

City of San Antonio



Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

June 1, 2020

1:00PM

Videconference

Board of Adjustment Members

A majority of appointive Members shall constitute a quorum.

Roger F. Martinez, District 10, Chair
Dr. Lisa Zottarelli, District 1, Vice Chair
Donald Oroian, District 8, Pro-Tem

Vacant, District 2 | Andrew Menchaca, District 3 | George Britton, District 4 |
Maria Cruz, District 5 | Seth Teel, District 6 | Phillip Manna, District 7 |
Kimberly Bragman, District 9 | Andrew Ozuna, Mayor

Alternate Members

Cyra M. Trevino | Anne Englert | Arlene B. Fisher | Vacant |
Seymour Battle III | Kevin W. Love | Jonathan Delmer

1:03 P.M. - Call to Order

- **Roll Call**
- **Present:** Zottarelli, Menchaca, Cruz, Teel, Manna, Bragman, Ozuna, Oroian, Martinez, Delmer, Fisher
- **Absent:** Britton

2 Translators from SeproTec were present to assist with translating.

**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*

Item #1 **BOA-20-10300003**: A request by Brian Kolodziej for a 2' special exception from the maximum height restriction of 6' to allow a fence to be up to 8' tall in the side and rear yard of property, and a 6" special exception from the maximum height restriction of 6' to allow a fence to be up to 6'6" tall behind the front facade facing the street, located at 3115 Sable Creek. Staff recommends Approval. (Council District 9) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 17 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. HOA not registered with the City of San Antonio.

Brian Kolodziej, 3115 Sable Creek – Spoke of request for special exception for fence. He replaced the old fence and made it higher for added safety.

Submitted response form

Donald & Julia Kane, 3123 Sable Creek – In opposition

Stable Creek HOA – In favor

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Motion: Chair Martinez asked for a motion for item BOA-20-10300003, as presented

Mr. Oroian made a **motion** for BOA-20-10300003 for approval

“Regarding Case No. BOA-20-10300003, I move that the Board of Adjustment grant 1) a 2’ special exception to allow a fence to be up to 8’ tall in the side and rear yard of property, and 2) a 6” special exception to allow a fence to be up to 6’6” tall in the side of property behind the front façade facing the street, situated at 3115 Sable Creek, applicant being Brian Kolodziej, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that:

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

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

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

In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. An 8’ tall closed fence along a portion of the side and rear property lines and a 6’6” tall solid fence in the side of property behind the front façade were built to provide additional security for the applicant’s property. This is not contrary to the public interest.

3. *The neighboring property will not be substantially injured by such proposed use.*
The fence will create enhanced security and privacy for the subject property and is highly unlikely to injure adjacent properties. The material and style of the fence is similar to other fences and is not noticeable from the right-of-way. Further, the fencing does not violate Clear Vision standards.
4. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*
The fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.
5. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*
The current zoning permits the current use. The requested special exception will not weaken the general purpose of the district.”

Second: Ms. Bragman

In Favor: Oroian, Bragman, Zottarelli, Fisher, Menchaca, Delmer, Cruz, Teel, Manna, Ozuna, Martinez

Opposed: None

Motion Granted

Item # 2 **BOA-20-10300038:** A request by Fernando Garcia for 1) a 2' special exception from the 6' maximum fence height to allow a solid screen fence to be up to 8' tall within the rear yard and 2) a 3' variance, from the 5' maximum fence height for combined or predominately open fences, to allow a solid screen fence to be up to 8' tall along the side property line within the front yard and 3) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 139 Valdez. Staff recommends Denial with Alternate Recommendation. (Council District 1) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 32 notices were mailed to property owners within 200 feet, 2 returned in favor, and 4 returned in opposition. The Tobin Hill Community Neighborhood Association agrees with staff recommendation.

Fernando Garcia, 139 Valdez – Needs fence for security. There are lots of people who pass his home while intoxicated or fighting. The fence helps him feel safer.

Submitted Public Comments

Rebecca Rodriguez, 126 Valdez – In favor

Tobin Hill Community Neighborhood Association – In opposition

Mohamed A. Ali, 128 Valdez – In opposition

Guadalupe Garcia, 131 Valdez – In opposition

Martinez JR & Elaines Cleto G., 467 E. French Pl. – In favor

Martha Burke, 135 Valdez – In opposition

John Burke, 135 Valdez – In opposition

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Motion: Chair Martinez asked for a motion for item BOA-20-10300038, as presented

Dr. Zottarelli made a **motion** for BOA-20-10300038 for approval

“Regarding Case No. BOA-20-10300038, I move that the Board of Adjustment grant 1) a special exception to allow a privacy fence to be up to 8’ tall along the sides property line within the rear yard, and 2) a special exception to allow a privacy fence to be up to 8’ tall along the side property line within the front yard, situated at 139 Valdez, applicant being Fernando Simon Garcia Sr, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The special exception will be in harmony with the spirit and purpose of the chapter.*
The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height is intended to provide safety and privacy of the applicant’s property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.
2. *The public welfare and convenience will be substantially served.*
In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. An 8’ tall closed fence along the side property lines within the rear yard, as well as along the side property line within the front yard will provide additional security for the applicant’s property. This is not contrary to the public interest.
3. *The neighboring property will not be substantially injured by such proposed use.*
The fence will create enhanced security and privacy for the subject property and is highly unlikely to injure adjacent properties. The material and style of the fence is similar to other fences and is not noticeable from the right-of-way.
4. *The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*
The fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.
5. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*
The current zoning permits the current use of a single-family home. The requested special exceptions will not weaken the general purpose of the district.

Second: Mr. Oroian

In Favor: Zottarelli, Oroian, Fisher, Menchaca, Delmer, Cruz, Teel, Manna, Bragman, Ozuna

Opposed: None

Chair Martinez was unable to vote due to technical difficulties

Motion Granted

Item #3 **BOA-20-10300025:** A request by Michael A. Perez for a variance from the Beacon Hill Neighborhood Conservation District (NCD-5) design standards to allow a minimum vertical to horizontal dimension ratio of 1:1, single pane light division for street-facing windows, located at 1002 & 1006 West Magnolia Avenue and 715 & 719 Grant Avenue. Staff recommends Denial. (Council District 1) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 23 notices were mailed to property owners within 200 feet, 3 returned in favor, and 2 returned in opposition. Beacon Hill Neighborhood Association in opposition.

Michael & Megan Perez, 330 Mission St. – Seeking variance for the design of windows to maintain privacy for residents of the properties.

Submitted Public Comments

Jacob Crumrine, 1002 W. Magnolia – In favor

Ryan McDermott, 1006 W. Magnolia – In favor

Justin Nichols, 1007 W. Magnolia – In favor

Brunella Bruni, 1010 W. Magnolia – In opposition

Cosima Colvin, Beacon Hill Area N.A. – Gave presentation, In opposition

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Motion: Chair Zottarelli asked for a motion for item BOA-20-10300025, as presented

Mr. Teel made a **motion** for BOA-20-10300025 for approval

“Regarding Case No. BOA-20-10300025, I move that the Board of Adjustment grant a request for a zoning variance from the Beacon Hill Neighborhood Conservation District (NCD-5) design regulations to allow a minimum vertical to horizontal dimension ratio of 2:1 and at least a 1-over-1 light division for street-facing windows, situated at 1002 & 1006 West Magnolia Avenue and 715 & 719 Grant Avenue, applicant being Michael A. Perez, 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 location of the lot, granting the variance still provides adequate accessibility to light, air, and open space. In this case, the variance is requested to allow a shorter window to provide privacy to the homeowner.
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 due to the structures and design elements already being constructed. The applicant has also installed false divisions to satisfy the 1-over-1 light division aspect of the Beacon Hill NCD Design Standards.
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 Beacon Hill Design Standards is to aesthetically preserve the character of the neighborhood. Given the construction and design of the units, all intents of this law will be observed if approved.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*
The variance will not authorize the operation of a use other than those uses specifically authorized by the district.
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
This variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district. Specifically, the variance would not place the structure out of character within the community.
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*
The unique circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature. Given the other design standards being consistent with the Neighborhood Conservation District, the requested variance is in line with the character of the neighborhood.”

Second: Mr. Oroian

In Favor: Teel, Oroian, Delmer, Ozuna

Opposed: Fisher, Menchaca, Cruz, Manna, Bragman, Zottarelli

Chair Martinez unable to comment/vote due to technical difficulties.

Motion Failed

Dr. Zottarelli called for the Board of Adjustment to take a recess at 3:16 PM. The Board of Adjustment resumed at 3:27 PM.

Item #4 **BOA-20-10300043:** A request by Priscilla Loker for a 3' variance from the required 5' side setback to allow an accessory detached dwelling unit to be 2' from the side property line, located at 232 Brightwood Place. Staff recommends Approval. (Council District 10) (Dominic Silva, Senior Planner (210) 207-0120, Dominic.Silva@sanantonio.gov, Development Services Department)

Staff stated 14 notices were mailed to property owners within 200 feet, 3 returned in favor, and 0 returned in opposition. No response from the Oak Park Northwood Neighborhood Association.

Angel Whitley, Representing Ms. Loker, 232 Brightwood Pl. – Requesting variance to convert the existing two car garage to a detached dwelling unit for her Daughter.

Submitted Public Comments

Shelby Jones, 206 Calumet –In favor

Christine Young, 222 Brightwood – In favor

John & Rebecca Huston, 232 Brightwood– In favor

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Motion: Chair Martinez asked for a motion for item BOA-20-10300043 as presented

Mr. Ozuna made a **motion** for BOA-20-10300043 for approval.

“Regarding Case No. BOA-20-10300043, I move that the Board of Adjustment grant a request for a 3' variance from the required 5' side setback to allow an accessory detached dwelling unit to be 2' from the side property line, situated at 232 Brightwood Place, applicant being Priscilla Loker, 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 accessory detached dwelling unit provides adequate habitable living space while also maintaining a rear and side setback for accessibility to light, air, and open space. Staff 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 community is characterized by detached accessory structure, built circa 1949, within setbacks established after their development. Literal enforcement of the ordinance would result in unnecessary hardship by prohibiting the owner to utilize the accessory detached dwelling unit as a habitable space as it was intended.

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

The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. The intent of the setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. All intents of this law will be observed if approved.

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

No uses other than those allowed within the district will be allowed with this variance.

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

This variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district. Specifically, the structures are located within the rear of the primary residence and not visible from the front property. Further, these structures have been in existence circa 1949 and have no record of code enforcement history or citizen complaints. The structures the variances are requested for follows a district norm of reduced setbacks built within the area.

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

The unique circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature. The character of reduced lot sizes within the district is uniform, leaving little room for proper building setbacks. This is created by the proliferation of older, outdated substandard lots.

Second: Ms. Cruz

In Favor: Ozuna, Cruz, Zottarelli, Fisher, Menchaca, Delmer, Teel, Manna, Oroian, Bragman, Martinez

Opposed: None

Motion Granted

Item #5 **BOA-20-10300044:** A request by Bobby Herrera for 1) a 10' variance from the required 20' rear setback to allow an attached addition to be 10' from the rear property line, 2) a 10" variance from the required 10' front setback to allow an attached addition to be 9'2" away from the front property line, and 3) a 2,500 square foot variance from the 5,000 square foot minimum lot size requirement to allow a home to be located on a 2,500 square foot lot, located at 411 Muncey. Staff recommends Approval. (Council District 2) (Dominic Silva, Senior Planner (210) 207-0120, Dominic.Silva@sanantonio.gov, Development Services Department)

Staff stated 24 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition, 1 in opposition outside the 200' buffer. No response from the Dignowity Neighborhood Association.

Bobby Herrera, 411 Muncey – Requesting variance to bring property into compliance due to lot size.

Submitted Public comment

Sanjuanita Saldana, 11902 Legend Trail – In opposition

The Board asked the applicant questions concerning the request. The Applicant responses were heard by the board as well as other testimonies offered, followed by a discussion among board members before the vote.

Motion: Chair Martinez asked for a motion for item BOA-20-10300044, as presented

Mr. Manna made a **motion** for BOA-20-10300044 for approval.

“Regarding Case No. BOA-20-10300044, I move that the Board of Adjustment grant a request for 1) a 10' variance from the required 20' rear setback to allow an attached addition to be 10' from the rear property line, 2) a 10" variance from the required 10' front setback to allow an attached addition to be 9'2" away from the front property line, and 3) a 2,500 square foot variance from the 5,000 square foot minimum lot size requirement to allow a home to be located on a 2,500 square foot lot, situated at 411 Muncey, applicant being Bobby Herrera, 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 attached addition provides adequate habitable living space, a modest increase in square footage, while also maintaining a rear and side setback for accessibility to light, air, and open space. Staff 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 community is characterized by historic principal structures that are relatively tight on living quarters within the area. Literal enforcement of the ordinance would result in unnecessary hardship by prohibiting the owner to utilize the small lot to its potential.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
The spirit of the ordinance is the intent of the code, rather than the strict letter of the law. The intent of the setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. All intents of this law will be observed if approved.
4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.*
No uses other than those allowed within the district will be allowed with this variance.
5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*
This variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district. Specifically, how the additions were built, there is no visible difference from any other residence within the area. Further, these structures have been in existence circa 1920; renovations and expansions will be necessary. The additions the variances are requested for follows a district norm of reduced setbacks built within the area.
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*
The unique circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature. The character of reduced lot sizes within the district is uniform, leaving little room for proper building setbacks. This is created by the proliferation of older, outdated substandard lots.”

Second: Ms. Bragman

In Favor: Manna, Bragman, Zottarelli, Fisher, Delmer, Cruz, Teel, Oroian, Ozuna, Martinez

Opposed: Menchaca

Motion Granted

Item #6 Consideration and approval of the May 18, 2020 Board of Adjustment Minutes.

Motion: Chair Martinez asked for a motion for approval of the May 18, 2020 minutes as presented.

Mr. Oroian made a **motion** for approval of May 18, 2020 minutes.

Second: Mr. Manna


In Favor: Oroian, Manna, Zottarelli, Fisher, Menchaca, Delmer, Cruz, Teel, Bragman, Ozuna, Martinez

Minutes Approved

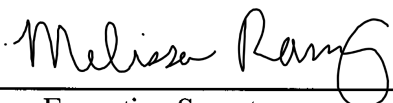
Staff mentioned the rest of the summer Board of Adjustment meetings will be held by videoconference.

Adjournment

There being no further business, the meeting was adjourned at 4:00 p.m.

APPROVED BY: _____ OR  _____
Chairman Vice-Chair

DATE: 12-16-2020

ATTESTED BY:  _____ DATE: 12/16/2020
Executive Secretary