

City of San Antonio



Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

March 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. Schaufele | Vacant

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

- **Roll Call**
- **Present: Dr. Zottarelli, Mr. Rodriguez, Schaufele, Neff, Cruz, Manna, Britton, Teel, Oroian, 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

- Item # 2 BOA-19-10300018: a request by Evita Morin for a 20' variance from the maximum 35' front setback requirement to allow a new building to be 55' away from the front property line, located at 2803 Mossrock. Staff recommends Approval. (Council District 1)

Staff stated 21 notices were mailed to property owners within 200 feet, 1 returned in favor, and 1 returned in opposition and no registered neighborhood association.

Craig Magmahan, 2803 Moss Rock, gave a short presentation and discussed how permits were pulled. Upon further due diligence it was discovered another variance was needed.

No Citizens appeared to speak.

Motion

Chair Martinez asked for a motion for item # BOA-19-10300018 as presented.

Motion: Dr. Zottarelli made a motion to approve the case BOA-19-10300018

Regarding Appeal No BOA-19-10300018, a request for a 20' variance increase from the maximum 35' front setback requirement to allow **one** new buildings to be 55' away from the front property line, situated at 2803 Mossrock, applicant being Evita Morin.

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 be 55' from the front property line and will not injure the rights of the adjacent property owners. All other buildings along this street are located at 55' from the front property line. This request will allow for parking to be located in the front yard as exists on adjacent buildings.

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

Literal enforcement of the ordinance would result in an unnecessary hardship as the existing site has a large retaining wall and the proposed project of a single-story structure will be in line with the larger building and in the similar visible line of building along Mossrock.

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 front setback is to create a more defined streetscape by locating structures closer to the front property line. The Board finds that allowing the building to be 20' further from the front is indiscernible to passersby.

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.*

As there are buildings closer than 35' from the property line, the request to increase the maximum front setback does not negatively impact neighboring properties as adjacent properties are all at 55' away from the front property line. It is unlikely that adjacent property would be harmed by the request.

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 current 35' maximum setback for 0-1.5 zoning would require the new buildings to be closer to the street than other adjacent office structures creating a unique site situation for the view corridor along Mossrock and is not available for the lower portion of the site due to the existing retaining wall and playfield.

Second: Rodriguez

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

Opposed: None

Motion Granted

- Item # 3 BOA-19-10300015: A request for a 5' variance from the 20' rear setback requirement to allow for a sunroom to be 15' away from the rear property line, located at 4839 Clemson Street. Staff recommends Approval. (Council District 8)

Staff stated 34 notices were mailed to property owners within 200 feet, 2 returned in favor, and 0 returned in opposition and no registered neighborhood association.

Herbert Hernandez wished to build a sunroom for his family on the existing foundation and asked for the Boards approval.

No Citizens appeared to speak

Motion

Chair Martinez asked for a motion for item BOA-19-10300015 as presented.

Mr. Oroian made a motion for BOA-19-10300015 for approval.

Regarding Appeal No BOA-19-10300015, a request for a 5' variance from the 20' rear setback requirement to allow a sunroom to be 15' from the rear property line, situated at 4839 Clemson Street, applicant being Herbert Hernandez.

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 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 proposed sunroom will be 15' away from the rear property line. 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.*

A literal enforcement of the ordinance would result in unnecessary hardship by requiring the proposed sunroom to be moved to meet the rear setback. The applicant merely wants to build a sunroom over an existing concrete patio in the rear of the property.

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

The intent of rear setback is to create an open area without crowding of structures and to establish uniform development standards to protect the rights of property owners. The proposed sunroom will not significantly disrupt uniformity and will not injure the rights of adjacent property owners.

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 sunroom will not detract from the neighborhood as the sunroom will not deviate from the existing side setbacks and further, the sunroom is unlikely to go noticed. The proposed sunroom 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 in this case is that the sunroom cannot be located anywhere else. The owner wants to construct this sunroom so that they can have an outdoor space at the same level as the foundation of their home so as to reduce the risk tripping or falling down.

Second: Ms. Cruz

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

Opposed: None

Motion Granted

Item #4 BOA-19-10300019: A request for a 5' variance from the 20' rear setback requirement to allow an addition to be 15' away from the rear property line, located at 7110 Blazewood. Staff recommends Approval. (Council District 6)

Staff stated 27 notices were mailed to property owners within 200 feet, 13 returned in favor, and 0 returned in opposition and 1 response in favor from outside the 200 sq. foot radius. No registered neighborhood association.

Faye Fegley, stated she wished to build an addition. During the permit process it was discovered a variance was needed in order to continue the project.

Motion

No Citizens appeared to speak

Chair Martinez asked for a motion for case BOA-19-10300019, as presented.

Motion: Mr. Rodriguez made a motion for BOA-19-10300019 for approval.

Regarding Appeal No BOA-19-10300019, a request for a 5' variance from the 20' rear setback requirement to allow an addition to be 15' from the rear property line, situated at 7110 Blazewood, applicant being Faye and Don Fegley.

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:

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 proposed addition will be 15' away from the rear property line. 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.*

A literal enforcement of the ordinance would result in unnecessary hardship by requiring the proposed addition to be moved to meet the rear setback.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The intent of rear setback is to create an open area without crowding of structures and to establish uniform development standards to protect the rights of property owners. The proposed addition will not significantly disrupt uniformity and will not injure the rights of adjacent property owners.
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 addition will not detract from the neighborhood as the addition will not deviate from the existing side setbacks and further, the rear addition is unlikely to go noticed. The proposed addition 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.*
The unique circumstance in this case is that there is not enough space within the required setbacks. This issue is not merely financial in nature.

Motion: Mr. Neff made a motion to approve the case BOA-19-10300007

Second: Mr. Oroian

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

Opposed:

Motion Granted

The Board of Adjustment recessed at 1:45pm and returned at 1:55pm

- Item # 5 BOA-19-10300016: A request for a special exception to allow a total of 1 short term rental (Type 2) units, located at 212 Camargo. Staff recommends Denial. (Council District 1)

Staff stated 38 notices were mailed to property owners within 200 feet, 0 returned in favor, and 6 returned in opposition and the Lavaca Neighborhood Association is opposed (2 are outside of the 200 sq. ft. radius)

Louis A. Wooten II, 18402 Forrest Dale Dr. Grapevine Texas, played a video for the Board and gave a history of the his family and his property. Mr. Wooten answered the Boards questions and asked for their approval.

The Following Citizens appeared to speak

Jody Bailey Newman, 228 Barrera, spoke in opposition
Cherise Rohr Allegrini, 122 Devine St, spoke in opposition
Cosima Colvin, 817 W. Magnolia, spoke in opposition
Tony Garcia, 243 E. Huisache, read a letter from the Tier One Group in opposition
Colleen Wagas, 163 Tart, spoke in opposition
Billie Lawrence, 318 Barrera, spoke in opposition
Eugene Mark, 5018 Kentview, spoke in opposition
Mark Ripley, 212 Camargo, spoke in support
Patty Ripley, 212 Camargo, spoke in support
Jane Wooten, 13110 Parkman, spoke in support

Chair Martinez asked for a motion for case BOA-19-10300016, as presented.

After further discussions and questions from Dr. Zottarelli with the applicant a motion was made.

Motion: Dr. Zottarelli made a motion to continue case BOA-19-10300016 to April 15, 2019.

Second: Ms. Cruz

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

Opposed: Schaufele, Neff

Motion Granted

Item # 6 BOA-19-10300020 A request by Richard McKinney for a special exception, as described in Section 35-374.01, to allow 3 additional short term rental (Type 2) units, located at 11014 Belair Drive. Staff recommends Denial. (Council District 9)

Staff stated 18 notices were mailed to property owners within 200 feet, 7 returned in favor, and 1 returned in opposition and no registered neighborhood association.

Richard McKinney, 3134 Turtle Creek, gave a description of the property and his future plans. He bought as a commercial property and wishes to the most for his money and asked the board to approve his request for a total of 2 short term rentals.

The Following Citizens appeared to speak.

Collen Waguespack, 1603 Tarton, spoke in opposition
Eugene Mark, 5018 Kenton View, spoke in opposition
Vicki Ferguson, 1606 Bauchamp, spoke in opposition
Cosima Colvin, not present to speak

Motion

Chair Martinez asked for a motion for item BOA-19-10300020, as presented.

Motion: Mr. Teel made a motion to approve item BOA-19-10300020

Regarding Appeal No BOA-19-10300020, a request for a special exception to allow a total 3 additional short term rental (Type 2) units, situated at 11014 Belair Drive, applicant being Richard McKinney.

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.

There is no record of previous Code Enforcement issues in this property. The property appears to be well kept, there is ample off-street parking of 9 spaces, and nothing about the quadraplex places it out of character with other residential uses in the immediate vicinity. This area has a combination of multi-family dwellings and commercial uses.

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

The Board can find no record of previous Code Enforcement activities on this property. It should be noted that, as this is the only residential structure on the blockface, and if this structure was located on a typical blockface of 16 residential structures, two Type-2 STRs would be permitted by right.

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 the only residential structure on the blockface.

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

The structure already exists with adequate utilities and 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 a total of four (4) 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 residential use and is the only residential structure on the blockface. From the street, the complex is not unlike other structures in the community.

Second: Mr. Manna

Motion: Teel, after further discussion with the applicant a motion was made for a total of **2 Type-2 short term rentals for this property.**

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

Opposed: None

Motion Granted

The Board of Adjustment recessed for a break at 3:40pm and reconvened at 3:55pm

Item # 8 BOA-19-10300022 a request by Tobias Stapleton for an appeal of the Historic and Design Review Commission's denial of a request to demolish a historic structure, located at 205 Ostrom. Staff recommends Denial. (Council District 1)

Staff stated 34 notices were mailed to property owners within 200 feet, 0 returned in favor, and 22 returned in opposition.

Toby Stapleton, Applicant, 205 Ostrom Dr, stated he has provided all documentation and have worked with staff on the demolition request. Mr. Stapleton stated 3 structural engineers condemned the building. Then introduced Scott Mortensen Structural Engineer

Scott Mortensen, 195 West Arrow Head, Structural Engineer, stated after inspecting the building gave all his reasons for condemning the structure and answered the Boards questions.

Corey Edwards, Office of Historical Preservation, gave an overview of the case and their reason regarding this case. Mr. Edwards answered the Boards questions.

The Following Citizens appeared to speak.

Ricard Reed, 615 River Road, spoke in opposition
Raleigh Wood, 109 Lindell, spoke in opposition
Kim Wood, 109 Lindell, spoke in opposition
Roy Sweers, 102 Armour, spoke in opposition
Ed Piner, 143 Magnolia Dr, yielded time to Mr. Sweers
Jim Cullum, 120 Anastacia Place, spoke in opposition
George Nash, 842 Magnolia, yielded time to Jim Cullum
Patricia Pratchett, yielded time to Jim Cullum
Blanquita Sullivan, 831 Magnolia, spoke in opposition
Leslie Vasquez, spoke in opposition
Ana Ramirez, yielded time to Ms. Vasquez
Mark Cannon, 112 E Pecan St, yielded time to Ms. Vasquez

John Hertz, spoke in opposition
Darla Piner, yielded time to Mr. Hertz
Myte Moore, 603 River Road, yielded time to Mr. Hertz

Motion

Chair Martinez asked for a motion for item BOA-19-10300022, as presented.

Motion: Dr. Zottarelli made a motion to approve item BOA-19-10300022

Regarding Appeal No BOA-19-10300022, request for an appeal of the Historic and Design Review Commission's denial of a request to demolish a historic structure, situated at 205 Ostrom, applicant being Tobias Stapleton.

I move that the Board of Adjustment grant the applicant's request for the appeal 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: The applicant is correct in asserting that the Historic Preservation Officer incorrectly denied the applicant's request for a demolition permit.

Second: Mr. Teel

In Favor: None

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

Motion Failed

Approval of Minutes

Item # 11 Consideration and Approval on the Minutes from March 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 5:25p.m.

APPROVED BY: Roger F. Matney OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: W. L. [Signature] DATE: April 3, 19
Executive Secretary