

City of San Antonio



Draft

Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

January 14, 2019

1:00PM

1901 S. Alamo

Board of Adjustment Members

A majority of appointive Members shall constitute a quorum.

Roger F. Martinez, District 10, Vice Chair
Alan Neff, District 2, Pro Tem
Vacant, District 9

Seth Teel, District 6 | Dr. Zottarelli, District 1 | Maria Cruz, District 5 | Phillip Manna, District 7 |
George Britton, District 4 | Henry Rodriguez, Mayor | Donald Oroian, District 8 | Vacant, District 3

Alternate Members

Kimberly Bragman | Jorge Calazo | Arlene B. Fisher | Eugene A. Polendo |
Roy A. Schaufele | Cyra M. Trevino

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

- **Roll Call**
- **Present: Teel, Dr. Zottarelli, Cruz, Rogers, Polendo, Neff, Britton, Rodriguez, Oroian, Fisher, Martinez**
- **Absent: None**
- Gabriela Barba and Maria E. Murray, SeproTec translators were present.

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

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

Pledge of Allegiance

Item # 1 (Continued from December 17, 2018) BOA-18-900010: A request by Eloy Rosales for 1) a variance from the restriction against corrugated metal as a fencing material to allow for the use of corrugated metal fencing, and 2) a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 235 Dashiell Street. Staff recommends Denial. (Council District 2)

Staff stated 37 notices were mailed to property owners within 200 feet, 0 returned in favor, and 2 returned in opposition and no response from the Alamodome Gardens Neighborhood Association, 1 from the Bowen Center for Neighborhood Advocacy.

Eloy Rosales, 130 Carolina, gave a presentation and submitted sketches of the line of site and additional photographs of the property. He also showed photos of when the Alamodome is hosting events. In addition gave all dimensions and how the structure will be modified.

The Following Citizens appeared to speak.

Gene Marks, 5018 Kenton View, spoke in opposition

Motion

Vice Chair Martinez asked for a motion for item #BOA-18-900010 as presented.

Motion: Mr. Neff made a motion for Approval: Regarding Appeal No. BOA-18-00010, a request for 1) a variance from the restriction against corrugated metal as a fencing material to allow for the use of corrugated metal fencing, situated at 235 Dashiell Street, applicant being Eloy Rosales.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property 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 fence was built with corrugated metal not imposing harm to the public and the fence is also, in harmony with the Clear Vision field which does not negatively impact any surrounding properties or the general public. The Board finds that the variance request is contrary to the public interest.

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

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

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

Granting the fence will not substantially injure the neighboring properties as the fence will enhance privacy for the subject property and is highly unlikely to injure adjacent properties with treatments and modifications described by applicant.

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

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 fence design does not detract from the character of the community. The applicant updated an older 6' private fence with an 8' privacy fence allowed by right on that street.

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

The unique circumstance in this case is that the new privacy fence was replaced in the same location as the previous privacy fence.

Second: Mr. Teel.

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

Opposed: Martinez, Schuaffele

Motion Granted

Motion

Vice Chair Martinez asked for a motion for item #BOA-18-900010 as presented.

Motion: Mr. Neff made a motion for Approval: Regarding Appeal No. BOA-18-00010, a request for 2) a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 235 Dashiell Street., applicant being Eloy Rosales.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property 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. The Applicant proposed a vision mirror to enhance the clear vision of the property. ~~In this case, the fence was built with corrugated metal not imposing harm to the public and the fence is also, in harmony with the Clear Vision field which does not negatively impact any surrounding properties or the general public. The Board finds that the variance request is contrary to the public interest.~~

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship. By complying with the clear vision code, much of the back yard will be taken away or a fence would be required and would be too low for security purposes of the property. Allowing the applicant to keep the corrugated metal fence will help create a safe and private environment while enhancing aesthetics. Therefore, the public welfare and convenience will be substantially served.*

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

Granting the fence will not substantially injure the neighboring properties as the fence will enhance privacy for the subject property and is highly unlikely to injure adjacent properties.

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

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 fence design does not detract from the character of the community. The applicant updated an older 6' private fence with an 8' privacy fence.

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

The unique circumstance in this case is that the new privacy fence was replaced in the same location as the previous privacy fence.

Second: Mr. Teel

Mr. Oroian made a motion to amend the clear vision variance solely to the southern side of the driveway. Motion dies due to the lack of a second.

In Favor: Neff, Polendo, Britton, Rodriguez, Teel,

Opposed: Dr. Zottarelli, Cruz, Trevino Martinez, Oroian, Schuaffele

Motion Failed

- Item # 2 BOA-18-900013: A request by Jesus Montiel for a 49.9% variance from the 50% front yard impervious cover limitation to allow 99.9% of the front yard to be covered in impervious cover, located at 3709 West Salinas Street. Staff recommends Denial. (Council District 5)

Staff stated 31 notices were mailed to property owners within 200 feet, 1 returned in favor, and 3 returned in opposition and no response from the Prospect Hill Neighborhood Association.

Staff informed the Board Mr. Montiel left ill and asked to postpone his case to February 4, 2019.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900013, as presented.

Motion: Mr. Oroian made a motion for a continuance to February 4, 2019.

Second: Dr. Zottarelli

In Favor: Unanimous

Opposed: None

Motion Granted

- Item #3 BOA-18-900016 A request by Enrique Patuel for an appeal of the Historic and Design Review Commission's denial of a request for a wrought iron fence to feature a driveway gate, spanning the width of the driveway parallel to the right of way rather than behind the front façade of the historic structure, situated at 219 Delaware Street. Staff recommends Denial. (Council District 1)

Enrique Patuel, 219 Delaware St. explained the reasons for requesting the requested fence. He submitted pictures of the neighborhood with similar fences and gave the reasons and police reports for the fence.

Edward Hall, Office of Historical Preservation, gave a presentation with the conditions for approval of the request.

Motion

Vice Chair Martinez asked for a motion for case BOA-18-900016, as presented.

Motion: Mr. Oroian made a Mr. Oroian made a motion to approve the case BOA-18-900016

Second: Mr. Rodriguez.

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

Opposed: None

Motion Granted

- Item # 4 BOA-18-900020: A request for a renewal of the special exception to allow a one-operator beauty/barber shop within a home, located at 1700 El Paso Street. Staff recommends Approval. (Council District 5)

Staff stated 48 notices were mailed to property owners within 200 feet, 3 returned in favor, and 0 returned in opposition and no comment from the Historic Westside Neighborhood Association.

Rosa E. Escobedo, 1700 El Paso St, stated she wishes to continue with her business and asked for approval of her request.

No Citizens appeared to speak.

Motion

Vice Chair Martinez asked for a motion for the Special Exception in case BOA-18-900020, as presented.

Motion: Mr. Rodriguez made a motion to approve the Special Exception in case BOA-18-900020.

Regarding BOA-18-900020, a request for a renewal special exception to allow a one-operator beauty/barber shop within a home, situated at 1700 El Paso Street, applicant being Rosa E. Escobedo.

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

Specifically, we find that:

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

The spirit and purpose of the chapter, in this case, is represented by minimum requirements to ensure that the operation of a one-operator beauty/barber shop does not negatively impact the character of the community or the quality of life of neighbors. The Board noted that nothing about the home, aside from a small sign, distinguishes it from others in the community. The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code. The Board finds that the special exception is in harmony with the spirit of the chapter.

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

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

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

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

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

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

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

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

Second: Ms. Cruz

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

Opposed: None

Motion Granted

- Item # 5 BOA-18-900024: A request by JD Dudley for a 14.5' variance from the 15' Type B landscape bufferyard along the west property line to allow for a bufferyard to be 6" deep, and 2) a 10' variance from the 15' Type B landscape bufferyard along the south property line to allow a bufferyard to be 5' deep, located at 2707 NE Interstate 410 Loop. Staff recommends Denial. (Council District 10)

Staff stated 8 notices were mailed to property owners within 200 feet, 1 returned in favor, and 2 returned in opposition and no response from the Village North II Neighborhood Association.

Mr. Dudley gave a short presentation. He gave a history on the business and all the charitable contributions. The applicant also worked with surrounding businesses and City staff.

The Following Citizens appeared to speak.

Mike Gallagher, 4302 Hilton Ave, spoke in favor.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900024, as presented.

Motion: Mr. Schauffele made a motion to approve item BOA-18-900024.

Second: Mr. Rodriguez.

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

Opposed: None

Motion Granted

- Item # 6 BOA-18-900026: A request by Laurie Cassidy for a variance from the Form Based Zone (T-4) regulations that restrict parking within the first layer to allow the property to be developed with parking spaces in the first 1/3 of the lot depth, located at 715 Camden Street. Staff recommends Approval. (Council District 1)

No Citizens appeared to speak.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900026, as presented.

Motion: Mr. Neff made a motion to continue item BOA-18-900026 to February 4, 2019.

Second: Dr. Zottarelli

In Favor: Unanimous

Opposed: None

Motion Granted

Item # 7 BOA-18-900028: A request by Kevin Stanton for a special exception to allow a total of 3 short term rental (Type 2) units, located at 2107 and 2109 Iowa Street. Staff recommends Approval. (Council District 2)

Staff stated 34 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition and no response from the Denver Heights Neighborhood Association.

Kevin Stanton, 310 E. Cypress Trails, gave a brief history of the family business, and described how they have made the properties safe and wished to continue to improve the properties. Mr. Stanton asked for the Board's approval.

No Citizens appeared to speak.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900028, as presented.

Motion: Mr. Teel made a motion to approve item BOA-18-900028 as presented.

“Regarding Appeal No BOA-18-900028, a request for a special exception to allow a total of 3 short term rental (Type 2) units, situated at 2107 and 2109 Iowa Street, applicant being Kevin Stanton

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

Specifically, we find that:

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

Staff finds that the request to operate the three 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 and on-street parking, and nothing about the house places it out of character with those in the immediate vicinity.

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

The operation of these short term rentals is not likely to cause a public nuisance. Staff can find no record of previous Code Enforcement activities on this property.

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

The requested special exception is not likely to negatively impact adjacent property owners because the homes are in character with those around it. During field visits staff noted nothing visible from the street that would indicate the presence of a short term rental.

D. 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, staff noted that there is plenty of off-street parking for guests of the short term rental, a large yard for open space. Further, nothing stood out as a cause of increased flooding issues.

E. The applicant or owner for the special exception does not have any previously revoked short term rental licenses, confirmed citations, or adjudicated offenses convictions for violations of Chapter 16, Article XXII of the City Code within one year prior to the date of the application.

The applicant is seeking their first permit for the operation of three Type-2 short term rentals. As such, no previous permit has been revoked.

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

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

Second: Dr. Zottarelli

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

Opposed: Neff

Motion Granted

The Board of Adjustment recessed for a break at 3:56pm and reconvened at 4:00pm.

Item # 8 BOA-18-900021: A request by Linda S. Peterson and Jay Pruski for 1) a variance from the Whispering Oaks Neighborhood Conservation District to allow a front yard fence in a portion of the front yard, and 2) a special exception to allow a 6' tall solid screen fence along a portion of the front yard, located at 11402 Whisper Green Street. Staff recommends Denial. (Council District 9)

Staff stated 27 notices were mailed to property owners within 200 feet, 3 returned in favor, and 0 returned in opposition and no response from the Whispering Oaks Neighborhood Association.

Linda S. Peterson & Jay Pruski, 11402 Whisper Green St, stated he will not add a six foot fence. He worked with the Home owners association and Conservation District along with his neighbors before beginning the fence.

No Citizens appeared to speak.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900021, as presented.

Motion: Mr. Oroian made a motion for approval on case BOA-18-900021.

Regarding Appeal No BOA-18-900021, a request for a variance from the Whispering Oaks Neighborhood Conservation District design limitation that prohibits front yard fencing to allow a fence in a portion of the front yard, situated at 11402 Whisper Green Street, applicant being Linda S. Peterson and Jay Pruski.

I move that the Board of Adjustment grant the applicant's request for the variances to the subject property 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 design requirements intended to provide for consistent development within the Whispering Oaks Neighborhood Conservation District. As such, the board finds that this project does follow the guidelines as set forth in the design requirements.

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

A literal enforcement of the ordinance could create unnecessary hardship in the applicant having to remove the front yard fencing.

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

The front yard fencing requirement within the Whispering Oaks Neighborhood Conservation District is to ensure that fencing matches the context of the neighborhood. The Board has determined that the front yard fence matches the context of the Whispering Oaks Neighborhood Conservation District and is within design guidelines.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized*
The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district.
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
The board finds that this variance will not substantially alter the essential character of the district in which the property is located as it follows the design requirements of the Whispering Oaks Neighborhood Conservation 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 circumstances existing on the property is due to the adjacent drainage channel in relation to the lot and the house.

Second: Mr. Teel

In Favor: Unanimous

Opposed: None

Motion Granted

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900021, as presented.

Motion: Mr. Oroian made a motion for approval on case BOA-18-900021.

Regarding Appeal No BOA-18-900021, a request for a special exception to allow a 6' tall solid screen fence along a portion of the front yard, situated at 11402 Whisper Green Street, applicant being Linda S. Peterson and Jay Pruski.

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

Specifically, we find that:

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

The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The fence height is intended to provide privacy of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.

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

In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. A 6' tall solid screen fence was built on a portion of the front property line to provide additional privacy for the applicant's property. This is not contrary to the public interest.

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

The fence will create enhanced privacy for the subject property and is highly unlikely to injure adjacent properties; with an adjacent drainage channel, the 6' solid screen fence height does not seem out of character within the community. Further, the fencing does not violate Clear Vision standards.

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

The 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.

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

The special exception will not allow the operation of a use not permitted within the property's current base zoning district. The requested special exception will not weaken the general purpose of the district.

Second: Mr. Teel

In Favor: Unanimous

Opposed: None

Motion Granted

Item # 9 BOA-18-900022: A request by Sharon Monreal for a 3'2" variance from the 5' rear setback requirement to allow a detached structure to be 1'10" away from the rear property line, located at 15134 Mission Oak Street. Staff recommends Approval. (Council District 9)

Staff stated 29 notices were mailed to property owners within 200 feet, 2 returned in favor, and 2 returned in opposition and no response North Central Thousand Oaks Neighborhood Association.

Sharon Monreal, 15134 Mission Oaks Street, read out letters of support from neighbors and explained this case came from a complaint regarding pets.

No Citizens appeared to speak.

Vice Chair Martinez asked for a motion for item #3 for BOA-18-900022, as presented.

Motion

Motion: Mr. Rodriguez made a motion for approval for item for BOA-18-900022.

Regarding BOA-18-900022, a request for a 3'2" variance from the 5' rear setback requirement to allow a detached structure to be 1'10" away from the rear property line, situated at 15134 Mission Oak Street, applicant being, Sharon Monreal.

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

Specifically, we find that:

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

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

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

An unnecessary hardship would result from the enforcement of the ordinance as strict enforcement would require the owner of the property to demolish and rebuild the structure in question.

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

Substantial justice will be done as the requested setbacks will still provide for a safe development pattern. The request provides fair and equal access to air and light, and provides for adequate fire separation.

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

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

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

In older neighborhoods such as this, it is common for accessory units to be located within the rear setbacks established by the current Unified Development Code. The request will not detract from the character of the district. The unit in question is in the rear yard, not affecting the public right-of-way. The structure in question does not injure the adjacent property.

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

The unique circumstance existing on the property is that the structure in question was already in place when the current owner of the home purchased the house.

Mr. Martinez made a friendly motion to allow an existing attached structure to the motion. Mr. Rodriguez accepted the motion.

Second: Ms. Cruz

In Favor: Unanimous

Opposed: None

Motion Granted

Item # 10 BOA-18-900023: A request by German Santos Garcia for 1) a 370 square foot variance from the maximum 446 square foot accessory dwelling unit size to allow an accessory dwelling unit to be 726 square feet and 2) a 2' variance from the 5' side setback to allow a detached accessory dwelling unit to be 3' from the side property line, located at 3418 Morales Street. Staff recommends Approval. (Council District 5)

Staff stated 26 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition and no response from the Prospect Hill-West End Hope Neighborhood Association.

No Citizens appeared to speak.

German Santos Garcia, 3418 Morales Street, requested interpreter services, is requested a variance. He built on the base that was already in existence because all utilities were there.

Vice Chair Martinez asked for a motion for item #3 for BOA-18-900023, as presented.

Motion

Motion: Mr. Cruz made a motion for approval for item for BOA-18-900023.

Regarding Appeal No BOA-18-900023, a request for 1) a 370 square foot variance from the maximum 446 square foot accessory dwelling unit to allow an accessory dwelling unit to be 726 square feet and 2) a 2' variance from the 5' side setback to allow a detached accessory dwelling unit to be 3' from the side property line, situated at 3418 Morales Street, applicant being German Santos Garcia.

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

Specifically, we find that:

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

The public interest is protected by a requirement that accessory dwelling structures remain subservient to the principal dwelling unit. In this case, the detached accessory dwelling unit is highly unlikely to be noticed from the public right-of-way. The variance to reduce the side setback and to allow the increase in size for the detached accessory dwelling structure is not contrary to the public interest.

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

The additional square footage for the detached accessory dwelling unit is not overwhelming, and allows for adequate air and light in the yard. The detached accessory dwelling unit is proportional to the main structure, the size of the lot, and the neighboring lots.

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

The spirit of the ordinance represents the intent of the requirement. The detached accessory dwelling unit is proportional to the size of the home, the size of the lot, and is within the character of the community.

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 requested variance will not authorize the operation of a use on the subject property other than those specifically authorized in the zoning district.

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

The size of the accessory dwelling unit is proportional with the size of the main home, the size of the lot, and the accessory dwelling unit will comply with the one bedroom one bath requirement of the code. In addition 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 unique circumstance in this case is that the owner is converting the original shed into a detached accessory dwelling unit within the same side setback. The accessory dwelling unit will be proportional in size with the primary dwelling.

Second: Mr. Rodriguez

In Favor: Unanimous

Opposed: None

Motion Granted

Approval of Minutes

Item # 11 Consideration and Approval on the Minutes from January 14, 2019.

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

Second: Mr. Rodriguez

In Favor: Unanimous

Opposed: None

Motion Granted

Item #12 Appointment of a Board of Adjustment Member as an alternate to the Planning Commission Technical Advisory Committee (PCTAC)

Staff gave a short description of the PCTAC duties and asked for a nomination. Mr. Teel and Mr. Oroian volunteered.

Ms. Trevino nominated Mr. Oroian for alternate PCTAC member.

Dr. Zottarelli nominated Mr. Teel for alternate PCTAC member.

After discussion Ms. Trevino withdrew her nomination for Mr. Oroian.

A voice vote was taken for Mr. Teel's nomination with everyone voting in the affirmative.

13 Election of Officers

Staff asked for a nomination for Chair from the Board:

Mr. Oroian nominated Mr. Martinez for Chair. No other nominations.

A voice vote was taken and Mr. Martinez was voted Chair Unanimously.

Staff asked for a nomination for Vice-Chair from the Board:

Mr. Teel nominated Dr. Zottarelli

In Favor: Teel, Dr. Zottarelli, Cruz, Trevino, Martinez

Opposed: Polendo, Neff, Rodriguez, Schuaffele, Oroian

Abstain: Britton

Mr. Britton nominated Mr. Neff.

In Favor: Britton, Dr. Zottarelli, Cruz, Martinez, Polendo, Neff, Rodriguez, Schuaffele, Oroian

Opposed: Teel, Trevino

Mr. Neff was voted Vice-Chair with a vote of 9-2.

Staff asked for a nomination for Pro-Tem from the Board:

Ms. Trevino nominated Mr. Oroian for Pro-Tem.

In Favor: Oroian, Teel, Trevino, Polendo, Schuaffele, Martinez

Opposed: Dr. Zottarelli, Cruz, Neff, Rodriguez

Abstain: Britton

Mr. Neff nominated Dr. Zottarelli.

In Favor: Dr. Zottarelli, Cruz, Neff, Rodriguez, Neff, Martinez

Opposed: Trevino, Polendo, Schaufele, Oroian

Abstain: Britton

After a tie for Pro-Tem, Dr. Zottarelli wished to withdraw her name from consideration. Mr. Neff withdrew Dr. Zottarelli's nomination at her request.

Mr. Oroian was voted Pro-Tem by a vote of 6-4 with 1 abstained.

- **Director's Report: Staff informed the Board of upcoming work sessions regarding Unconscious Bias training, Enhance Board Member Orientation, BOA Applicant Orientation - assist the citizen and Short Term Rentals.**

Adjournment

There being no further business, the meeting was adjourned at 5:15 p.m.

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary