

City of San Antonio



Draft

Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

February 18, 2019

1:00PM

1901 S. Alamo

Board of Adjustment Members

A majority of appointive Members shall constitute a quorum.

Roger F. Martinez, District 10, Chair
Alan Neff, District 2, Vice Chair
Donald Oroian, District 8, Pro-Tem

Seth Teel, District 6 | Dr. Zottarelli, District 1 | Maria Cruz, District 5 | Phillip Manna, District 7 |
George Britton, District 4 | Henry Rodriguez, Mayor | Kimberly Bragman, District 9 |
Reba N. Malone, District 3

Alternate Members

Cyra M. Trevino | Jorge Calazo | Arlene B. Fisher | Eugene A. Polendo
| Roy A. Schauffele | Vacant

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

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

- 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

Mr. Neff made a motion to move up Item BOA-18-900038 to be heard first on the Agenda. Mr. Manna seconded the motion which passed unanimously.

Item # 7 BOA-18-900038: A request by Diane Ruiz Chavez for a 1,056 square foot variance from the minimum 6,000 square foot lot size to allow a lot size to be 4,944 square feet, located at 430 Sandmeyer Street. Staff recommends Approval. (Council District 2)

Staff stated 24 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and the Government Hill Alliance Neighborhood Association.

Diane and Y. Ruiz Chavez, *interpreter requested, 430 Sandmeyer St, stated she is on dialysis and the variance requested is to build a dwelling for her to live and asked for approval.

The Following Citizens appeared to speak.

Dolores Nolan, 428 Sandmeyer, spoke in favor

Motion

Chair Martinez asked for a motion for item #BOA-18-900038 as presented.

Motion: Mr. Neff made a motion to approve the case BOA-18-900038

Regarding Appeal No BOA-18-900038, a request for a 1,056 square foot variance from the minimum 6,000 square foot lot size, situated at 430 Sandmeyer Street, applicant being Diane Y. Ruiz Chavez.

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, given the lot constraints on the subject property, granting the variance still provides adequate accessibility to light, air, and open space.

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

The literal enforcement of the ordinance would result in unnecessary hardship, as the subject property cannot be expanded and the surrounding lots are already developed. The Board finds that relief is warranted.

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 new home will provide a safe development pattern and will meet all required setbacks. The request will provide access to quality light and air, and provide 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.*

The surrounding dwellings will not be injured by granting the variance, because the applicant is seeking to develop a lot in the same configuration that it has been in for decades.

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 condition present is that the lot was subdivided and developed before the 6,000 square foot minimum lot size was established in 2001. This is not the fault of the owner of the property, nor is the request merely financial in nature.

Second: Ms. Rodriguez

In Favor: Neff, Rodriguez, Cruz, Britton, Schuaffele, Dr. Zottarelli, Bragman, Manna, Teel, Oroian Martinez,

Opposed: None

Motion Granted

- Item # 2 BOA-19-10300005 a request by KC Palmetto Pointe, LLC for a 114' variance from the 150' distance requirement to allow for 2 signs to be 36' apart, situated at 4835 USAA Boulevard. Staff recommends Approval. (Council District 8)

Staff stated 15 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Andrew Perez, Chief Sign Inspector, was available for questions.

Rob Killen, Kaufman & Killen, gave a presentation and explained the reasoning for their request and asked the Board for Approval.

No Citizens appeared to speak**Motion**

Chair Martinez asked for a motion for item BOA-19-10300005, as presented.

Mr. Oroian made a motion for BOA-19-10300005 for approval.

Regarding Appeal No BOA-19-10300005, a request for a 114' variance from the 150' distance requirement to allow for 2 signs to be 36' apart, situated at 4835 USAA Boulevard, applicant being KC Palmetto Pointe, LLC.

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

Specifically, we find that:

1. *The variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property; and.*

The applicant stated that the proposed apartment complex would suffer an unnecessary hardship due to the natural curvature and elevation grade along the street to provide adequate signs on the site.

1. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*
 - A. *Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.*

The request is not out of character with the surrounding properties and the signs are simply located too close to another, lacking a secondary frontage.

- B. *Granting the variance will not have a substantially adverse impact on neighboring properties.*

The proposed variance will not have an adverse impact on neighboring properties and the signs will not be obstructing entrance and exit views.

- C. *Granting the variance will not substantially conflict with the stated purposes of this article.*

The requested variance will not create traffic hazards by confusing or distracting motorists, or by impairing the driver's ability to see pedestrians, obstacles, or other vehicles, or to read traffic signs.

Second: Ms. Cruz

In Favor: Oroian, Cruz, Neff, Rodriguez, Britton, Schuaffele, Dr. Zottarelli, Bragman, Manna, Teel, Martinez

Opposed: None

Motion Granted

Item #3 BOA-19-10300004: A request by GE Reaves Engineering for a 16' variance from the 30' setback requirement to allow one new structure to be 14' from the rear property line, located at 366 and 370 West Sunset Road. Staff recommends Approval. (Council District 1)

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.

Gus Gonzalez, 5250 Callaghan Road, gave a presentation with the specific of the project. They believe this project is in harmony with the Neighborhood.

Gabriel Duran Hollis, 14603 Huebner Rd. #18 gave a separate presentation and explained the features on the project.

Motion

No Citizens appeared to speak

Chair Martinez asked for a motion for case BOA-19-10300004, as presented.

Motion: Dr. Zottarelli made a motion for BOA-19-10300004 for approval.

Regarding Appeal No BOA-19-10300004, a request for a 16' variance from the 30' setback requirement to allow one new structure to be 14' from the rear property line, situated at 219 Andrews Street, applicant being GE Reaves Engineering.

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 owner of the property is trying to develop four single buildings and only one of these structures is seeking to reduce the rear setback. With the adjacent multi-family use, the code does not trigger bufferyards. The Board finds that, as a result of the proposed office use, the public interest would not be harmed by the requested reductions.

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

Literal enforcement would not allow the development of this structure to be built, as proposed. Lastly, the proposed development is unlikely to harm adjacent properties, especially after business hours.

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

The intent of the setback is to create an open area without crowding of structures and to establish uniform development standards to protect the rights of property owners. In this case, the development will replace a vacant lot with buildings, proving services to the community. The requested setback reduction is unlikely to harm the adjacent use.

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 variances 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 rear reduction for the new building would replace a vacant lot with buildings, proving services to 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 circumstance in this case is that the proposed infill development abuts a residential zoning use which prompts larger setbacks. This condition was not created by the owner and is not merely financial in nature.

Motion: Dr. Zottarelli made a motion to approve the case BOA-19-10300004

Second: Mr. Oroian

In Favor: Dr. Zottarelli, Oroian, Rodriguez, Cruz, Neff, Teel, Schaufele, Bragman, Manna, Britton, Martinez

Opposed: None

- Item # 4 BOA-18-900040: A request by Itzhak Elgrably for a special exception to allow a total of 5 short term rental (Type 2) units, located at 219 Andrews Street. Staff recommends Approval. (Council District 2)

Staff stated 40 notices were mailed to property owners within 200 feet, 0 returned in favor, and 6 returned in opposition and Mahncke Park Neighborhood Association is opposed.

Danny Elgrably, 14455 Blanco, wishes to provide short term rentals for the Base, Zoo, and Botanical Gardens. He explained crime has gone down since purchasing the property.

The Following Citizens appeared to speak.

Nadine Long, spoke in opposition
Gene Mark, spoke in opposition
Tony Garcia, spoke in opposition
Liz Franklin, spoke in opposition
Jessica Doll, spoke in opposition
Roslyn Cogburn, spoke in opposition
Cosima Colvin, spoke in opposition
Selena Gibson, spoke in opposition

Motion

Chair Martinez asked for a motion for the variance in case BOA-18-900040, as presented.

Motion: Mr. Teel made a motion to approve the variance in case BOA-18-900026 BOA-18-900040 for a **total of five units**.

Regarding Appeal No BOA-18-900040, a request for a special exception to allow a total of 5 short term rental (Type 2) units, situated at 219 Andrews Street, applicant being Itzhak Elgrably.

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.

The Board finds that the request to operate the 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 and single-family dwellings. There is nothing obvious that would distinguish a short term rental versus a long term rental at this facility.

B. 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.

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 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.

D. Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary facilities have been or are being provided.

During the visit to the site, there is plenty of off-street parking for guests of the short term rentals.

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 five Type-2 short term rentals for this property. 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 multi-family use. From the street, the complex is not unlike other structures in the community.

Second: Mr. Oroian

Mr. Schaufele made a friendly amendment to reduce the number of from 5 to 2 Total.

Mr. Teel stated he would accept a total of 3 and not 2 as Mr. Schuauffele requested. After further discussion, Mr. Schaufelle withdrew his amendment. The Motion is now for a total of 3 Units.

In Favor: Teel, Bragman, Oroian, Britton

Opposed: Cruz, Dr. Zottarelli, Manna, Schaufele, Rodriguez, Neff, Martinez

Motion Failed

Item # 5 BOA 18-900037: A request by Abe Juarez, Cogo Investments, LLC for a special exception to allow a 8' fence, consisting of 6' of solid wood and 2' of open lattice on the east side of the property, located at 412 Warren Street. Staff recommends Approval. (Council District 1)

Staff stated 33 notices were mailed to property owners within 200 feet, 4 returned in favor, and 0 returned in opposition and no response from the Five Points Neighborhood Association.

Abe Juarez, Cogo Investments, stated the variance is needed to maintain privacy for its tenants and asked for approval.

No Citizens appeared to speak.

Motion

Chair Martinez asked for a motion for item BOA 18-900037, as presented.

Motion: Dr. Zottarelli made a motion to approve item BOA 18-900037

Regarding Appeal No BOA-18-900037, a request for a special exception to allow an 8' fence, consisting of 6' solid wood and 2' of open lattice, along the east and rear property line, situated at 412 Warren Street, applicant being Abe Juarez, Cogo Investments, LLC.

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

Specifically, we find that:

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

The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to 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. An 8' fence, consisting of 6' solid wood and 2' of open lattice, 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; an 8' fence, consisting of 6' solid wood and 2' of open lattice, 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. Oroian

In Favor: Dr. Zottarelli, Oroian, Neff, Cruz, Rodriguez, Bragman, Teel, Manna, Britton, Schaufele, Martinez

Opposed: None

Motion Granted

The Board of Adjustment recessed at 3:22pm and reconvened at 3:30pm.

Item # 6 BOA 18-900036 a request by Maria Alba Fernandez Font for an 826 square foot variance from the minimum 4,000 square foot lot size to allow a lot size to be 3,174 square feet, located at 120 Sample Street. Staff recommends Approval. (Council District 2)

Staff stated 42 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no response from the Denver Heights Neighborhood Association.

Maria Alba Fernandez Font and David Oberhauser, 383 Rising, is requesting the variance and feels the construction is in keeping with the Neighborhood.

No Citizens appeared to speak.

Motion

Chair Martinez asked for a motion for item BOA 18-900036, as presented.

Motion: Mr. Manna made a motion to approve item BOA 18-900036.

Regarding Appeal No BOA-18-900036, a request for an 826 square foot variance from the minimum 4,000 square foot lot size to allow a lot size to be 3,174 square feet, situated at 120 Sample Street, applicant being Maria Alba Fernandez Font

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, given the lot constraints on the subject properties, granting the variance still provides adequate accessibility to light, air, and open space. The new structure will meet all required setbacks. 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.*

The applicant needs this variance in order to apply for a COD. A literal enforcement of the ordinance would render the property undevelopable. The Board finds that relief is warranted.

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 property will provide a safe development pattern. The request provides access to quality light and air, 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 zoning district in which the variance is located.*

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

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 surrounding single-family dwellings will not be injured by granting the variance because the lot size will not create incompatible development, nor will it detract from the character of the community. The character of the surrounding neighborhood will not be altered and the proposed development will be cohesive with the existing pattern of development within the immediate 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.*

A literal enforcement of the ordinance would render the property undevelopable. This is not the fault of the owner of the property, nor is the request merely financial in nature.

Second: Mr. Oroian

In Favor: Manna, Oroian, Schaufele, Neff, Dr. Zottarelli, Cruz, Rodriguez, Bragman, Teel, Britton, Martinez

Opposed: None

Motion Granted

Item # 8 BOA 18-900039: A request by Willie Salas and Nelda Salas for a 2' variance from the 5' side setback requirement to allow for a structure to be 3' from the side property line, located at 434 West Hermosa. Staff recommends Approval. (Council District 1)

Staff stated 27 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition and there is no response from the Edison Neighborhood Association.

Willie and Nelda Salas, 434 W. Hermosa, gave a presentation and showed photos of his property and explained the water runoff falls on his property.

No Citizens appeared to speak.**Motion**

Chair Martinez asked for a motion for item BOA 18-900039, as presented.

Motion: Ms. Cruz made a motion to approve item BOA 18-900039

Regarding BOA-18-900039, a request for a 2' variance from the side 5' setback requirement to allow a detached structure to be 3' away from the side property line, situated at 434 West Hermosa, applicant being, Nelda and Willie Salas.

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 is already in place.

Second: Mr. Rodriguez

In Favor: Cruz, Rodriguez, Dr. Zottarelli, Teel, Oroian, Manna, Bragman, Britton, Schauffele, Neff, Martinez

Opposed: None

Motion Granted

Mr. Manna left the Board of Adjustment Meeting at 4:08pm

- Item # 9 BOA 19-10300001 a request by John O'Neil for a 4'11" variance from the 5' side setback requirement to allow for a structure to be 1" from the side property line, located at 1027 Arroya Vista Drive. Staff recommends Denial. (Council District 1)

Staff stated 18 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition and no response from the North Carolina Neighborhood Association.

Fred Ortiz, 13415 Lawnwood, stated they removed the dangerous carport for safety reasons. Also showed many other carports in the neighborhood and asked for approval.

No Citizens appeared to speak.

Motion

Chair Martinez asked for a motion for item BOA 19-10300001, as presented.

Motion: Mr. Oroian made a motion for approval on case BOA 19-10300001.

Regarding BOA-19-10300001, a request for a 4'6" variance from the side 5' setback requirement to allow an attached carport to be 1" away from the side property line, situated at 1027 Arroya Vista Drive, applicant being, John O'Neil.

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 build the structure within the required setbacks

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 is common among other homes in the neighborhood.

Second: Dr. Zottarelli

In Favor: Dr. Zottarelli, Cruz, Schaufele, Rodriguez, Dr. Zottarelli, Bragman, Britton, Neff, Martinez

Opposed: None

Motion Granted

- Item # 10 BOA-19-10300002: A request by James Clark Sidney for a 4'8" variance from the 5' side setback requirement to allow for a structure to be 4" from the side property line, located at 1325 West Elsmere Place. Staff recommends Denial. (Council District 1)

Staff stated 38 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no response from the Keystone Neighborhood Association.

James Clark Sidney, 1325 W. Elsmere, provided pictures of 45 homes in the neighborhood with similar carports and will build what the code requires.

No Citizens appeared to speak.

Chair Martinez asked for a motion for item for BOA-19-10300002, as presented.

Motion

Motion: Ms. Bragman made a motion for approval for item for BOA-19-10300002.

Regarding BOA-19-10300002, a request for a 4'8" variance from the side 5' setback requirement to allow an attached carport to be 4" away from the side property line, situated at 1325 West Elsmere Place, applicant being, James Clark Sidney.

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 build the structure within the required setbacks
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 property is very narrow and placing the carport 5" away from the property line would result in the carport being placed in the middle of the existing driveway.

Second: Mr. Britton

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

Opposed: None

Motion Granted

Approval of Minutes

Item # 11 Consideration and Approval on the Minutes from February 18, 2019.

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

Second: Mr. Neff

In Favor: Unanimous

Opposed: None

Motion Granted

Director's Report: None

Adjournment

There being no further business, the meeting was adjourned at 4:35p.m.

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary

DRAFT