

City of San Antonio



Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

November 4, 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 | Vacant | Arlene B. Fisher | Eugene A. Polendo |
Vacant | Vacant

1:07 P.M. - Call to Order, Board Room

- Roll Call
- Present: Tell, Zottarelli, Cruz, Oroian, Britton, Rodriguez, Neff, Manna, Fisher, Trevino, Martinez
- Absent: Bragman

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 # 4 (Continued from 10/21/2019) **BOA-19-10300117**: A request by Jorge de La Vega for a 1.5' variance from the 5' required side setback requirement to allow a structure to be 3.5' away from the east property line, located at 429 Natalen Ave. Staff recommends Approval. (Council District 2) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 44 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition. No comment from the Mahncke Park neighborhood association.

Jorge De La Vega, 111 Probandt, spoke of need for the setback variance for property. Submitted new site plan for the record

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-19-10300117, as presented

Mr. Oroian made a **motion** for BOA-19-10300117 for approval

“Regarding Case No. BOA-19-10300117, I move that the Board of Adjustment grant a 1.5' variance from the 5' required side setback to allow a structure to be 3.5' away from the east property line, situated at 429 Natalen Avenue, applicant being Roberto Garza, 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 setbacks that maintain neighborhood character. The 1.5' side setback variance is not contrary to public interest as it does not negatively impact any surrounding properties or the general public. The neighboring residential dwelling is 21' away from this structure.*
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. The special condition on this lot is the uniquely narrow lot; a literal enforcement would result in the destruction of the wall of the second home on the lot.*
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 side setback observes the intent of the code as the property complies with other requirements in neighborhood design and similar placements are found within the neighborhood.*

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

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.*

The request will not injure the rights of neighboring properties as the reduction does not detract from the character of the neighborhood. The adjacent homes on either side are at least 10 feet from the structure and the requested variance will not alter this distance.

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 here is not the fault of the owner of the property, nor is it due to, or the result of, general conditions in the community in which it is located."

Second: Mr. Manna

In Favor: Oroian, Manna, Teel, Zottarelli, Cruz, Britton, Rodriguez, Neff, Fisher, Trevino, Martinez

Opposed: None

Motion Granted

Item # 5

(Continued from 10/21/2019) **BOA-19-10300122:** A request by Derek Gisriel for 1) a 4'11" variance from the 5' side setback requirement to allow a detached dwelling unit to be 1" from the side property line and 2) a 2' variance from the 5' rear setback requirement to allow a detached dwelling unit to be 3' from the rear property line, located at 802 Matagorda Street. Staff recommends Approval. (Council District 1) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 32 notices were mailed to property owners within 200 feet, 1 returned in favor, and 1 returned in opposition. No comment from Lavaca Neighborhood Association.

Derek Gisriel, 802 Matagorda St, spoke in need of variance to keep the detached dwelling structure at the existing location, and finish the unit for his disable Father.

The following Citizens appeared to speak

James Mullin, 214 Barrera, has no concerns of what the applicant wants to do.

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-19-10300122, as presented

Mr. Teel made a **motion** for BOA-19-10300122 for approval

“Regarding Case No. BOA-19-10300122, I move that the Board of Adjustment grant a 1) a 4’11” variance from the 5’ side setback requirement to allow a detached dwelling unit to be 1” from the side property line, and 2) a 2’ variance from the 5’ rear setback requirement to allow a detached dwelling unit to be 3’ from the rear property line, situated at 802 Matagorda Street, applicant being Derek Gisriel, 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 setbacks that maintain neighborhood character. The 4’11” side and 2’ rear setback variances are not contrary to public interest as they do not negatively impact any surrounding properties or the general public.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
If enforced, the ordinance would significantly increase physical hardship for the subject property owner. The accessory dwelling is already located in the setback area as originally constructed and it would be a hardship to relocate the structure.
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 side and rear setback observes the intent of the code as the property complies with other requirements in neighborhood design and similar placements are found within the neighborhood.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.*
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.*
The request will not injure the rights of neighboring properties as the reduction does not detract from the character of the neighborhood.
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 here is not the fault of the owner of the property, nor is it due to, or the result of, general conditions in the community in which it is located.”*

Second: Mr. Rodriguez

In Favor: Teel, Rodriguez, Zottarelli, Cruz, Oroian, Britton, Neff, Manna, Fisher, Trevino, Martinez

Opposed: None

Motion Granted

Item #2

Discussion and possible action amending the Unified Development Code (UDC), Chapter 35 of the City Code of San Antonio, Texas, with changes to Section 35-801 relating to the composition of the Board of Adjustment (BOA) and authorizing a change to the BOA Rules and Procedures Document in order to modify the BOA Composition. (Catherine Hernandez, Development Services Administrator, (210) 207-5085, catherine.hernandez@sanantonio.gov, Development Services Department)

Chair Martinez **motioned** for approval of the possible action amending the Unified Development Code (UDC), as presented.

Members voted in the affirmative

Item #3

(Continued from 10/21/2019) **BOA-19-10300124:** A request by Mark Aerts for a special exception of the density limitations to allow one short-term rental (Type 2) unit, located at 1154 East Euclid Avenue. Staff recommends Denial. (Council District 1) (Dominic Silva, Senior Planner (210) 207-0120, dominic.silva@sanantonio.gov, Development Services Department)

Staff stated 52 notices were mailed to property owners within 200 feet, 1 returned in favor, and 6 returned in opposition. Tobin Hill Community Association is in opposition.

Rob Killen, property owner representative, property owners did their due diligence before purchasing property to use at a short term rental.

The following Citizens appeared to speak

Aneli Melendez, 12800 Apple White Rd, in favor, gave time to Melissa Aerts

Mark Aerts, 619 Legacy Rd, in favor, gave time to Melissa Aerts

Melissa Aerts, 619 Legacy Rd, request for special exception for the use of property to use as a short-term rental.

Martin Kushner, 405 E. Myrtle, in opposition of having this short term rental property in the neighborhood.

Sara Wilson, 1120 E. Euclid, in opposition of the short term rental in the neighborhood.

Federica Kushner, 405 E. Myrtle, in opposition of the request for the special exception.

Motion: Chair Martinez asked for a motion for item BOA-19-10300124, as presented

Mr. Oroian made a **motion** for BOA-19-10300124 for approval

Chair Martinez called for the **Board of Adjustment** to take a recess at 3:18 pm. Board resumed at 3:33 pm.

“Regarding Case No. BOA-19-10300124, I move that the Board of Adjustment grant a special exception of the density limitations to allow one short-term rental (Type 2) unit, situated at 1154 East Euclid Avenue, applicant being Mark Aerts, 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 property appears to be well kept, there is ample off-street and on-street parking, and nothing about the townhome places it out of character with those in the immediate vicinity.
2. *The special exception does not create a public nuisance.*
Since the permit was issued in April, staff can find no record of Code Enforcement or San Antonio Police activities on this property.
3. *The neighboring property will not be substantially injured by such proposed use.*
The property has been operating as a Type 2 STR since the permit was issued in April 2019 with no code violations. 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.
4. *Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary faculties have been or are being provided.*
During the visit to the site, City Staff noted that there is plenty of off-street parking for guests of the short term rental. The structure already exists with adequate utilities.
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 is seeking a Special Exception to keep the existing permit to continue the operation of the Type-2 short term rental. As such, no previous permit has been revoked.
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 requested special exception is not likely to alter the essential character of the district as the property is still used, primarily, as a residence. Within this development, the home is not unlike other homes in the community.”

Second: Mr. Manna

In Favor: Teel, Zottarelli, Britton, Fisher, Martinez

Opposed: Oroian, Manna, Cruz, Rodriguez, Neff, Trevino

Motion Fails

- Item #6** **BOA-19-10300128:** A request by Patrick Christensen for a variance of 3'8" from the 5' rear setback requirement to allow a detached carport to be 1'4" from the rear property line, located at 7801 Broadway. Staff recommends Approval. (Council District 10) (Rachel Smith, Planner (210) 207-5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 22 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No comment from Oak Park Northwood Neighborhood Association.

Patrick Christensen, 7801 Broadway, spoke of the need for the setback variance for the detached carport which was destroyed by natural disaster.

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-19-1030128, as presented

Mr. Manna made a **motion** for BOA-19-10300128 for approval

"Regarding Case No. BOA-19-10300128, I move that the Board of Adjustment grant a 3'8" variance from the 5' rear setback requirement to allow a detached carport to be 1'4" from the rear property line, situated at 7801 Broadway, applicant being Patrick Christensen, 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. The original carport has been in the same location since 1990 with no registered complaints and the new carport is within the original footprint.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The new carport is built within the same footprint as the original carport that was damaged beyond repair due to inclement weather in 2016. Literal enforcement of the ordinance would result in the applicant removing that portion of the carport that extends beyond the rear setback, leaving the carport unusable in its current format due to space limitations.
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 new carport is not overwhelming in size and follows the same footprint as the original carport that was built prior to 1990 with no registered complaints. Additionally, the carport is built of metal posts and canvas with no overhang.

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 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 carport is not noticeably out of character within the district in which it is located. The previous carport had been in place for over 20 years with no complaints. The district is characterized by commercial, multi-family and single-family dwellings. The variance requested will not substantially injure the appropriate uses of adjacent conforming properties or alter the 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 variance being sought is due the reconstruction of a carport that was destroyed by a tornado in 2016. The new carport follows the same footprint as the previous and is made entirely of metal. The unique circumstances were not created by the owner and are not merely financial in nature, and are not due to or the result of general conditions in the district.”

Second: Mr. Rodriguez

In Favor: Manna, Rodriguez, Teel, Zottarelli, Cruz, Oroian, Neff, Fisher, Trevino, Martinez

Opposed: None

Motion Granted

Item #7

BOA-19-10300125: A request by Adam Harden for a special exception request to allow for one Type 2 short term rental, located at 507 E Ashby Place #102. Staff recommends Denial. (Council District 1) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 40 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. No comment from the Tobin Hill Community Association.

Adam Harden, 507 E. Ashby, talked about the need for the special request. Suggested an alternate request of BOA counting the third unit as East Ashby blockface, without formally correcting the Rose Lane address.

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-19-10300125, as presented

Mr. Teel made a **motion** for BOA-19-10300125 for approval

“Regarding Case No. BOA-19-10300125, I move that the Board of Adjustment grant a special exception of the density limitations to allow one short-term rental (Type 2) unit, situated at 507 E Ashby #101, applicant being Adam Harden, 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 requested special exception will be in harmony with the spirit and purpose of the chapter in that the proposed short-term rental will follow the specified criteria established in Section 35-374.01 in the Unified Development Code.
2. *The special exception does not create a public nuisance.*
Since the permit was issued in August, staff can find no record of Code Enforcement or San Antonio Police activities on this property.
3. *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.
4. *Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary faculties have been or are being provided.*
During the visit to the site, City Staff noted that there is plenty of off-street parking for guests of the short-term rental. The structure already exists with adequate utilities.
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 is seeking a Special Exception to keep the existing permits but reallocate them to the specific duplex located at 507 E Ashby Place so that operation of the Type-2 short-term rental may continue. As such, no previous permit has been revoked.
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 requested special exception is not likely to alter the essential character of the district as the property is still used, primarily, as a residence. Within this development, the home is not unlike other homes in the community.”

Second: Dr. Zottarelli

In Favor: Teel, Zottarelli, Cruz, Oroian, Britton, Rodriguez, Manna, Fisher, Martinez

Opposed: Neff, Trevino

Motion Granted

Item #8

BOA-19-10300126: A request by Nicholas Van Delist for a 2' variance from the 5' side and rear setback requirement to allow a detached garage to be 3' from the side and rear property lines and eaves to be projected 1' from the side and rear property lines, located at 509 West Gramercy Place. Staff recommends Approval. (Council District 1) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 30 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. Alta Vista neighborhood association is in favor.

Nicholas Van Delist, 509 West Gramercy Place. Requesting variance to allow a detached garage 3' off the property line. Spoke of keeping the garage built to the historic features.

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-19-10300126, as presented

Mr. Teel made a **motion** for BOA-19-10300126 for approval

"Regarding Case No. BOA-19-10300126, I move that the Board of Adjustment grant a 2' variance of the 5' side and rear setback requirement to allow a detached garage to be 3' from the side and rear property lines and eaves to be projected 1' from the side and rear property lines, situated at 509 West Gramercy Place, applicant being Nicholas Van Delist, 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 setbacks that maintain neighborhood character. The with the remaining three feet the applicant still has enough space to allow for long term maintenance of the structure without trespass. The structure will be in similar character to the primary structure in accordance with the NCD requirements and the structure will not be visible from the street.

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

The structure will be located in the rear yard of the property and due to the location of the underground pool; the only space for a detached garage to exist is where the applicant has proposed. If the structure were to be placed in a different location, it would cause difficulty driving into and out of the garage.

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 side and rear setback observes the intent of the code as the property complies with other requirements in neighborhood design and similar placements are found within the neighborhood.*
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 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 request will not injure the rights of neighboring properties, as the reduction does not detract from the character of the neighborhood. There is still space for proper water runoff on the property and maintenance without trespassing on 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 here is not the fault of the owner of the property, nor is it due to, or the result of, general conditions in the community in which it is located.”

Second: Dr. Zottarelli

In Favor: Teel, Zottarelli, Cruz, Oroian, Britton, Rodriguez, Neff, Manna, Fisher, Trevino, Martinez

Opposed: None

Motion Granted

At 4:50 pm, Dr. Zottarelli left the Board of Adjustment Meeting.

Item #9

BOA-19-10300133: A request by Robert King for 1) a variance of the 800 square feet maximum for an accessory detached dwelling unit to allow it up to 1,500 square feet and 2) a 18% variance from the 40% maximum size for an accessory dwelling unit to allow an accessory dwelling unit to be 58% of the size of the primary structure, located at 250 Laurel Heights Place. Staff recommends Approval. (Council District 1) (Dominic Silva, Senior Planner (210) 207-0120, dominic.silva@sanantonio.gov, Development Services Department)

Staff stated 17 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. Monte Vista Historical neighborhood association is in opposition.

Robert King, Alamo Construction, 250 Laurel Heights Place. Spoke of the need of the variance for the building of the detached dwelling.

The following Citizens appeared to speak

Tony Garcia, 243 E. Huisache, spoke in opposition

George Nelson, 231 Laurel Heights Pl, spoke in opposition

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

Motion: Chair Martinez asked for a motion for item BOA-19-10300133, as presented

Mr. Oroian; made a **motion** for BOA-19-10300133, for approval

“Regarding Case No. BOA-19-10300133, I move that the Board of Adjustment grant 1) a variance of the 800 square feet maximum for an accessory detached dwelling unit to allow it up to 1,500 square feet and 2) a 18% variance from the 40% maximum size for an accessory dwelling unit to allow an accessory dwelling unit to be **more than 40% and up to 1,500 square feet** of the size of the primary structure, **but no more than 100% of the primary structure**, applicant being Robert 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 variance is not contrary to the public interest.*

In this case, the public interest is represented by the accessory dwelling unit size limitations to ensure future development is compatible within the context that it is placed. The lot size measures over 28,000 square feet. The size of the structure is comparable to the size of the lot and principal structure. The Board finds that permitting the requested size variance is warranted and is not contrary to the public interest.

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

Although the proposed guest house is set well within the lot and out of view of the public right-of-way due to the location of the proposed structure, dense foliage and bounded by mature trees, literal enforcement of the ordinance would result in the owner being unable to develop the project.

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 requirement rather than the strict letter of the law. The accessory dwelling is not overwhelming in comparison to the principal structure and is situated within a lot of substantial size. The Board finds that the request observes the spirit of the ordinance.

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

The variance will not authorize the operation of a use other than those uses specifically authorized by the 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 size of the accessory dwelling unit is proportional with the size of the principal dwelling and the size of the lot. The structure will not impose any immediate threat of water runoff or fire spread on adjacent properties.

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

The applicant has a substantial lot with a large home and is bounded by mature trees and dense foliage. The accessory dwelling unit will be proportional in size with the principal structure.

Second: Ms. Trevino

In Favor: Oroian, Trevino, Teel, Cruz, Rodriguez, Martinez

Opposed: Britton, Neff, Manna, Fisher

Motion Fails

Item #10 **BOA-19-10300127:** A request by Brady Johnson for a variance of 4'11" from the 5' side setback requirement to allow a home to be 1" from the side property line, located at 12627 Sandtrap Lane. Staff recommends Denial. (Council District 10) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 37 notices were mailed to property owners within 200 feet, 1 returned in favor, and 1 returned in opposition. Northern Hills neighborhood association is in opposition.

Brady Johanson, 22211 IH 10 West, Contractor for property. Proposing to bring the wall up and meeting the roof line to build a bathroom.

The following Citizens appeared to speak

Brenda Suller, 12623 Sandtrap, spoke in opposition of variance

Gloria Martinez, 12619 Sandtrap, spoke in opposition of variance

Mr. Britton left the Board of Adjustment meeting at 6:10 p.m.

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-19-10300127, as presented

Ms. Cruz made a **motion** for BOA-19-10300127 for approval

“Regarding Case No. BOA-19-10300127, I move that the Board of Adjustment grant a 4’11” variance from the 5’ side setback requirement to allow a home to be 1” from the **south** side property line, situated at 12627 Sandtrap Lane, applicant being Brady Johanson, 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 setbacks that maintain neighborhood character. The 1” side setback variance is not contrary to public interest as it is consistent with the placement of all homes in the neighborhood. The neighboring residential dwelling is at least 5’ away from this structure.

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

A special condition could be the zero lot line development and the general placement of all homes in the neighborhood at zero lot line.

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 side setback observes the intent of the code as the property complies with other requirements in neighborhood design and similar placements are found within the neighborhood.

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 permitted within the property’s current base 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 request will not injure the rights of neighboring properties, as the reduction does not detract from the character of the neighborhood. The adjacent homes on either side are at least 5 feet from the structure and the requested variance will not alter this distance.

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 here is not the fault of the owner of the property, nor is it due to, or the result of, general conditions in the community in which it is located.”

Second: Mr. Neff

In Favor: Cruz, Neff, Teel, Oroian, Rodriguez, Manna, Fisher, Trevino, Martinez

Opposed: None

Motion Granted

Item #11

Consideration and approval of the October 21, 2019 Board of Adjustment Minutes.

Chair Martinez **motioned** for approval of the October 21st minutes as presented
Members voted in the affirmative.

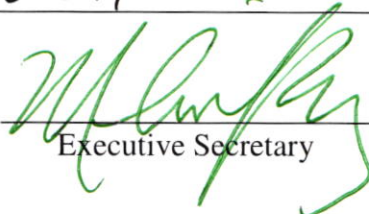
Director's Report: Status of Board Appointments

Adjournment

There being no further business, the meeting was adjourned at 6:24 p.m.

APPROVED BY: _____ OR  _____
Chairman Vice-Chair

DATE: 11-18-2019

ATTESTED BY:  _____ DATE: Nov. 26, 19
Executive Secretary