

City of San Antonio



Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

December 17, 2018

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
- Luis Antequera 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 A-18-173: A request by Arturo and Elizabeth Lopez for an appeal of the Director's decision to deny Non-Conforming Use Rights, located at 5745, 5679, 5682, 5650, and 5550 Easterling Road. Staff recommends Denial. (Council District 6)

Logan Sparrow, Interim Development Services Manager, presented Case # A-18-173 presented to the Board of Adjustment.

Staff stated 111 notices were mailed to property owners within 200 feet, 1 returned in favor, and 8 returned in opposition and no response from the Mountain View Acres Neighborhood Coalition.

Rob Killen, Kaufman and Killen, Representative, gave a detailed description and background information regarding this case and presented why he believes the director was incorrect in denying the non-conforming use rights.

Sam Adams, City Attorney's Office, answered the Boards questions.

Art and Liz Lopez, 5435 Grissom Road, explained their reasons to change the Directors Decision.

The Board of Adjustment recessed at 2:33pm and reconvened at 2:39pm.

The Following Citizens appeared to speak.

Jan Wells, 10306 Mount Evans Road, spoke in opposition.

Rebecca Flores Perez, Westover Hills Neighborhood Association.

Peter Witherspoon, PO BOX 681085, spoke in favor.

David Salinas, 4122 New Mathis, spoke in favor.

Jesse Escobar, 3914 New Mathis, spoke in favor.

David Rocha, 9142 New Mathis, spoke in favor.

Charles Mayo, 5690 Easterling, spoke in favor.

Raul Cardenas, 9950 Santa Ana, spoke in opposition.

Rosemary and Gabriel Perez, 4927 Gemsbuck Chase, spoke in opposition.

Discussion included concerns of the impact of upholding the Director's decision to deny non-conforming use rights. Staff explained that, should the Board of Adjustment uphold the Director's decision, the applicant could still pursue a rezoning to bring the property into compliance

Motion

Vice Chair Martinez asked for a motion for item #A-18-173 as presented.

Motion: Mr. Teel made a motion for Approval:

“Regarding Appeal No A-18-173, a request for an appeal of the Director’s decision to deny Non-Conforming Use Rights, situated at 5745, 5679, 5682, 5650, and 5550 Easterling, applicant being Arturo and Elizabeth Lopez.

I move that the Board of Adjustment grant the applicant’s request for an appeal to the subject properties as described above, because the testimony presented to us, and the facts that we have determined, show that the decision made by the administrative official was flawed in the interpretation of the Code and that the correct interpretation would approve the Non-Conforming Use Rights.

Specifically, we find that:

That the applicant is correct in asserting that they have not violated the Chapter, and are asking the Board of Adjustment to overturn the Director’s decision to approve the Non-Conforming Use Rights.”

Second: Mr. Oroian.

Mr. Teel stated he felt the property was zoned incorrectly and for that reason will not support the item in order to give them more time to work with staff.

Mr. Oroian felt the Exemptions did not have time limits and for that reason will support the item.

Mr. Rodriguez agreed with Mr. Oroian’s comments.

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

Opposed: Teel, Dr. Zottarelli, Cruz, Rogers, Martinez, Fisher

Motion Failed

Item # 2 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)

Logan Sparrow, Interim Development Services Manager, presented Case # A-18-173 presented to the Board of Adjustment and stated the applicant asked for a continuance to January 14, 2019.

Motion

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

Motion: Mr. Neff made a motion for a continuance to January 14, 2019.

Second: Ms. Rogers.

In Favor: Unanimous

Opposed: None

Motion Granted

Mr. Oroian recused himself at 3:23pm and was replaced by Ms. Bragman.

- Item # 3 BOA-18-900007: A request by James Griffin for 1) a waiver from the 12 month time limitation on subsequent applications, 2) a special exception to allow a predominately open fence to be 8' tall along all property lines, 3) a 12' variance from the 15' Type B landscape bufferyard along the east and south property lines to allow for a bufferyard to be as narrow as 3', 4) a 7' variance from the 10' Type A landscape bufferyard along the north property line to allow for a bufferyard to be as narrow as 3', located at 244 West Cevallos Street. Staff recommends Approval. (Council District 1)

Staff stated 30 notices were mailed to property owners within 200 feet, 2 returned in favor, and 0 returned in opposition and no response from the Collins Gardens Neighborhood Association.

James Griffin, Brown and Ortiz 112 E. Pecan, stated a prior request failed to garner 9 votes and since then the Applicant has reached out to the neighborhood and amended their request to provide a buffer and make other changes to the special exception and variances. With these change the neighbors are now in favor.

Motion

Vice Chair Martinez asked for a motion for a waiver from the 12 month time limitation on subsequent applications for case BOA-18-900016, as presented.

Motion: Dr. Zottarelli made a motion to waive the 12 month time limitation on subsequent applications.

Second: Ms. Rogers.

In Favor: Unanimous

Opposed: None

Motion Granted

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900007, as presented.

Motion: Dr. Zottarelli made a motion to approve item BOA-18-900007.

Regarding Appeal No BOA-18-900007, a request for 1) a waiver from the 12 month time limitation on subsequent applications, 2) a special exception to allow a predominately open fence to be 8' tall along all property lines, 3) a 12' variance from the 15' Type B landscape bufferyard along the east and south property lines to allow for a bufferyard to be as narrow as 3', and 4) a 7' variance from the 10' Type A landscape bufferyard along the north property line to allow for a bufferyard to be as narrow as 3', situated at 244 West Cevallos Street, applicant being James Griffin, Brown & Ortiz, P.C.

"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 3' bufferyards are not contrary to public interest as they do not negatively impact any surrounding properties or the general public and will alleviate concerns of separation between the uses of the adjacent properties and the subject property, as well as balancing the owner's needs with the community. As the applicant is not requesting for the complete elimination of the bufferyards, the requests are not contrary to the public interest.

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

Literal enforcement of the 15' bufferyard would make the use of a parking lot impossible for a lot of this size. The Board realizes that some relief is merited in this instance given the size of the lot. With the 3' bufferyard, some separation can be enjoyed by adjacent property owners while also allowing the owner of the subject property to continue the permitting process.

- b. *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 requirements rather than the strict letter of the law. The intent of the bufferyards is to reduce conflicts between adjacent land uses as well as maintain landscaping. In this case, the proposed bufferyards will adhere to the spirit of the ordinance and substantial justice will be done by allowing redevelopment of the vacant property to continue.

- c. *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.

- d. *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 introduction of the 3' bufferyards along the north, south, and east property lines would alleviate concerns of separation between land uses and elimination of landscaping that is essential with the district.

- e. *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 for which the variance is sought is due to the owner rehabilitating a vacant lot with a narrow configuration preventing full use of the property for secure parking. The 3' bufferyards provide some screening of the subject property and adjacent neighboring properties as well as enhance the landscaping of the district."

Second: Ms. Cruz.

In Favor: Unanimous

Opposed: None

Motion Granted

Mr. Oroian reentered the Board of Adjustment meeting replaced by Ms. Bragman.

- Item # 4 BOA-18-900017: A request by Carlos Rodriguez for 1) a special exception to allow up to a 6' privacy fence in the front yard and 2) a variance to allow the use of a plastic fence material, and 3) a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 1008 Edison Drive. Staff recommends Denial. (Council District 1)

Staff stated 34 notices were mailed to property owners within 200 feet, 1 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Carlos Rodriguez, 1008 Edison Drive, requested Interpreter services, stated he has a high fence to keep in dogs in his yard. He also needs the fence for protection and safety. He has vandalized and robbed on many occasions. He has also been threatened with a gun. Mr. Rodriguez asked the Board to approve his request.

The Following Citizens appeared to speak.

Jose Trevino, 1001 Edison Dr. – spoke in favor.

Norma Trevino, 1001 Edison Dr. – spoke in favor.

Motion

Vice Chair Martinez asked for a motion for the Special Exception in case BOA-18-900017, as presented.

Motion: Mr. Oroian made a motion to approve the Special Exception in case BOA-18-900017.

“Regarding Appeal No BOA-18-900017, request for 1) a special exception to allow up to a 6’ privacy fence in the front yard, situated at 1008 Edison Drive, applicant being Carlos Rodriguez.

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 request for up to 6’ tall privacy fence along the east property line and in a portion of the front yard of the property are in harmony with the spirit and purpose of the chapter as the fence is intended to provide privacy and security of the applicant.

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. The up to 6’ tall privacy fence along the east property line and in a portion of the front yard is intended to provide additional privacy of 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.*

Granting the requested special exception 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.

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 up to 6' tall privacy fence along the east property line and in a portion of the front yard would not significantly alter the overall appearance of the district and would be able to provide added protection for the property owner.

E. 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-4 AHOD" Residential Single-Family Airport Hazard Overlay District and permits the current use. The requested special exception will not weaken the general purpose of the district."

Second: Dr. Zotarelli

In Favor: Unanimous

Opposed: None

Motion Granted

Motion

Vice Chair Martinez asked for a motion for the Variance in case BOA-18-900017, as presented.

Motion: Mr. Oroian made a motion to approve the Variance in case BOA-18-900017.

"Regarding Appeal No BOA-18-900017, A request for 2) a variance from the restricted fencing material regulations to allow the use of a plastic fence material not authorized by the UDC's fencing regulations and 3) a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, situated at 1008 Edison Drive, applicant being Carlos Rodriguez.

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 plastic fence material does not impose 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 plastic fence material 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.*

The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. In this case the intent of the code is to allow property owners to secure their property while still proving for safe conditions for motorist and pedestrians. Allowing a 6' tall fence in the front yard, constructed of plastic material, 9' from the curb will not substantially injure the neighboring properties.

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

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

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

The Board finds that the 6' tall fence with plastic material does not alter the essential character of the district.

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

The plight of the owner is due to security and safety concerns."

Second: Neff

In Favor: Oroian, Neff, Teel, Cruz, Rogers, Polendo, Britton, Rodriguez, Fisher

Opposed: Dr. Zottarelli, Martinez

Motion Granted

- Item # 5 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 2 returned in opposition and no response from the Prospect Hill Neighborhood Association.

Jesus Montiel, 3709 West Salinas Street, not present

The Following Citizens appeared to speak.

Kamala Platt, 3910 W. Martin, spoke in opposition.

Motion

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

Motion: Dr. Zottarelli made a motion for a continuance to January 14, 2019.

Second: Ms. Cruz.

In Favor: Unanimous

Opposed: None

Motion Granted

The Board of Adjustment recessed for a break at 4:43pm and reconvened @ 4:49pm.

Ms. Rogers left the meeting and was replaced by Ms. Fisher at 4:49pm.

- Item # 6 BOA-18-900015: A request by Andrew Tinsley for 1) a 27' variance from the 30' setback requirement to allow two separate structures to be 3' away from the east property line and 2) a 27' variance from the 30' setback requirement to allow a new structure to be 3' away from the rear property line, located at 204 Dinn Drive. Staff recommends Approval. (Council District 2)

Staff stated 12 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Andrew Tinsley, 420 Auburn Park, Selma Texas, gave a brief description of his project and yielded to Board questions.

No Citizens appeared to speak.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900015, as presented.

Motion: Mr. Neff made a motion to approve item BOA-18-900015.

Regarding Appeal No BOA-18-900015, a request for 1) a 27' variance from the 30' setback requirement to allow two separate structures to be 3' away from the east property line and 2) a 27' variance from the 30' setback requirement to allow a new structure to be 3' away from the rear property line, situated at 204 Dinn Drive, applicant being Andrew Tinsley.

"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 public interest is represented by setbacks to prevent fire spread and to protect adjacent property owners. The requested 3' rear and 3' side setbacks are not contrary to public interest as there is a large vacant field to the South of the subject property and City-owned drainage to the East. The Board finds that the requests are not contrary to the public interest.

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

A literal enforcement of the ordinance would result in unnecessary hardship as the requested setbacks consume 80% of the lot. Enforcing the full requirement removes developable space which leaves the project with insufficient space to develop. A variance is required to develop this property.

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

The intent of rear and side setbacks 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 proposed setback reductions will not injure the rights of adjacent property owners as a large vacant field is to the South of the subject property and City owned drainage to the East. These requests observe the intent 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 requested variances will not authorize the operation of a use on the subject property other than those specifically permitted 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 3' rear setback and the 3' side setback would allow for the development of the structures, which will enhance the property. It is highly unlikely that the requested variances will detract from the essential character of the community, especially considering that the area has some commercial and residential and multiple vacant lots and because there are no nearby uses to be harmed.

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 the subject property is only 70' wide which restricts the owner's ability to develop without reducing the 30' side setback requirement. The property is narrow and warrants some relief to allow for development."

Second: Rodriguez

Mr. Oroian made a friendly Amendment to change from a 27 foot variance to a 25 foot variance. There was no second, motion died.

In Favor: Unanimous

Opposed: None

Motion Granted

Item # 7 BOA-18-900012: A request by Wayne German for a 4'6" variance from the 5' side setback requirement to allow a carport to be 6" from the side property line, located at 1729 San Francisco Street. Staff recommends Denial. (Council District 1)

Staff stated 35 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition and no response from the Los Angeles Heights Neighborhood Association.

Wayne German, 1729 San Francisco, stated he will put gutters on this carport to help protect his vehicles and property. Mr. German also showed pictures and videos and receipts of damage.

The Following Citizens appeared to speak.

Fern Dallas, 1733 San Francisco, spoke in opposition.

Joel Dallas, 1733 San Francisco, spoke in opposition.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900012, as presented.

Motion: Mr. Oroian made a motion to approve item BOA-18-900012.

Regarding Appeal No BOA-18-900012, a request for a 1' variance from the 3' side setback requirement to allow a carport to be 6" from the side property line, situated at 1729 San Francisco Street, applicant being Wayne German.

"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 public interest is represented by setbacks to prevent fire spread and to protect adjacent property owners. The requested 3' side setback is not contrary to public interest as the applicant intends to install gutters to divert drainage away from the adjacent property owner. The Board finds that the requests are not contrary to the public interest.

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

A literal enforcement of the ordinance would result in unnecessary hardship as the requested setback reduction would create a nonconforming carport. Enforcing the full requirement removes developable space which leaves the project with insufficient space to retain a viable carport. A variance is required to develop this property.

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

The intent of side 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 proposed setback reductions will not injure the rights of adjacent property owners as long as gutters are installed to divert drainage away from the adjacent property owner. The request observes the intent 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 requested variances will not authorize the operation of a use on the subject property other than those specifically permitted 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 1" side setback would allow for the continued use of the carport and protect the property from drainage issues that have affected Mr. German's foundation. It is unlikely that the requested variance will detract from the essential character of the community, especially considering that the area has carports that are similar in location and scale.

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 requested variance will mitigate water issues for the property owner.

Second: Dr. Zottarelli

In Favor: Unanimous

Opposed: None

Motion Granted

Item # 8 BOA-18-900019: A request by Christopher Peel for a 3' variance from the 5' side setback requirement, to allow a carport to be 2' from the side property line, located at 327 Burnside Drive. Staff recommends Approval. (Council District 10)

Staff stated 22 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Christopher Peel, 327 Burnside Drive, stated he would like to build a two car carport and gave examples of others homes in the neighborhood with carports.

No Citizens appeared to speak.

Motion

Vice Chair Martinez asked for a motion for item BOA-18-900019, as presented.

Motion: Mr. Rodriguez made a motion for approval on case BOA-18-900019.

Regarding Appeal No BOA-18-900019, a request for a 3' variance from the 5' side setback requirement to allow a carport to be 2' from the side property line, located at 327 Burnside Drive, applicant being Christopher Peel.

"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 contrary to the public interest. Allowing the structures to be 2' from the side property line will leave room for maintenance, and provides ample space for rainwater runoff and fire rating concerns.

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

A literal enforcement of the ordinance would result in the owner removing the completed carport from the side property which would result in unnecessary financial 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, 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 the code have been met.

- 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 the carport, as built, does not detract from the essential character of the district and does not substantially injure the appropriate use of adjacent conforming 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.*

Allowing a 2' variance from the 5' side setback to allow the carport to be 3' from the side property line would alleviate concerns of injuring the appropriate use of adjacent conforming properties while also eliminating the hardship of dismantling the carport altogether."

Second: Mr. Neff

In Favor: Unanimous

Opposed: None

Motion Granted

- Item # 9 BOA-18-900018: A request by Hector Gonzalez for 1) a 4'11" variance from the 5' side setback requirement to allow an attached front porch to be 1" from the west side property line, and 2) a 4'11" from the 5' setback requirement to allow an attached carport to be 1" from the west side property line, and 3) a request for a 45% variance from the 50% front yard impervious cover limitation to allow 95% of the front yard to be covered in impervious cover, situated at 122 Pharis Street. Staff recommends Denial. (Council District 6)

Staff stated 39 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition and no response from the Community Workers Council Neighborhood Association.

Richard Gomez, 122 Pharis, stated he was brought into this project after it had begun and pulled all proper permits. In that process he discovered the other violations and wish to correct them before continuing with the project.

No Citizens appeared to speak.

Vice Chair Martinez asked for a motion for item #3 for BOA-18-900018, as presented.

Motion

Motion: Mr. Polendo made a motion for approval for item #3 only for BOA-18-900018.

Regarding Appeal No BOA-18-900018, a request for 3) a request for a 45% variance from the 50% front yard impervious cover limitation to allow 95% of the front yard to be covered in impervious cover, situated at 122 Pharis Street, applicant being Hector Gonzalez.

"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 variances are not contrary to the public interest as the structures will provide room for maintenance, other properties within the community benefit from a similar carport and porch designs. The subject property retains the water into the open green area located within the property.

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

Literal enforcement would result in an unnecessary hardship as the home does not have a garage and there is not adequate coverage for vehicles on the property and the owner would have to remove about 45% of concrete in the front yard.

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 requested setback will still provide for a safe development pattern. The intent of the impervious coverage limitation requirements is to prevent water flooding and to preserve the character of the community.

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.*

If the requested variances are approved, the carport and porch will not have a negative impact on the neighboring properties as it does not interfere with Clear Vision. The impervious coverage mitigates the amount of storm water retained on-site. Therefore, the requested variances will not injure adjacent property owners.

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 site is that the house was not built with a garage and the previous carport did not provided enough coverage for onsite protection and water onsite would still be mitigated with the impervious coverage exceeding the 50% limitation.

Second: Mr. Britton

In Favor: Unanimous

Opposed: None

Motion Granted

Vice Chair Martinez asked for a motion for item #1 and #2 for BOA-18-900018, as presented.

Motion

Motion: Mr. Polendo made a motion for approval for item #1 and #2 for BOA-18-900018.

Regarding Appeal No BOA-18-900018, a request for 1) a 4'11' variance from the 5' side setback requirement to allow an attached front porch to be 1" from the west side property line and 2) a 4'11' from the 5' side setback requirement to allow an attached carport to be 1" from the west side property line, situated at 122 Pharis Street, applicant being Hector Gonzalez.

"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:

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

The variances are not contrary to the public interest as the structures will provide room for maintenance, other properties within the community benefit from a similar carport and porch designs. The subject property retains the water into the open green area located within the property.

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

Literal enforcement would result in an unnecessary hardship as the home does not have a garage and there is not adequate coverage for vehicles on the property and the owner would have to remove about 45% of concrete in the front yard.

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 requested setback will still provide for a safe development pattern. The intent of the impervious coverage limitation requirements is to prevent water flooding and to preserve the character of the community.

- 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.*

If the requested variances are approved, the carport and porch will not have a negative impact on the neighboring properties as it does not interfere with Clear Vision. The impervious coverage mitigates the amount of storm water retained on-site. Therefore, the requested variances will not injure adjacent property owners.

- 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 site is that the house was not built with a garage and the previous carport did not provided enough coverage for onsite protection and water onsite would still be mitigated with the impervious coverage exceeding the 50% limitation.”

Second: Mr. Britton

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

Opposed: Martinez

Motion Granted

Approval of Minutes

Item # 10 Consideration and Approval on the Minutes from December 3, 2018.

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

Director's Report: Election of officers to take place in January

Adjournment

There being no further business, the meeting was adjourned at 6:20 p.m.

APPROVED BY: _____ OR 
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____


Executive Secretary

DATE: 1-15-19