

City of San Antonio



Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

December 16, 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 | Andrew Ozuna, Mayor | Kimberly Bragman, District 9 |
Reba N. Malone, District 3

Alternate Members

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

1:08 P.M. - Call to Order, Board Room

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

Jaqueline Payan and Cesar Chavez, SeproTec translators were present.

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

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

Pledge of Allegiance

Mr. Manna entered the Board of Adjustment meeting at 1:10 pm.

Mr. Neff stepped out of the Board of Adjustment meeting at 1:15 pm, recusing himself from case **BOA-19-10300131**. **Ms. Englert** joined the board to review the case.

Item # 1 (Continued from 11/18/19) **BOA-19-10300131**: A request by Justin Kim for a variance from the restriction of corrugated metal as a fencing material to allow for its use as fencing, located at 1226 Wyoming Street. Staff recommends Denial. (Council District 2) (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 0 returned in opposition. No comment from Denver Heights Neighborhood Association.

Scott Casey, 1226 Wyoming Street – Showed an example of rolled metal edges used for the fence. Goal is to maintain the modern look of the property.

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-19-10300131**, as presented

Mr. Ozuna made a **motion** for **BOA-19-10300131** for approval

“Regarding Case No. **BOA-19-10300131**, I move that the Board of Adjustment grant a variance from the restriction of corrugated metal as a fencing material to allow for the use of fencing, situated at 1226 Wyoming Street, applicant being Justin Kim, 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 good design and minimal use of metal as fence material. Therefore, the variance is not contrary to public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Literal enforcement would require that the builder remove a portion of the already constructed fence, an unnecessary hardship.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law.

The intent of the material limitation is to promote attractive design, which is observed with this fence.

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 metal compliments the design and contributes to the character of the district. No adjacent conforming properties are injured in the use of this material.

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 the orientation of the buildings to the side lot and desire to create an appealing front yard, it 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. Britton

In Favor: Ozuna, Britton, Teel, Fisher, Orioan, Englert, Battle

Opposed: Zottarelli, Cruz, Manna, Martinez

Motion Fails

Ms. Englert left the Board of Adjustment meeting at 1:55 pm. **Mr. Neff** rejoined the board at 1:55 pm.

Item # 2

BOA-19-10300155: A request by Diana Fuentes for a special exception to allow a four-year renewal for a one-operator beauty shop in a single family home located at 5931 Cliff Ridge. Staff recommends Approval. (Council District 6) (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, 1 returned in favor, and 0 returned in opposition. No comment from Great Northwest Community Improvement Neighborhood Association.

Diana Fuentes, 5931 Cliff Ridge – Spoke of need for special exception. It is beneficial for her to work from home so she is able to care for her father and grandchild at the same time.

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-19-10300155, as presented

Ms. Cruz made a **motion** for BOA-19-10300155 for approval

“Regarding Case No. BOA-19-10300155, I move that the Board of Adjustment grant a special exception to allow a four-year renewal for a one-operator beauty shop in a single family home hours of operation will be Monday and Tuesday from 2 pm to 7 pm and Wednesday, Thursday and Sunday from 10 am to 2 pm, by appointment only, situated at 5931 Cliff Ridge, applicant being Diana Fuentes, 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 spirit and purpose of the chapter is to ensure that the operation of a one-operator beauty shop does not negatively impact the character of the community or the quality of life of neighbors. 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 will be in harmony with the spirit and purpose of the chapter.

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

The public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood. The proposed hours of operation will be limited Monday and Tuesday from 2 pm to 7 pm and Wednesday, Thursday and Sunday from 10 am to 2 pm, by appointment only.

3. 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 shop. There is also a driveway capable of providing any necessary parking for the proposed use.

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 requested special exception is not likely to alter the essential character of the district as the property is still used, primarily, as residence.

5. 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 residential. 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.”

Second: Mr. Oroian

In Favor: Cruz, Oroian, Teel, Zottarelli, Fisher, Britton, Ozuna, Neff, Manna, Battle, Martinez

Opposed: None

Motion Granted

Item #3

BOA-19-10300139: A request by Ralph Hernandez for 1) a 25' variance from the 30' rear setback requirement to allow a new detached building to be 5' from the rear property line and 2) a 10' variance from the 15' Type C bufferyard requirement to allow a 5' bufferyard along the rear property line, located at 738 W Hildebrand Ave. Staff recommends Approval. (Council District 1) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 36 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. Beacon Hill Neighborhood Association is in support. No response from Edison Neighborhood Association.

Ralph Hernandez, 738 W Hildebrand – spoke of request to remove carport damaged by storm and build a detached structure.

The Following Citizens appeared to speak

Cosima Colvin, 817 W. Magnolia – in support of the construction of the detached structure

Jack Finger, 901 W. Mulberry Ave – in support of the construction of the detached structure

Motion: Chair Martinez asked for a motion for item BOA-19-10300139, as presented

Mr. Oroian made a **motion** for BOA-19-10300139 for approval

“Regarding Case No. BOA-19-10300139, I move that the Board of Adjustment grant 1) a 25' variance from the 30' rear setback requirement to allow a new detached building to be 5' from the rear property line, and 2) a 10' variance from the 15' Type C bufferyard requirement to allow a 5' bufferyard along the rear property line, situated at 738 West Hildebrand Avenue, applicant being Ralph Hernandez, 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 community. In this situation, the public interests are represented through setbacks and landscaping buffer requirements. The Board finds that the 5' setback and bufferyard are sufficient to prevent stormwater runoff onto other properties and mitigate fire spread. The 5' bufferyard is sufficient to screen the property from adjacent residential land uses and mitigate noise and address onsite water runoff issues.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The special condition on this site is that the lot is not deep enough at 125 feet to allow a storage building with the required setbacks and landscaping and the required circulation. The Board supports the request for a 5' rear buffer as it provides adequate space for a variety of vegetation including trees that would provide canopy and promote water conservation on site.
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 provide for consistent development and to mitigate adverse environmental effects. The granting of this variance observes the spirit of the ordinance by providing for a buffer that will adequately screen unsightly equipment from adjacent property, mitigate noise, and air pollution. The requested setback reduction and landscape buffer reduction addresses these concerns.
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 proposed building will be in the same location as the existing structures and is unlikely to injure adjacent property. The property to the South has an accessory structure that is at least 3' from the property line and a fence separates the two.
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 situation is that there is limited space on the site to allow for the needed storage space and provide sufficient site circulation. The Board finds that this situation is not merely financial, not due to the general conditions of the district and was not created by the property owner."

Second: Mr. Teel

In Favor: Oroian, Teel, Zottarelli, Fisher, Cruz, Britton, Ozuna, Neff, Manna, Battle, Martinez

Opposed: None

Motion Granted

Item #4

BOA-19-10300154: A request by Abraham Contreras for 1) a 13.5' variance from the 20' rear setback requirement to allow for 2 residential units to be 6.5' from the rear property line, 2) a parking adjustment to decrease the 6 parking spaces required to 2 parking spaces, and 3) 4' variance from the 5' side setback requirement to allow an attached carport to be 1' from the side setback, located at 411 Cincinnati Avenue. Staff recommends Denial with an Alternate Recommendation. (Council District 1) (Debora Gonzalez, Senior Planner (210) 207- 3074, debora.gonzalez@sanantonio.gov, Development Services Department)

Staff stated 29 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. No comment from Uptown Neighborhood Association.

Abraham & Jackie Contreras, 411 Cincinnati Avenue - Spoke of need for variance for rear setback and side setback for the carport.

Citizens appeared to speak

Corine Clutter, 414 Cincinnati Ave; - in support of variance

Max Woodward, 823 Fredsburg, - in support of all three variances

Motion: Chair Martinez asked for a motion for item BOA-19-10300154, as presented

Mr. Oroian made a **motion** for BOA-19-10300154 for approval

“Regarding Case No. BOA-19-10300154, I move that the Board of Adjustment grant a request for 1) a 13.5’ variance from the 20’ rear setback requirement to allow for 2 residential units to be 6.5’ from the rear property line, and 3) 4’ variance from the 5’ side setback requirement to allow an attached carport to be 1’ from the side setback, situated at 411 Cincinnati Avenue, applicant being Abraham Contreras, 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 already existing structure is only been rehabilitated and the footprint is not expanding, the attached carport has been in place since 2007, without any complaints. The Board finds the request is not contrary to the public interest.

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

Due to the structure existing as detached accessory dwelling units, a literal enforcement of the ordinance would result in unnecessary hardship by requiring the entire structure be moved to meet the rear setback, the attached carport has also been existing since 2007.

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.

These variances would not substantially injure or alter the use or character of the district. Specifically, the variances would not place the structures 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 rear yards within the district and the attached carport are predominantly compact, leaving little room for proper building setbacks.”

Second: Dr. Zottarelli

In Favor: Oroian, Zottarelli, Teel, Fisher, Cruz, Britton, Ozuna, Neff, Manna, Battle, Martinez

Opposed: None

Motion Granted

Chair Martinez asked for a motion for the special exception of item BOA-19-0300154

Mr. Ozuna made a **motion** for BOA-19-10300154 special exception for approval

“Regarding Case No. BOA-19-10300154, I move that the Board of Adjustment grant a request for 2) a parking adjustment to decrease the 6 parking spaces required to 2 parking spaces, situated at 411 Cincinnati Avenue, applicant being Abraham Contreras, 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.

According to Section 35-526(b)7 of the UDC, in order for a parking modification to be granted, the applicant must demonstrate that a hardship is created by strict interpretation. The UDC requires off-street “primary” parking/driveway. Literal interpretation of the UDC code requirement would cause financial hardship and potentially yield this property unbuildable as proposed. Although the UDC required parking spots would fit in front of the structure, this would be in direct conflict with the City Council approved ordinance. The 4 parking space reduction would not injure the public as the applicant does provide 2 parking spaces in the property.”

Second: Mr. Neff

In Favor: Ozuna, Neff, Teel, Zottarelli, Fisher, Cruz, Oroian, Britton, Manna, Battle, Martinez

Opposed: None

Motion Granted

Chair Martinez called for the Board of Adjustment to take a recess at 3:20 pm. Board resumed at 3:36 pm. **Mr. Battle** stepped out of the Board of Adjustment meeting at 3:36 pm, **Mr. Quijano** joined the board to review the remaining cases.

Item #5 **BOA-19-10300148:** A request by Kaufman & Killen, Inc. for a 7' variance from the 30' rear setback requirement to allow a building to be 23' from the rear property line, located at 8338 and 8342 Broadway Street. Staff recommends Approval. (Council District 10) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 14 notices were mailed to property owners within 200 feet, 2 returned in favor, and 0 returned in opposition. No response from Oak Park Northwood Neighborhood Association.

Rob Killen, 8338 and 8342 Broadway Street – Spoke of need for variance to allow the building to be 23' from the property line.

Richard Underwood – Spoke of the 5' right of way, and removing two driveways and replacing with one.

The following Citizens appeared to speak

Brent Clifton - Surrendering time

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-19-1030148, as presented

Mr. Teel made a **motion** for BOA-19-10300148 for approval

“Regarding Case No. BOA-19-10300148, I move that the Board of Adjustment grant a 7' variance from the 30' rear setback requirement to allow a building to be 23' from the rear property line, situated at 8338 & 8342 Broadway Street, applicant being Kaufman & Killen, Inc, 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 community. In this case, the public interest is represented by setbacks that contribute to the desired street frontage, provide space to prevent fire spread, prevent water runoff onto adjacent property, and allow for maintenance without trespassing. The requested rear variance is being sought due to site constraints to allow the required parking and preserve the proposed building size. The requested variance along the East property line is not contrary to the public interest.

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

The special conditions present on this site are that there is not adequate space on the site to meet both the building setback and parking requirements.

A literal enforcement would require the applicant to reduce the size of the building to meet the requirements which would be an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done. The spirit of the ordinance is the intent of the code; the Board finds that this variance observes the spirit of the ordinance by allowing for adequate light, space for maintenance, and stormwater runoff.*
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 rear setback is unlikely to injure adjacent conforming properties or alter the essential character of the district. There are similar placements along this block of Broadway and the applicant has actually increased the distance between the apartments and the proposed structure.*
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 on the property are that there is not adequate depth to provide for the proposed design and meet parking and setback requirements."*

Second: Ms. Cruz

In Favor: Teel, Cruz, Zottarelli, Fisher, Oroian, Britton, Ozuna, Neff, Manna, Quijano, Martinez

Opposed: None

Motion Granted

Item #6

BOA-19-10300153: A request by Jose Quintero for a special exception to allow for (1) Type 2 short term rental unit, located at 1112 E Euclid Ave. Staff recommends Denial. (Council District 1) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 49 notices were mailed to property owners within 200 feet, 2 returned in favor, and 9 returned in opposition. Tobin Hill Neighborhood Association in opposition.

Jose Quintero, 1112 E. Euclid Ave. – Explained the need for the special exception for Type 2 short term rental to provide options for tourists visiting San Antonio. Property is located near the Pearl, and thrives off of tourism.

The follow citizens appeared to speak

Sara Wilson, 1120 E. Euclid – spoke in opposition of special exception. Does not wish to see more short term rental homes in the neighborhood.

Chris Dunn, 1130 E. Euclid – spoke in opposition of special exception. Block face already exceeds units allowed.

Martin Kushner, 405 E. Myrtle – spoke in opposition. Does not wish to have any more short term rentals in neighborhood.

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-19-10300153, as presented

Dr. Zottarelli made a **motion** for BOA-19-10300153 for approval

“Regarding Case No. BOA-19-10300153, I move that the Board of Adjustment grant a special exception to allow for (1) Type 2 short term rental unit, situated at 1112 E Euclid Avenue, applicant being Jose Quintero, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The Board finds that the request to operate a short term rental is unlikely to materially endanger the public health, safety, or welfare. The property appears to be well kept, there is ample off-street parking, and nothing about the townhome places it out of character with those in the immediate vicinity. This district has a combination of townhome dwellings, single-family dwellings and commercial uses. There is nothing obvious that would distinguish a short term rental versus a long term rental at this facility.

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

There is 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 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, the Board has 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 obtain a 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. Oroian

In Favor: None

Opposed: Zottarelli, Oroian, Teel, Fisher, Cruz, Britton, Ozuna, Neff, Manna, Quijano, Martinez

Motion Fails

Chair Martinez noted at 4:20 pm the Board dropped to 10 members as Dr. Zottarelli stepped out.

- Item #7** **BOA-19-10300151:** A request by Barrington Pryce for a special exception to allow for three (3) Type 2 short term rental units, located at 8111 Landing Avenue. Staff recommends Denial. (Council District 4) (Debora Gonzalez, Senior Planner (210) 207- 3074, debora.gonzalez@sanantonio.gov, Development Services Department)

Staff stated 20 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No comment from Lackland Terrace Neighborhood Association.

Barrington Pryce, 8111 Landing Avenue – Has hosted families of the Military since he began running the units. If granted the special exception it would have a positive impact on the neighborhood.

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-19-10300151, as presented

Mr. Oroian made a **motion** for BOA-19-10300151 for approval

“Regarding Case No. BOA-19-10300151, I move that the Board of Adjustment grant a special exception to allow for three (3) additional Type 2 short term rental units, situated at 8111 Landing Avenue, applicant being Barrington Pryce, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The special exception will not materially endanger the public health or safety.*
The Board finds that the request to operate a total of five short term rentals is unlikely to materially endanger the public health, safety, or welfare. The property appears to be well kept, there is ample off-street parking, and nothing about the multi-family complex places it out of character with those in the immediate vicinity. This district has a combination of multi-family dwellings, single-family dwellings and commercial. There is nothing obvious that would distinguish a short term rental versus a long term rental at this facility.
2. *The special exception does not create a public nuisance.*
The operation of these short term rentals are not likely to cause of a public nuisance. The Board can find no record of previous Code Enforcement activities on this property.
3. *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 structure is in character with those around it. There is nothing visible from the street that would indicate the presence of a short term rental.
4. *Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary faculties have been or are being provided.*
The Board has 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 obtain a 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 multi-family use. From the street, the complex is not unlike other structures in the community.”

Second: Ms. Cruz

In Favor: Oroian, Cruz, Teel, Britton, Ozuna, Martinez

Opposed: Fisher, Neff, Manna, Quijano

Motion Fails

Mr. Ozuna asked to suspend the vote until the board was fulling impaneled. **Chair Martinez** asked for a motion for those agreeing with Mr. Ozuna’s request. Request was denied by the Board.

Dr. Zottarelli returned to the **Board of Adjustment** at 4:41 pm

Item #8 **BOA-19-10300149**: A request by Concepcion Campos for 1) a special exception to allow a privacy fence to be up to 7' tall in the front and side yard of the property, and 2) a variance from the restriction of metal sheeting as a fencing material to allow for its use as a privacy fence gate, located at 6611 Marcum Drive. Staff recommends Approval. (Council District 6) (Rachel Smith, Planner (210) 207-5407, rachel.smith@sanantonio.gov, Development Services Department)

Staff stated 29 notices were mailed to property owners within 200 feet, 8 returned in favor, and 0 returned in opposition. No comment from Cable Westwood Neighborhood Association.

Esmerelda Campos, 6611 Marcum Drive – Spoke on behalf of Concepcion Campos. The fence and gate are needed to provide safety to her family and property. Her home has been broken in to, vehicles stolen, and a body found a short distance from the property.

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-19-10300149, as presented

Dr. Zottarelli made a **motion** for BOA-19-10300149 for approval

“Regarding Case No. BOA-19-10300149, I move that the Board of Adjustment grant a variance from the restriction of metal sheeting as a fencing material to allow for its use as a gate in the front yard, situated at 6611 Marcum Drive, applicant being Concepcion Campos, 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 community. In this case, the fence material was used due to safety and welfare concerns for the property owner. The metal portion of the fence is only along a portion of the front fence and does not violate Clear Vision Standards; the Board does not find this contrary to the public interest.

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

The special conditions are that the property owner was responding to safety concerns in the neighborhood and constructed a fence that would preserve the safety and security of their property. A literal enforcement would result in the property owner having to remove the metal gate which has been present for at least six months and replace it with allowable material, an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The spirit of the ordinance is the intent of the code, which in this case is the safety and security of the subject property. The Board finds that this observes the spirit of the ordinance.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*
The variance will not authorize the operation of a use other than those 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.*
However, the Board finds that adjacent conforming property is unlikely to be injured by the use of this metal as a fence gate. The metal was used to enhance the security of the property and is only along a portion of the front fence. The solid portion does not violate the Clear Vision Standards.
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 plight of the owner is primarily regarding the safety of their property. The situation was not created by the owner and is not merely financial."

Second: Mr. Teel

In Favor: Zottarelli, Teel, Fisher, Cruz, Oroian, Britton, Ozuna, Neff, Manna, Quijano, Martinez

Opposed: None

Motion Granted

Special exception

Motion: Chair Martinez asked for a motion for a special exception for item BOA-19-10300149, as presented

Ms. Fisher made a **motion** for BOA-19-10300149 for approval

"Regarding Case No. BOA-19-10300149, I move that the Board of Adjustment grant a special exception to a special exception, from the fencing height standards to allow a privacy fence to be up to 7' tall in the front and side yard of the property, situated at 6611 Marcum Drive, applicant being Concepcion Campos, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The special exception will be in harmony with the spirit and purpose of the chapter.* The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height is intended to provide safety and security of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.
2. *The public welfare and convenience will be substantially served.*
In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. A 7' tall solid metal gate and 7' tall chain link fence were built in the front yard along the front and side property lines. This is not contrary to the public interest.
3. *The neighboring property will not be substantially injured by such proposed use.*
The fence will create enhanced security for the subject property and is highly unlikely to injure adjacent properties. Furthermore, the fencing does not violate Clear Vision standards.
4. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*
The fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.
5. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*
The property is located within the "R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District and permits the current use. The requested special exception will not weaken the general purpose of the district."

Second: Dr. Zottarelli

In Favor: Fisher, Zottarelli, Teel, Cruz, Oroian, Britton, Ozuna, Neff, Manna, Quijano, Martinez

Opposed: None

Motion Granted

Item #9

BOA-19-10300150: A request by Angel Menendez for 1) a special exception request to allow a privacy fence to be up to 7' tall in the north, south and west property line, and 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 1026 Branch Road. Staff recommends Approval. (Council District 2) (Debora Gonzalez, Senior Planner (210) 207-3074, debora.gonzalez@sanantonio.gov, Development Services Department)

Staff stated 9 notices were mailed to property owners within 200 feet, 0 returned in favor, 0 in opposition, 1 returned neutral.

Angel Menendez, 1026 Branch Road – Fence is needed to provide safety to property and family.

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-19-10300150, as presented

Mr. Quijano made a **motion** for BOA-19-10300150 for approval

“Regarding Case No. BOA-19-10300150, I move that the Board of Adjustment grant a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, situated at 1026 Branch Road, applicant being Angel Menendez, 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 and clear vision field area that enhances pedestrian safety. The fence location within the Clear Vision encroachment is not contrary to the public interest. Specifically, the fence is 10’ along the north and west property lines and the corner of a dead intersection, the property owner is the only with access unto the property.

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

The special condition is that the lot is located at a dead end street abutting industrial uses. The requirement to reduce the fence height would have placed the home safety and privacy at risk.

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

The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. The intent of the code is to establish cohesive development that preserves the public interest. The request to reduce the clear vision field observes the intent of the code as the property complies with other requirements. The fence encroaches 5’ in the driveway area and on the corner and still observes the spirit of the code.

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

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

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

The request will not injure adjacent properties as there is still adequate distance between the driveway fence and the street will not harm other motorists or pedestrians.

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

The unique circumstances existing here are that the lot is located among industrial uses and a dead end street. These are not the fault of the property owner and are not the result of the general conditions in the community.”

Second: Mr. Manna

In Favor: Quijano, Manna, Teel, Zottarelli, Fisher, Cruz, Oroian, Britton, Ozuna, Neff, Martinez

Opposed: None

Motion Granted

Motion: Chair Martinez asked for a motion for a special exception for item BOA-19-10300150, as presented

Mr. Quijano made a **motion** for BOA-19-10300150 for approval

Regarding Case No. BOA-19-10300150, I move that the Board of Adjustment grant a special exception to allow a privacy fence to be up to 7' tall in the north, south and west property line, situated at 1026 Branch Road, applicant being Angel Menendez, 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 in the north, south and west property lines is intended to provide safety and security of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.
2. *The public welfare and convenience will be substantially served.*
In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. An up to 7' tall fence in the north, south and west property lines is not contrary to the public interest.
3. *The neighboring property will not be substantially injured by such proposed use.*
The fence enhances the privacy and security of the subject property and is unlikely to injure neighboring properties.
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 fence provides a safe environment for the property owner and does not alter the essential character of the district.*

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

The requested special exception will not weaken the general purpose of the district.

Second: Ms. Cruz

In Favor: Quijano, Cruz, Teel, Zottarelli, Fisher, Oroian, Britton, Ozuna, Neff, Manna, Martinez

Opposed: None

Motion Granted

Item #10 **BOA-19-10300152:** A request by Bill Krupa for a 13' variance from the 20' rear setback requirement to allow an attached addition to be 7' from rear property line, located at 22018 Advantage Run. Staff recommends Approval. (Council District 9) (Debora Gonzalez, Senior Planner (210) 207- 3074, debora.gonzalez@sanantonio.gov, Development Services Department)

Staff stated 40 notices were mailed to property owners within 200 feet, 2 returned in favor, and 0 returned in opposition.

Bill Krupa, 22018 Advantage Run – Builder and Designer of addition. The addition has been approved by the HOA. The 20' setback line was not realized until permitting process.

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-19-10300152, as presented

Mr. Oroian made a **motion** for BOA-19-10300152 for approval

“Regarding Case No. BOA-19-10300152, I move that the Board of Adjustment grant a request for a 7.5' variance from the 20' rear setback requirement to allow an attached addition to be 12.5' from rear property line, situated at 22018 Advantage Run, applicant being Bill Krupa, 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 represented by setbacks to provide separation between incompatible uses and to ensure fair and equal access to air and light. The proposed addition's wall will be fire-rated. The proposed room addition 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.*
An unnecessary hardship would result from the literal enforcement of the ordinance in that the property owner would need to modify the proposed room addition. The Board finds that a literal enforcement of the ordinance would result in unnecessary hardship.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The granting of the request variance would be in harmony with the spirit of the ordinance. The intent of the setback requirements is to prevent unnecessary trespass on adjacent property for maintenance, fire safety, and ensure proper storm water management. All of these intents will still be maintained with the granting of this request.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*
The variance will not authorize the operation of a use other than those uses specifically authorized by the district.
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
This variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district.
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*
The unique circumstance present in the case is that the property addition does meet the side setback. This setback issue is not merely financial in nature."

Second: Mr. Manna

In Favor: Oroian, Manna, Zottarelli, Fisher, Cruz, Britton, Ozuna, Neff, Quijano, Martinez
(Mr. Teel stepped out at 5:34 pm and was not present to vote)

Opposed: None

Motion Granted

Item #11

Consideration and approval of the December 2, 2019 Board of Adjustment Minutes.

Chair Martinez **motioned** for approval of the December 2nd minutes as presented.
Members voted in the affirmative.

Adjournment

There being no further business, the meeting was adjourned at 5:45 p.m.

APPROVED BY: Ron I. Matos OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: [Signature]
Executive Secretary

DATE: Jan 21, 2020