

City of San Antonio



Board of Adjustment Minutes

Development and Business Services
Center
1901 South Alamo

November 16, 2020

1:00PM

Videoconference

Board of Adjustment Members

A majority of appointive Members shall constitute a quorum.

Roger F. Martinez, District 10, Chair
Donald Oroian, District 8, Vice Chair
Andrew Ozuna, Mayor, Pro-Tem

Anisa Schell, District 1 | 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

Alternate Members

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

1:04 P.M. - Call to Order

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

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 **(Continued from 11/2/2020) BOA-20-10300086:** A request by Lisa McCorquodale-Robalin for a Special Exception to allow one (1) Type 2 Short Term Rental, located at 430 East Myrtle Street. Staff recommends Denial. (Council District 1) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 37 notices were mailed to property owners within 200 feet, 9 returned in favor, and 2 returned in opposition, 1 in favor outside 200' notification area. The Tobin Hill Community Association is in opposition.

Lisa McCorquodale-Robalin, 428 East Myrtle St. – Requesting Special exception for Type 2 Short Term Rental. The home has been in the family for years. As they live next door, it is easier for them to maintain as a short-term rental.

Submitted Public Comment

Martin F. Kushner, 405 E Myrtle St – In opposition
Emma & Daniel Eicher, 403 Gillespie St – In favor
William T. Hoover, 514 E Park Ave – In opposition
Cody Doege, 325 E Myrtle – In favor
Chad Walling, 325 E Myrtle – In favor
Kell & Marcela Bates, 505 E Park Ave – In favor
Frederica Kushner, 405 E Myrtle St – In opposition
Rachel O'Hern, 503 E Myrtle – In favor
Tobin Hill Comm. Assoc., Lynn Knapik – In opposition
Bo Brockman, 509 E Park – In opposition
Richard Galik, 517 E Park Ave – In favor
Casey Gillespie & Kevin Frankel, 502 E Myrtle – In favor
David Medford, 511 E Myrtle St – 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.

Chair Oroian asked for a motion for item BOA-20-10300086 as presented

Ms. Schell made a **motion** for BOA-20-10300086 for approval

“Regarding Case No. BOA-20-10300086, I move that the Board of Adjustment grant a special exception to allow for (1) Type 2 short term rental unit, situated at 430 East Myrtle Street, applicant being Linda McCorquodale-Robalin, 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 not materially endanger the public health or safety.*
The Board finds that the request to operate a short term rental is unlikely to materially endanger the public health, safety, or welfare. There is nothing obvious that would distinguish a short term rental versus a long term rental at this facility.
2. *The special exception does not create a public nuisance.*
The Board finds that there are a total of forty (40) residential units on this blockface and the special exception would permit a total of seven (7) Type 2 short term rentals, resulting in 17.5% of the blockface. The percentage is not much greater than what is permitted, and with the applicant residing on the abutting property this allows reason to believe a public nuisance seems unlikely to be created.
3. *The neighboring property will not be substantially injured by such proposed use.*
The neighboring properties consist of single-family residences and the subject property is located in close proximity to the commercial corridor of North St. Mary's and McCullough Avenue. The applicant also resides on the neighboring property to the west. This unique scenario does not cause reason to believe it will substantially injure neighboring property as a Type 2 Short Term Rental.
4. *Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary faculties have been or are being provided.*
The subject property provide off-street parking and appears to have adequate utilities, access, and open space.
5. *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 does not currently hold a Short Term Rental Permit and does not have any history of revocation, citations, or convictions for violations of Chapter 16.
6. *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 subject property is located near North St. Mary's Street and in close proximity to commercial, recreational, and other residential uses. With the property owner providing off-street parking and maintaining it from the neighboring property, the special exception does not appear to alter the essential character of the district and location in which the property is seeking the special exception."**

Second: Ms. Bragman

In Favor: Schell, Bragman, Delmer, Menchaca, Cruz, Teel, Battle, Ozuna, Oroian

Opposed: Fisher, Manna

Motion Granted

Item # 2 (Continued from 11/2/2020) BOA-20-10300089: A request by Donald Smith for a 2' special exception to allow a privacy wood fence to be up to 8' tall in the side and rear of property, located at 6119 Bear Branch. Staff recommends Approval. (Council District 2) (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, 4 returned in favor, and 2 returned in opposition. No response from the Lakeside Neighborhood Association.

Donald & Sherly Smith – Requesting a special exception for privacy fence. Homeowners replaced their fence that fell, increasing height due to sloop of property. The fence is needed for security and privacy of property.

Submitted Public Comment

Cristobal Olivares, 6123 Bear Branch – In favor
Philip Hopper, 6126 Bear Branch – In opposition
Desha Mills, 6114 Bear Branch – In favor
Nina R Christopher, 6111 Bear Branch – In favor
Eddie Pena, 6123 Foster Trail Dr – In opposition
Robert Pesinal & Vanessa Elizondo, 6115 Bear Branch – 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.

Chair Oroian asked for a motion for item BOA-20-10300089, as presented

Mr. Manna made a **motion** for BOA-20-10300089 for approval

“Regarding Case No. BOA-20-10300089, I move that the Board of Adjustment grant a special exception to allow a privacy wood fence to be up **8’ tall on the side property and 6’ fence to be on the street facing front side** of property, situated at 6119 Bear Branch, applicant being Donald Smith, 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 on the side 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.

- 2. *The public welfare and convenience will be substantially served.*
The public welfare and convenience can be served by maximum fence heights to protect residential property owners while still promoting a sense of community. An 8' tall wooden fence along the side of property line will provide additional privacy for the applicant's property and a 6' will keep in harmony with the rest of the community. 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 utilized within the immediate vicinity. Further, the constructed fence 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 height does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material within the community.
- 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 allows the current use of a single-family home. The requested special exception will not weaken the general purpose of the district.”

Second: Ms. Schell

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

Opposed: None

Motion Granted

Due to technical difficulties, the following voicemail was not played
Robert Pesina, 6115 Bear Branch – In favor

Item #3 **BOA-20-10300098:** A request by Killen, Griffin & Farrimond for 1) a 7' variance to the minimum front setback of 10' to allow a structure to be 3' from the front property line, 2) a variance to allow a privacy fence to be within the Clear Vision Field and 3) a variance from the minimum required 20' garage setback to allow a garage entrance to be 3', and 4) a special exception to allow a solid screen fence to be 6'4" within the front property, located at 314 East Hollywood Avenue. Staff recommends Approval. (Council District 1) (Dominic Silva, Senior Planner (210) 207-0120, Dominic.Silva@sanantonio.gov, Development Services Department)

Staff stated 16 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the Monte Vista Neighborhood Association.

Emilie Weissler, 314 East Hollywood Avenue – Requesting variances for proposed garage extension, existing privacy fence and receptacle cover for resident.

No Public Comments

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.

Chair Oroian asked for a motion for item BOA-20-10300098 as presented

Ms. Fisher made a **motion** for BOA-20-10300098 for approval

“Regarding Case No. BOA-20-10300098, I move that the Board of Adjustment grant a request for 1) a 7’ variance to the minimum front setback distance of 10’ to allow a structure to be 3’ from the front property line, 2) a variance to allow a privacy fence to be within the Clear Vision Field and 3) a variance from the minimum required 20’ garage entrance to allow a garage entrance to be 3’, and 4) a variance to allow a solid screen fence to be 6’4” within the front property, situated at 314 East Hollywood Avenue, applicant being Killen, Griffin & Farrimond, 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, due to the unique configuration of the corner lot, as well as the pool being a buffer between the adjacent property, the requested variance will not be contrary to the public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Due to the unique configuration as a narrow corner lot, as well as fronting off a named alley, a literal enforcement of the ordinance would result in an unnecessary hardship as any expansion of the existing structures will need variances due to the compact nature of the lot.
3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
Substantial justice will be as the proposed extension of the existing garage will leave adequate room for maintenance of the structure without trespass as well as adequate storm water management controls.
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.*

The subject property is located on a named alley with the majority of homes fronting streets other than East Hollywood Avenue. The requested variances will not substantially injure other conforming properties or alter the character of the district.

- 7. *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. Due to compact, narrow design of the lot, as well as the location of the lot as a corner property, variances will need to be requested anytime the existing structure will be expanded.”

Second: Mr. Teel

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

Opposed: None

Motion granted

Chair Oroian called for the Board of Adjustment to take a recess at 2:49 p.m. The Board of Adjustment returned at 2:58 p.m.

Item #4

BOA-20-10300104: A request by Jose Rolando Garza for 1) a 10' variance from the 15' Type B bufferyard to allow a bufferyard to be 5' along the east and west property lines and 2) a 5' variance from the minimum 10' side setback to allow a structure to be 5' from the east and west property lines, located at 1330 West Mulberry. (Council District 1) (Dominic Silva, Senior Planner (210) 207-0120, Dominic.Silva@sanantonio.gov, Development Services Department)

Staff stated 13 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the Keystone Neighborhood Association.

Jose Rolando Garza, 1330 West Mulberry – Requesting bufferyard and setback variances for construction of new building.

No Public Comment

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 Oroian asked for a motion for item BOA-20-10300104 as presented

Mr. Ozuna made a **motion** for BOA-20-10300104 for approval.

“Regarding Case No. BOA-20-10300104, I move that the Board of Adjustment grant a request for 1) a 10' variance from the 15' Type B bufferyard to allow a bufferyard to be 5' along the east and west property lines and 2) a 5' variance from the minimum 10' side setback to allow a structure to be 5' from the east and west property lines, situated at 1330 West Mulberry, applicant being Jose Rolando Garza, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*
The public interest is defined as the general health, safety, and welfare of the public. The variance requested for the bufferyard and setback reduction is not contrary to the public interest as the applicant has enough separation from neighboring structures.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Literal enforcement would make development of the site nearly impossible, or would require a very small structure, which may not satisfy the needs of any tenants. The lot was originally intended for residential uses however, with the addition of the Interstate Highway, the property is no longer suitable for residential use; a commercial use is more appropriate, and deserves some relief.
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 proposed setbacks and landscape bufferyard reduction 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 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.*
The five foot setback for a new building and the five foot buffer would only enhance the overall appearance of the site, streetscape, and 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.*
The unique circumstance in this case is the corner configuration lot which restricts the owner's ability develop it without reducing setbacks and landscape bufferyard.”

Second: Mrs. Cruz

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

Opposed: None

Motion Granted

Item #5

BOA-20-10300114: A request by Jon Robinson for a) a 9'7" variance from the 15' Type B bufferyard to allow a bufferyard to be 5'5" along the north property line, 2) a 10'8" variance from the 15' Type B bufferyard to allow a bufferyard to be 4'4" along the east property line, 3) a 10'8" variance from the 15' Type B bufferyard to allow a bufferyard to be 4'4" along the west property line, and 4) a 11'6" variance from the 15' Type C bufferyard to allow a bufferyard to be 3'6" along the south property line, located at 4402 South New Braunfels Avenue. Staff recommends Approval. (Council District 3) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 12 notices were mailed to property owners within 200 feet, 0 returned in favor, and 1 returned in opposition. No response from The Hot Wells Mission Reach Neighborhood Association. No response from Highland Hills Neighborhood Association.

Jon Robinson, 4402 South New Braunfels- Requesting bufferyard variances in order to demolish existing building on property and construct a new building.

Submitted Public comment

Cynthia & Benjamin Bernal, 657 Monticello Ct. - 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 Oroian asked for a motion for item BOA-20-10300114 as presented

Mr. Manna made a **motion** for BOA-20-10300114 for approval.

“Regarding Case No. BOA-20-10300114, I move that the Board of Adjustment grant a request for 1) a 9'7" variance from the 15' Type B bufferyard to allow a bufferyard to be 5'5" along the north property line, 2) a 10'8" variance from the 15' Type B bufferyard to allow a bufferyard to be 4'4" along the east property line, 3) a 10'8" variance from the 15' Type B bufferyard to allow a bufferyard to be 4'4" along the west property line, and 4) a 11'6" variance from the 15' Type C bufferyard to allow a bufferyard to be 3'6" along the south property line, **with all the variances taking account parking as presented in presentation**, situated at 4402 South New Braunfels Avenue, applicant being Jon Robinson, 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 reduction of bufferyards on the all four sides around the property is not contrary to public interest as it does not negatively impact any surrounding properties or the general public. The development of an abandoned property will be beneficial and a net improvement to the surrounding vicinity.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Literal enforcement would not allow the redevelopment of the property as proposed due to the lot size constrains and establishing new bufferyards as required.
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 bufferyard requirements is to prevent fire spread, increase privacy, and separate uses within a district. The requested variances along the property lines meet 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 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 introduced bufferyards to the property lines would enhance the overall appearance of the site, streetscape, and neighborhood. The requested variances will not substantially injure 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.*
The unique circumstance existing here is not the fault of the owner of the property, nor is it due to, or the result of, general conditions in the community in which it is located. Because of the small size of the tract, the proposed development cannot be constructed as intended.”

Second: Ms. Schell

In Favor: Manna, Schell, Delmer, Menchaca, Fisher, Cruz, Tell, Bragman, Battle, Ozuna, Oroian

Motion Granted

Due to technical difficulties, the following voicemail was not played
Brady Alexander, Hot Wells Mission Reach NA – In opposition

Item #6

BOA-20-10300103: A request by Presidio Roofing LLC for a special exception to allow a one-operator beauty/barber shop, located at 13759 Cedar Canyon. Staff recommends Approval. (Council District 8) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 31 notices were mailed to property owners within 200 feet, 1 returned in favor, and 4 returned in opposition. 1 returned in opposition outside 200' boundary. No Registered Neighborhood Association.

Linda Marlar, 13759 Cedar Canyon – Requesting a special exception to operate a beauty shop out of her home. One client at a time will be allowed at a time with only 3 to 4 clients per day.

Submitted Public comment

Lucy Macnak & Warren Johnson, 13810 Cedar Canyon – In opposition

Beth Morse, 13807 Blenheim Ridge – In opposition

Dave & Toni Keith, 13755 Cedar Canyon – In favor

Gerald Schott, 2611 Knights Walk, Castle Hills Forest HOA – In opposition

Margaret Ann Martin, 13807 Cedar Canyon – In opposition

Resident, 13759 Cedar Canyon – 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 Oroian asked for a motion for item BOA-20-10300103, as presented

Mrs. Cruz made a **motion** for BOA-20-10300103 for approval.

“Regarding Case No. BOA-20-10300103, I move that the Board of Adjustment grant special exception to allow a one-operator beauty/barber shop, situated at 13759 Cedar Canyon, applicant being Presidio Roofing LLC, 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 purpose of the review is to ensure that the operation of one-operator beauty/barber shop does not negatively impact the character of the neighborhood. The applicant has fulfilled all requirements for a one-operator shop as established in the Unified Development Code. As such, staff finds that the special exception will be in harmony with the purpose of the chapter. Hours of operation have been confirmed as Monday – Friday, 9 am – 5 pm.
2. *The public welfare and convenience will be substantially served.*
Public welfare and convenience will be served as it will provide a valuable service to the residents of the neighborhood.

3. *The neighboring property will not be substantially injured by such proposed use.*
The subject property will be primarily used as a single-family residence. The beauty/barber shop will occupy only a small portion of the main structure, as required by the UDC, and the fact that a beauty shop is being operated from the home will likely be indiscernible to passersby. As such, neighboring properties will not be substantially injured.

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 requested special exception is not likely to alter the essential character of the district as the property is still used as a residential building.

5. *The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*
The primary use of the dwelling remains a single-family home. The granting of this special exception will not weaken the purposes of the residential zoning district.”

Second: Mr. Manna

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

Opposed: None

Motion Granted

Due to technical difficulties, the following voicemails were not played

Anna Carter, 14031 Cedar Canyon – In opposition

Sharon Grooms, 14154 Sage Trail – In opposition

Mr. Battle left the Board of Adjustment meeting at 3:58 pm

Item #7

BOA-20-10300101: A request by Elbert Fuqua request from the Medium Density Infill Development (IDZ-2) design standards for a 4’ variance from the 5’ perimeter requirement to allow the new structure to be 1’ away from the side property line, located at 400 Montana. Staff recommends Approval. (Council District 2) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 35 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No response from the Alamodome GardensNeighborhood Association.

Elbert Fuqua, 400 Montana – Requesting variance for structure to be built 1’ from the property line. Lot size is difficult to build on.

No Public comment

Motion: Chair Oroian asked for a motion for item BOA-20-10300101, as presented

Mr. Teel made a **motion** for BOA-20-10300101 for approval

“Regarding Case No. BOA-20-10300101, I move that the Board of Adjustment grant a request from the Medium Density Infill Development (IDZ-2) design standards for a 4’ variance from the 5’ perimeter requirement to allow the new structure to be 1’ away from the side property line, situated at 400 Montana Street, applicant being Elebrt Fuqua, 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, reducing the north property line to 1’ would leave adequate space for long term maintenance and fire spread separation.
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 creating difficulties in reducing the amount of developable space on the site. The applicant will not be able to construct the single-family home as 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 for the district in which the property for which the variance is sought is located.*
The requested variances will not permit a use not authorized within the district it is located in.
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. Due to the design guidelines of a minimum setback requirement, the amount of developable space is reduced.”

Second: Ms. Bragman

In Favor: Teel, Bragman, Delmer, Menchaca, Cruz, Ozuna, Oroian

Opposed: Schell, Fisher, Manna

Motion Fails

Due to technical difficulties, the following voicemail was not played

Barbara McDonald, 102 Kansas St. – In favor

Item #8

BOA-20-10300105: A request by Rene Lafuente for 4' variance from the minimum 5' side setback requirement to allow a carport to be 1' with overhang 1" from the side property line, located at 1207 West Hutchins Place. Staff recommends Denial with an Alternate Recommendation. (Council District 3) (Kayla Leal, Senior Planner (210) 207-0197, kayla.leal@sanantonio.gov, Development Services Department)

Staff stated 17 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. No Registered Neighborhood Association.

Rene Lafuente, 1207 West Hutchins Place – Requesting setback variance. Builder spoke of cutting overhang and install gutters to keep rain waterflow from draining into the neighbor's property.

No Public comment

Motion: Chair Oroian asked for a motion for item BOA-20-10300105, as presented

Mr. Manna made a **motion** for BOA-20-10300105 for approval.

“Regarding Case No. BOA-20-10300105, I move that the Board of Adjustment grant a request for a 4' variance from the minimum 5' side setback requirement to allow a carport to be 1' with **no overhang** from the side property line, situated at 1207 West Hutchins Place, applicant being Rene Lafuente, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The public interest is defined as the general health, safety, and welfare of the public. The variance requested for the side setback encroachment of the carport is not contrary to the public interest as the applicant has enough separation from neighboring structures, and will allow water drainage onto subject property.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The Board finds that any special conditions that, if enforced, would result in an unnecessary hardship. The limited amount of space for the width of the carport requires it to be built into the side setback.

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 defined as the intent of the code, rather than the exact letter of the law. The intent of the side and rear setbacks is to provide spacing between neighboring structures. The applicant will still maintain space between structures with the variance.

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.*
The Board finds the request to reduce the side and rear setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to 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 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 side setbacks due to building orientation within the district is uniform, leaving little room for proper building setbacks.”

Second: Mr. Teel

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

Opposed: None

Motion Granted

Due to technical difficulties, the following voicemails were not played

Francisco Rubio, 1203 W Hutchins Place – In favor

Richard Lujan, 1101 Logwood Ave. – In opposition

Item #9 **BOA-20-10300106**: A request by Juan Sanchez for a variance from the Jefferson Neighborhood Conservation District design standards to allow 1) the carport material to be metal, 2) to allow the carport to be within the 10' structure separation, and 3) a 3'7" variance from the minimum 5' side setback to allow an attached carport to be 1' 5" away from the side property line, and 4) the carport roof to be flat, located at 2635 West Mulberry Avenue. Staff recommends Denial. (Council District 7) (Azadeh Sagheb, Planner (210) 207-5407, Azadeh.Sagheb@sanantonio.gov, Development Services Department)

Staff stated 22 notices were mailed to property owners within 200 feet, 0 returned in favor, and 0 returned in opposition. The Jefferson Neighborhood Association is in opposition.

Juan Sanchez, 2635 West Mulberry Avenue – Requesting variance to keep carport built as is. The carport is needed for protection of vehicles.

No Public comment

Motion: Chair Oroian asked for a motion for item BOA-20-10300106, as presented

Mr. Manna made a **motion** for BOA-20-10300106 for approval.

“Regarding Case No. BOA-20-10300106, I move that the Board of Adjustment grant a request a zoning variance from the Jefferson Neighborhood Conservation District design regulations to allow 1) to allow the carport to be within the 10' structure separation, and 2) a 2' variance from the minimum 5' side setback to allow an attached carport to be 3' away from the side property line, and 4) the carport roof to be flat, situated at 2635 West Mulberry Avenue, applicant being Juan Sanchez, 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 variances are not contrary to the public interest. The carport is constructed such that two cars could be accommodated inside it where the carport becomes wider towards the back.
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 financial hardship due to the structure already being constructed.
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 Jefferson NCD Design Standards is to aesthetically preserve the character of the community. The Board has determined that the constructed carport as constructed does not matches the context of the Jefferson Neighborhood Conservation District and is within design guidelines.

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

- 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 adjusted variances are in line with the character of the neighborhood.”*

Second: Mr. Ozuna

In Favor: Manna, Ozuna, Schell, Delmer, Fisher, Teel, Oroian

Opposed: Menchaca, Cruz, Bragman

Motion Fails

Due to technical difficulties, the following voicemail was not played

Saldana Sameli, 2639 W Mulberry Ave. – In favor

Item #10 Consideration and approval of the November 2, 2020 Board of Adjustment Minutes.

Motion: Chair Oroian asked for a motion for approval of the November 2, 2020 minutes as presented.

Ms. Fisher made a **motion** for approval of November 2, 2020 minutes.

Second: Mrs. Cruz

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

Opposed: None

Minutes Approved

Adjournment

There being no further business, the meeting was adjourned at 5:02 p.m.

APPROVED BY: _____ OR DA _____
Chairman Vice-Chair

DATE: 12-10-2020

ATTESTED BY: [Signature] DATE: December 10, 2020
Executive Secretary