welfare. 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 variances 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 requested variances to reduce the lot size and the rear setback do not pose a risk of substantially injuring or altering the use or character of adjacent conforming property or character of the district. The variances would not place the structure out of character within the community.
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 reduced lot sizes within the community is typical, which leaves little room for meeting the setback requirement.”

Second: Mr. Oroian

In Favor: Manna, Oroian, Schell, Love, Delmer, Cruz, Teel, Bragman, Martinez

Opposed: None

Motion Granted

Item #5 **BOA-20-10300091**: A request by Shawn Brown for a 3’9” variance from the required 5’ side setback to allow a structure to be 1’3” away from the side property line, located at 126 Vitra. Staff recommends Approval. (Council District 5) (Dominic Silva, Senior Planner (210) 207-0120, Dominic.Silva@sanantonio.gov, Development Services Department)

Staff stated 24 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from The Lavaca Neighborhood Association.

Shawn Brown, 126 Vitra Pl. – Requesting variance for side setback to allow the structure to be 1’3” from property line for the addition to home.

No Public comment

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

Motion: Chair Martinez asked for a motion for item BOA-20-10300091 as presented

Mrs. Cruz made a **motion** for BOA-20-10300091 for approval.

“Regarding Case No. BOA-20-10300091, I move that the Board of Adjustment grant a request for 3’9” variance from the required 5’ side setback to allow a structure to be 1’3” away from the side property line, situated at 126 Vitra, applicant being Shawn Brown, 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 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 lot constraints and building orientation, granting the variances still provides adequate accessibility to light, air, and open space.
- 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 demolition of the entire structure. Further, if enforced, the ordinance would significantly reduce the amount of developable space on each site. The small lot configurations are the result of an old subdivision and the lots are similar to the lot scheme of the neighborhood

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 variance would not place the structure out of character within the community. Further, the residential structure is following a district norm of reduced setbacks for all houses built within the area.
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 reduced side setbacks due to building orientation within the district is uniform, leaving little room for proper building setbacks.”

Second: Mr. Love

A **Friendly amendment** was made by **Mr. Oroian** to read:

“I move that the Board of Adjustment grant a request for 3’9” variance from the required 5’ side setback to allow the existing structure and addition structure to be 1’3” away from the side property line”

The **Friendly amendment** was accepted by **Mrs. Cruz** and **Mr. Love**

In Favor: Cruz, Love, Schell, Delmer, Teel, Manna, Oroian, Bragman, Martinez

Opposed: None

Motion Granted

Chair Martinez called for the Board of Adjustment to take a recess at 2:22 p.m. The Board of Adjustment returned at 2:28 p.m.

Item #6 **BOA-20-10300093**: A request by Jeannette Jay for a 2’6” variance from the required 5’ side setback to allow a detached garage to be 2’6” away from the side property line, located at 204 East White Avenue. Staff recommends Approval. (Council District 3) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 24 notices were mailed to property owners within 200 feet, 12 returned in favor, and 0 returned in opposition, 2 in favor outside 200’. No response from the Mission San Jose Neighborhood Association.

Jeanette Jay, 204 E. White Ave. – Requesting setback variance to begin construction of a detached garage.

No Public comment

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

Motion: Chair Martinez asked for a motion for item BOA-20-10300093, as presented

Mr. Oroian made a **motion** for BOA-20-10300093 for approval.

“Regarding Case No. BOA-20-10300093, I move that the Board of Adjustment grant a request for a 2’6” variance from the required 5’ side setback to allow a detached garage to be 2’6” away from the side property line, situated at 204 East White Avenue, applicant being Jeannette Jay, 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 half of the required setback and proximity to the adjacent property, granting the variances still provides adequate accessibility to light, air, and open space for both the subject property and the adjacent property.
- 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 result in not allowing the owner of the property to build the proposed structure as intended and to move the entire proposed structure to meet the setback requirement.
- 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 requested variances will not permit a use not authorized within the district it is located in.
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 to reduce the side setback would not substantially injure or alter the use or character of adjacent conforming property or character of the district. The proposed unit will be within the rear yard, not affecting the public right-of-way or the clear vision ordinance.
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. Willing to maintain the existing structure side setback leaves little room for proper building setback.”

Second: Mr. Manna

In Favor: Oroian, Manna, Schell, Love, Delmer, Cruz, Teel, Bragman, Martinez

Opposed: None

Motion Granted

Item #7 **BOA-20-10300087**: A request by Site Works Texas, LLC for a special exception to allow an 8’ privacy fence to be within the front property and 2) and variance to allow a privacy fence to be within the Clear Vision field, located at 427 East Hildebrand. Staff recommends Denial with an Alternate Recommendation. (Council District 1) (Dominic Silva, Senior Planner (210) 207-0120, Dominic.Silva@sanantonio.gov, Development Services Department)

Staff stated 19 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition.

Bobby Mickler, Site Works Texas, LLC, 427 East Hilderbrand – Requesting special exception to allow for an 8’ privacy fence to act as a sound barrier and for safety of homeowner.

No Public comment

Motion: Chair Martinez asked for a motion for item BOA-20-10300087, as presented

Mr. Oroian made a **motion** for BOA-20-10300087 for approval.

“Regarding Case No. BOA-20-10300087, I move that the Board of Adjustment grant a special exception to allow an 6’ privacy fence no closer than 15’ to the front property line of property situated at 427 East Hildebrand, applicant being Site Works Texas, LLC, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The special exception will be in harmony with the spirit and purpose of the chapter.*
The additional fence height is intended to provide 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 fence heights to protect residential property owners while still promoting a sense of community. A 6’ closed fence no closer than 15 of front property line will provide additional security for the applicant’s property. This is not contrary to the public interest.
3. *The neighboring property will not be substantially injured by such proposed use.*
The fence will create enhanced security and privacy for the subject property and is highly unlikely to injure adjacent properties. The material and style of the fence is similar to other fences and is not noticeable from the right-of-way.
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.
5. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*
The current zoning permits the current use of a single-family home. The requested special exceptions will not weaken the general purpose of the district.”

Second: Ms. Schell

In Favor: Oroian, Schell, Love, Delmer, Cruz, Teel, Manna, Bragman, Martinez

Opposed: None

Motion Granted

Item #8 **BOA-20-10300092:** A request by Raymond Prior for a 2’1.5” variance to allow a privacy fence to be up to 8’1.5” tall in the side and rear of property, located at 18215 Brookwood Forest. Staff recommends Approval. (Council District 9) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 19 notices were mailed to property owners within 200 feet, 3 returned in favor, and 0 returned in opposition.

Raymond Prior, 18215 Brookwood Forest – Requesting variance to keep fence. Fence is needed for privacy and keep some of the headlights coming from commercial property.

Submitted Public comment

Chien Liu, 18510 Eagle Ford - In favor

Christine Zink, 18502 Eagle Ford– In favor

Kurt Foruheim, 18134 Brookwood Forest – In favor

Motion: Chair Martinez asked for a motion for item BOA-20-10300092, as presented

Ms. Bragman made a **motion** for BOA-20-10300092 for approval.

“Regarding Case No. BOA-20-10300092, I move that the Board of Adjustment grant a request for a 2’1.5” variance to allow a privacy fence to be up to 8’1.5” tall in the side and rear of property, situated at 18215 Brookwood Forest, applicant being Raymond Prior, 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 variance is not contrary to the public interest.*
The public interest is defined as the general health, safety, and welfare of the public. The additional fence height is intended to provide additional security and safety for the applicant’s property. In this case, given the lot’s location abutting a commercial property, the variance for an 8’1.5” solid screen fence is not contrary to the public interest.
- Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Literal enforcement would require that the owner remove a portion of the already constructed fence, an unnecessary hardship.
- 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 fence height requirement is to provide ample security and safety while establishing minimum fence height and material requirements. By granting the variances, the spirit of the ordinance will be preserved.
- 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 in the zoning district.
- 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 fence will create enhanced security and privacy for the subject property and is highly unlikely to injure adjacent properties. Specifically, the variance would not place the fence out of character within the community.

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 installed fence serves as a buffer to the subject property.***

Second: Mr. Oroian

In Favor: Bragman, Oroian, Schell, Love, Delmer, Cruz, Teel, Manna, Martinez

Opposed: None

Motion Granted

Item #9 Consideration and approval of the October 5, 2020 Board of Adjustment Minutes.

Motion: Chair Martinez asked for a motion for approval of the October 5, 2020 minutes as presented.

Mr. Manna made a **motion** for approval of October 5, 2020 minutes.

Second: Ms. Cruz

In Favor: Manna, Cruz, Schell, Love, Delmer, Teel, Oroian, Bragman, Martinez

Opposed: None

Minutes Approved

Adjournment

There being no further business, the meeting was adjourned at 3:33 p.m.

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary

DRAFT