

City of San Antonio



Minutes Board of Adjustment Development and Business Services Center 1901 S. Alamo

Monday, June 26, 2023

1:00 PM

1901 S. Alamo

1:00 PM – Call to Order

Roll Call – Present: Spielman, Caudill, Menchaca, Dean, Cruz, Manna, Brown, Vasquez, Bragman, Ozuna, Oroian, Hayes, Bonillas

Absent: Zuniga

SeproTec translator were present.

THE FOLLOWING ITEMS MAY BE CONSIDERED AT ANY TIME DURING THE REGULAR PLANNING COMMISSION MEETING:

Public Hearing and Consideration of the following Plats, Variances, Special Exceptions, Appeals, as identified below.

Item #6

BOA-23-10300097: A request by Robert Benke for 1) a 13'8" variance from the maximum NCD8 front-facing façade width of 50' to allow a front-facing façade width of 63'8", and 2) a 3'6" variance from the minimum 5' rear setback requirement to allow carports to be 1'6" from the rear property line, located at 1823 West Craig Place. Staff recommends Denial. (Council District 7) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 29 notices were mailed to property owners, 2 returned in favor with 9 responses outside the 200' foot radius, 5 returned in opposition with 11 responses outside the 200' foot radius, and Woodlawn Lake Community Association is in opposition. Jefferson and Monticello Park Neighborhood Associations, outside the 200' radius, are in opposition.

Robert Benke, applicant, stated the purpose of this request is to allow for 2 units per lot on the subject property. He does not feel this development would negatively impact the neighborhood as the near northwest plan future land use map states this block of West Craig is identified as medium density residential that includes single family homes, duplexes, triplexes, fourplexes, townhomes, cottage housing and accessory dwelling units. He further stated he has been working closely with the Woodlawn Neighborhood Association during the zoning process and has altered his design to accommodate their concerns. He has also collected a petition from surrounding neighbors expressing their support.

Public Comment

Voicemails

Alex Garcia, spoke in opposition.

Drea Garza, president of Monticello Neighborhood Association, spoke in opposition.

Andra Nava-Garcia, spoke in opposition.

Elia Reyna, spoke in opposition.

JD Morales, president of Woodlawn Lake Community Association, spoke in opposition.

Larissa O'Connor, spoke in opposition.

Nick Rangel, spoke in opposition.

Robin Foster, spoke in opposition.

Vanessa Sanabria, spoke in opposition.

In Person

Diana Ramos, spoke in opposition.

Bianca Maldonado, spoke in opposition.

Jason Vasquez, spoke in opposition.

Ted Guerra, spoke in opposition.

Rebuttal

Robert Benke, applicant, stated most of the opposition are in Monticello Neighborhood Association which is adjacent to Woodlawn Lake Neighborhood Association. He further stated he has met with the Councilwoman Castro who expressed support in this proposal.

Motion

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300097**, I move that the Board of Adjustment grant a request for 1) a 13'-8" variance from the maximum NCD-8 front-facing façade width of 50' to allow a front-facing façade width of 63'-8", and 2) a 3'-6" variance from the minimum 5' rear setback requirement to allow detached carports to be 1'-6" from the rear property line, situated at 1832 West Craig Place, applicant being Robert Benke, 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 consistent development patterns and design standards to promote the architectural integrity of an already established neighborhood and building regulations. The applicant is requesting a 13'-8" variance from the maximum NCD-8 front-facing façade width of 50' to allow a front-facing façade width of 63'-8", and a 3'-6" variance from the minimum 5' rear setback requirement to allow carports to be 1'-6" from the rear property line. Staffs finds the requests are not contrary, as the existing structure already exceeds the maximum front façade requirement. Additionally, staff found the carports in their anticipated location provide adequate distance from the shared property line, which appears to not impose on the public interest of the abutting property.

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

The special condition found on the subject property being the existing structure already exceeds the front façade requirement and limited space to place the carports. A literal enforcement of the ordinance would result in an unnecessary hardship, as the applicant would need to alter the existing home and reduce the size of the rear yard to alter the carport to abide by the NCD design requirements and UDC building requirements.

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. In this case, the intent of the code is to abide by the NCD-8 design standards and UDC regulations. Design standards have been adopted to promote the existing development patterns and architectural diversity of the neighborhood and building regulations for safe and uniform developments. The structure was built prior to 2001 and the adoption of the NCD and has not been a matter in question until now.

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.*

If granted, the structure will have a front façade width of 63'-8" and a rear setback of 1'-6". If granted, staff finds the variance will not substantially injure the appropriate use to adjacent conforming properties. The structure already exceeds the maximum requirement and has not injured the appropriate use of adjacent conforming properties from the time it was constructed. Per satellite imagery, other accessory structures were seen in the rear yards of the neighboring properties, however, some of which were constructed prior to 2001 with a similar setback distance.

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.*

Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, such as the prevention of demolishing an existing home and limited rear yard space. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Bragman.

Favor: Bragman, Caudill, Menchaca, Ozuna, Oroian

Opposed: Manna, Spielman, Hayes, Cruz, Brown, Vasquez

MOTION FAILS

Item #7

BOA-23-10300119: An appeal by Lisa Horgan of the Administrator's decision to revoke the short-term rental permit, located at 106 Westminster Avenue. Staff recommends denial. (Council District 7) (Emily Garcia, Planner (210) 207-0271, Emily.Garcia@sanantonio.gov, Development Services Department)

Lisa Horgan, applicant, stated this was a misunderstanding. This was her first time operating a Short-Term Rental and was unaware advertising on Peerspace was not allowed as she had noticed other Short-Term Rentals advertised on that platform. Upon receiving a notice that her permit had been revoked, she immediately removed all advertisements and closed her account. She stated her actions were not intentional and this has been a learning experience.

Public Comment

Voicemails

Paula Kothmann, spoke in opposition of staff recommendation of denial.

In Person

Tony Garcia, spoke in favor of staff recommendation of denial.

Bianca Maldonado, spoke in favor of staff recommendation of denial.

Theresa Coronado, spoke in favor of staff recommendation of denial.

Rebuttal

Lisa Horgan, applicant, stated the concerns expressed by the opposition are for another home that is also renting, possibly renting bedrooms. She has also experienced some of the parking and trespassing issues as expressed by surrounding neighbors.

Motion

A motion was made by Commissioner Oroian. Regarding Case No. **BOA-23-10300119**, I move that the Board of Adjustment grant the appeal for the property, situated at 106 Westminster Avenue, applicant being Lisa Horgan, because the information provided by the applicant shows that City staff made an error in revoking the Short- Term Rental permit. The motion was seconded by Commissioner Manna.

Favor: None

Opposed: Oroian, Manna, Spielman, Caudill, Menchaca, Hayes, Cruz, Brown, Vasquez, Bragman, Ozuna

MOTION FAILS

Commissioner Vasquez exited the boardroom at 2:30 pm for a short break.

Item #8

BOA-23-10300120: An appeal by Janice Aragonés of the Administrator's decision to revoke the short-term rental permit, located at 2102 West Kings Highway. Staff recommends denial. (Council District 7) (Emily Garcia, Planner (210) 207-0271, Emily.Garcia@sanantonio.gov, Development Services Department)

Commissioner Vasquez re-entered the boardroom at 2:31 pm.

Janice Aragonés, applicant, stated their Short-Term Rental is advertised on their website along with Peerspace. In viewing the Peerspace, many other Short-Term Rentals are advertised on that platform. As another source of revenue, she posted her Short-Term Rental on their platform. They have not had any violations up until this advertisement. She further stated since their permit being revoked, this has set them back in revenue tremendously. She stressed that should this appeal not be granted this would lead to a financial distress.

Public Comment**Voicemails**

Andria Bundy, spoke in favor reinstating permit.

Brittany Jay, spoke in favor reinstating permit.

Cameron Medlock, spoke in favor reinstating permit.

Carmen Robles, spoke in favor reinstating permit.

Celina Aragonés, spoke in favor reinstating permit.

Gloria Valenzuela, spoke in favor reinstating permit.

Jason Vasquez, spoke in favor of reinstating permit.

Kennon, spoke in favor of reinstating permit.

Paulette Halvorson, spoke in favor of reinstating permit.

Nicholas Seaver, spoke in favor of reinstating permit.

Norma Rodriguez, spoke in favor of reinstating permit.

Araceli Pompa, spoke in favor of reinstating permit.

Laura Nava, spoke in favor of reinstating permit.

Nicholas Seaver, spoke in favor of reinstating permit.

Robert Sipes, spoke in support of staff's recommendation of denial.

Alex Garcia, spoke in support of staff's recommendation of denial.

Drea Garza, president of Monticello Neighborhood Association, spoke in support of staff's recommendation of denial.

Andra Nava-Garcia, spoke in support of staff's recommendation of denial.

Elia Reyna, spoke in support of staff's recommendation of denial.

JD Morales, president of Woodlawn Lake Community Association, spoke in support of staff's recommendation of denial.

Larissa O'Connor, spoke in support of staff's recommendation of denial.

Mari Flores, spoke in support of staff's recommendation of denial.

Morton Baird, spoke in support of staff's recommendation of denial.

Moses Berban, spoke in support of staff's recommendation of denial.

Nick Rangel, spoke in support of staff's recommendation of denial.

Patrick Mayo, spoke in support of staff's recommendation of denial.

Phillip Scheppke, spoke in support of staff's recommendation of denial.

Rene Roel, spoke in support of staff's recommendation of denial.

Alfred Gomez, spoke in support of staff's recommendation of denial.

Robin Foster, spoke in support of staff's recommendation of denial.

Shelley Galbraith, spoke in support of staff's recommendation of denial.

Vanessa Sanabria, spoke in support of staff's recommendation of denial.

In Person

Tony Garcia, spoke in favor of staff recommendation of denial.

Bianca Maldonado, spoke in favor of staff recommendation of denial.

Paula Kothmann, spoke in favor receiving a warning and come into compliance.

Jason Vasquez, member of Jefferson Neighborhood Association, spoke in favor of staff recommendation of denial.

Ted Guerra, President, Jefferson Neighborhood Association, spoke in favor of staff recommendation of denial.

Larissa Benavides, spoke in favor of staff recommendation of denial.

Jaime Parker, spoke in favor of staff recommendation of denial.

Tom Scheppke, spoke in support of staff's recommendation of denial.

Rebuttal

Janice Aragon, applicant, stated she would like address concerns from the opposition. This Short-Term Rental houses up to 12 guest and there is up to 5 parking spaces for renters to park and off-street parking which was submitted as part of the application. With regards to complaints, there has been no police reports nor have the surrounding neighbors have ever approach them to express such concerns and or disturbances. She further stated the home has several cameras and when there is a concern, they immediately contacts the renter to address the issue.

Motion

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-23-10300120**, I move that the Board of Adjustment grant the appeal for the property, situated at 2102 West Kings Highway, applicant being Janice Aragon, because the information provided by the applicant shows that City staff made an error in revoking the Short-Term Rental permit. The motion was seconded by Commissioner Manna.

Favor: Caudill

Opposed: Bragman, Manna, Spielman, Menchaca, Hayes, Cruz, Brown, Vasquez, Ozuna, Oroian

MOTION FAILS

Vice Chair Ozuna call a break at 3:45 pm

Commission reconvened at 3:55 pm

Item #11

BOA-23-10300167: A request by Brown & McDonald PLLC for a 2' variance from the minimum 5' side setback to allow a 3' side setback on the western property line, located at 107 Harding Place. Staff recommends approval. (Council District 2) (Mirko Maravi, Principal Planner, (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 16 notices were mailed to property owners, 3 returned in favor 1 returned in opposition, and Denver Heights Neighborhood Association is in opposition. Staff received 26 notices in support outside the 200' radius.

Ken Brown, representative, they are requesting 2-foot variance for the second floor only, for the minimum 5-foot side yard setback to allow a 3-foot setback. He stated this is a minimal encroachment. He stated they are providing a new quality of housing that is consistent with City's comprehensive plan that would allow infill development. He feels this development would enhance the neighborhood. They have received 21 letters in support from neighborhood residents and 10 letters in support from individuals and businesses who have been working with the applicant.

Public Comment**In Person**

Bryan Narvaez, spoke in favor.

Juan Rodriguez, spoke in favor.

Ben Schoenbaum, spoke in opposition.

Mario Rios, spoke in opposition.

Voicemails

Alberto Estebane, spoke in opposition.

Rebuttal

Ken Brown, representative, stated the variance request presented today is simply a request for a 2-foot variance from the 5-foot side yard setback on the subject property. This slight encroachment would not overlay onto the neighboring property. He stated they have been working closely with the surrounding neighbors however Mr. Rios was not willing to compromise. He has expressed various concerns with this proposed development however Mr. Rios is and has been in violation. There are several code violations on his property that need to be visited by code enforcement to be addressed. Mr Rios continuously harasses the property owner and there are various police reports as evidence.

Motion

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-23-10300167**, I move that the Board of Adjustment grant a request for a 2' variance from the minimum 5' side setback, to allow a 3' side setback on the western property line, situated at 107 Harding Place, applicant being Brown & McDonald PLLC, 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 applicant is requesting a variance to the side setbacks to allow a structure to be 3' from the side property lines, which 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 the applicant building the structure 5' from the side property lines, which would result in an unnecessary hardship as the structure would have to reduce the square footage to meet the setback requirements.

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 structure would be 3' from the side property lines, which observes the spirit of the ordinance due to the size of the lot and the proposed square footage of the structure.

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.*

If granted, the structure will be 3' from the side property lines due to the size of the lot and the proposed square footage of the structure and would 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.*

Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property.

The motion was seconded by Commissioner Manna.

Favor: Bragman, Manna, Spielman, Caudill, Menchaca, Hayes, Cruz, Vasquez, Ozuna, Oroian

Opposed: Brown

MOTION PASSES

Item #12

BOA-23-10300168: A request by Brown & McDonald PLLC for a 2' variance from the minimum 5' side setback to allow a 3' side setback on the western property line, located at 108 Vine Street. Staff recommends approval. (Council District 2) (Mirko Maravi, Principal Planner (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 19 notices were mailed to property owners, 4 returned in favor 0 returned in opposition, and Denver Heights Neighborhood Association is in opposition. Staff received 23 notices in support outside the 200' radius.

Caroline McDonald, representative, stated the property is zoning "RM-4" which permits 3 buildings on the subject property. Her client was in the process of constructing with approved plans however because of an overhang a "Stop Work Order" was issued. The second story overhang is a minimal encroachment onto the side yard setback. They are requesting a 2' variance from the minimum 5' side set back to allow a 3'side setback on the western property line. She further stated they have received 27 letters in support for this variance request. This variance is not contrary to the public interest. They are providing a new quality of housing and it would allow infill development.

Public Comment

In Person

Bryan Narvaez, spoke in favor.

Karla Alvarado, spoke in favor.

Maria Clark, spoke in favor.

Esteban Rodriguez, spoke in favor.

Juan Rodriguez, engineer, spoke in favor and addressed drainage concerns.

Motion

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300168**, I move that the Board of Adjustment a request for a 2' variance from the minimum 5' side setback, to allow a 3' side setback on the western property line, situated at 108 Vine Street, applicant being Brown & McDonald PLLC, 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 applicant is requesting a variance to the side setbacks to allow a structure to be 3' from the side property lines, which 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 the applicant building the structure 5' from the side property lines, which would result in an unnecessary hardship as the structure would have to have reduce the square footage reduced to meet the setback requirements.

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 structure would be 3' from the side property lines, which observes the spirit of the ordinance due to the size of the lot and the proposed square footage of the structure.

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.*

If granted, the structure will be 3' from the side property lines due to the size of the lot and the proposed square footage of the structure and would 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.*

Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property.

The motion was seconded by Commissioner Bragman.

Favor: Manna, Bragman, Spielman, Caudill, Menchaca, Hayes, Cruz, Vasquez, Ozuna, Oroian

Opposed: Brown

MOTION PASSES

Commissioner Bragman and Commission Brown left the meeting at 5:04 pm

Commissioner Dean joined meeting via WebEx at 5:04 PM.

Item #9

BOA-23-10300129: An appeal by Autumn Galbreath of the Administrator's decision to revoke the short-term rental permit, located at 1649 West Magnolia Avenue. Staff recommends denial. (Council District 1) (Emily Garcia, Planner (210) 207-0271, Emily.Garcia@sanantonio.gov, Development Services Department)

Autumn Galbreath, applicant, stated she has been in operation since 2021, her HOT taxes are paid and current and has not had complaints. Unfortunately, her Peerspace posting has cause her permit to be revoked. She also advertised her Short-Term Rental property on Peerspace as this platform promotes Short-Term Rentals. She would also like to correct some misunderstandings. First off, staff indicated she was in operating after her permit was revoke, that is incorrect. In conversations, thru email, with the code officer, she has evidence that proves she had not been in operation. Upon her permit being revoked, she contacted City staff to address and correct this issue.

Public Comment

In Person

Tony Garcia, spoke in support of staff's recommendation of denial.

Bianca Maldonado, spoke in support of staff's recommendation of denial.

Paula Kothmann, feels applicants should a receiving a warning and come into compliance rather than revocation.

Jason Vasquez, spoke in opposition to the applicant's appeal.

Ted Guerra, president of Jefferson Neighborhood Association, spoke in opposition to the applicant's appeal.

Voicemails

Robert Sipes, spoke in support of staff recommendation of denial.

Alex Garcia, spoke in support of staff recommendation of denial.

Drea Garza, president of Monticello Neighborhood Association, spoke in support of staff recommendation of denial.

Andra Nava-Garcia, spoke in support of staff recommendation of denial.

Elia Reyna, spoke in support of staff recommendation of denial.

JD Morales, president of Woodlawn Lake Community Association, spoke in support of staff recommendation of denial.

Nick Rangel, spoke in support of staff recommendation of denial.

Robin Foster, spoke in support of staff recommendation of denial.

Vanessa Sanabria, spoke in support of staff recommendation of denial.

Rebuttal

Autumn Galbreath, applicant, stated the home sleeps 10 which is the maximum that is listed on AirBNB and Vrbo. She stated her listing on Peerspace was for 30 which she removed it shortly after an hour after receiving revocation even though there have never been 30 occupants in the home. She feels the ordinance should be revisited as it does not involve or mention advertising.

Motion

A motion was made by Commissioner Oroian. Regarding Case No. **BOA-23-10300129**, I move that the Board of Adjustment grant the appeal for the property, situated at 1649 West Magnolia Avenue, applicant being Autumn Galbreath, because the information provided by the applicant shows that City staff made an error in revoking the Short-Term Rental permit. The motion was seconded Commissioner Manna.

Favor: Oroian, Caudill, Menchaca, Cruz, Vasquez, Ozuna

Opposed: Manna, Spielman, Dean, Hayes

MOTION FAILS

Item #10

BOA-23-10300140: An appeal by Barbara Tavares of the Administrator's decision to revoke the Short-term rental permit, located at 2009 W Mulberry Avenue. Staff recommends denial. (Council District 7) (Emily Garcia, Planner (210) 207-0271, Emily.Garcia@sanantonio.gov, Development Services Department)

Commissioner Caudill left the meeting at 5:55 pm

Barbara Tavares, applicant, stated she feels this issue was a miscommunication. She purchased this 2-bedroom, 1 bath with a pool house in the back that she lives. In conversations with City staff to inquire about possibly including the pool house, "Casita", on her application for Short Term Rental, she was told it would be a Type II permit. She was informed, by city staff and AirBnB, that she was unable to rent both out separately therefore during booking, if a 3rd bedroom was needed and she was not occupying the casita, she would include the casita. AirBnB directed her to post 2 calendars, one for the main structure and the second for the casita which is why it looks as if both structures were being rented out separately. Shortly after posting of the calendars, she was notified of the revocation. She contacted city staff and was presented with the option to appeal to the board.

Commissioner Bonillas joined meeting via WebEx at 6:10 PM.

Public Comment

Voicemails

Robert Sipes, spoke in support of staff recommendation of denial.

Alex Garcia, spoke in support of staff recommendation of denial.

Drea Garza, president of Monticello Neighborhood Association, spoke in support of staff recommendation of denial.

Andra Nava-Garcia, spoke in support of staff recommendation of denial.

JD Morales, president of Woodlawn Lake Community Association, spoke in support of staff recommendation of denial.

Nick Rangel, spoke in support of staff recommendation of denial.

Robin Foster, spoke in support of staff recommendation of denial.

Sandra Chavez, spoke in support of staff recommendation of denial.

Vanessa Sanabria, spoke in support of staff recommendation of denial.

In Person

Tony Garcia, spoke in support of staff's recommendation of denial.

Bianca Maldonado, spoke in support of staff's recommendation of denial.

Jason Vasquez, spoke in opposition to the applicant's appeal.

Ted Guerra, president of Jefferson Neighborhood Association, spoke in opposition to the applicant's appeal.

Mark Cooper, spoke in support of staff's recommendation of denial.

Rebuttal

Barbara Tavares, applicant, as previously mentioned she feels like she this is all a misunderstanding. She currently lives in the "casita" as her divorce processes and does not rent it out however if asked for a 3rd bedroom she will rent it out. Since she been in operation, she has complied and current with her taxes and is agreeable to make all necessary changes to bring her back into compliance.

Motion

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300140**, I move that the Board of Adjustment grant the appeal for the property, situated at 2009 West Mulberry Avenue, applicant being Barbara Tavares, because the information provided by the applicant shows that City staff made an error in revoking the Short-Term Rental permit. The motion was seconded Commissioner Oroian.

Favor: Manna, Oroian, Bonillas, Menchaca, Cruz, Hayes, Vasquez, Ozuna

Opposed: Spielman, Dean

MOTION FAILS

Vice Chair Ozuna call a break at 6:45 pm

Commission reconvened at 6:50 pm

Item #13

BOA-23-10300111: A request by Antonio Lopez for 1) a 1'5" special exception from the maximum 6' fence height requirement to allow a 7'5" solid screened fence along the rear property line, 2) a 5'2" variance from the minimum 15' clear vision requirement to allow a solid screened fence to be 9'10" from the side yard driveway curb, 3) a 7'4" variance from the minimum 20' rear setback requirement to allow a structure to be 12'8" from the rear property line, and 4) a 2'7" variance from the minimum 5' rear setback requirement, to allow an accessory structure to be 2'5" from the rear property line, located at 4123 Barrington Street. Staff recommends approval. (Council District 10) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 28 notices were mailed to property owners, 3 returned in favor 1 returned in opposition, and Village North II Neighborhood Association is in support.

Antonio Lopez, applicant, stated he is a first-time homeowner, and his first project was installing a 6-foot privacy fence. The fence was constructed with the privacy in harmony. When hiring the contractor, he did ask about permits at which contractor assure him no permits was needed. He was later informed by his neighbors that he may received a code violation for the fence height. He contacted city staff at which was directed to seek a variance. In doing so, he was later informed he would also need to seek a variance for the existing awning structure attached to home and existing carport. He stated he is agreeable to removing the existing carport.

Public Comment

Voicemail

Gilbert Davila, spoke in favor.

Special Exception Motion

A motion was made by Commissioner Cruz. Regarding Case No. **BOA-23-10300111**, I move that the Board of Adjustment grant a request for a 1'-5" special exception from the maximum 6' fence height requirement to allow a 7'-5" solid screened fence along the rear property, line situated at 4123 Barrington Street, applicant being Antonio Lopez, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The UDC states the Board of Adjustment can grant a special exception for a fence height modification. The additional fence height being requested is only located along the rear property lines and does not exceed 8' in height. If granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance.

- B. *The public welfare and convenience will be substantially served.*

In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The fence is exceeding the maximum height requirement by 1'-5" and is located along the rear property line. Due to the irregular orientation of the subject property's lot with the neighboring lot, an increased fence height will serve the public welfare and substantial justice will be served.

- C. *The neighboring property will not be substantially injured by such proposed use.*

The fence will create enhanced security and privacy for the subject and 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 additional fence height of the subject property does not appear to alter the location for which the special exception is sought, as the abutting base zoning districts are residentially zoned. Additionally, the orientation of the property would be beneficial for an increase in fence height.

- E. *The special exception will not weaken the general purpose of the district, or the regulations herein established for the specific district.*

The requested special exception will not weaken the general purpose of the district.

The motion was seconded by Commissioner Ozuna.

Favor: Cruz, Ozuna, Spielman, Bonillas, Menchaca, Dean, Manna, Hayes, Vasquez, Oroian

Opposed: None

MOTION PASSES

Variance Motion

A motion was made by Commissioner Oroian. Regarding Case No. **BOA-23-10300111**, I move that the Board of Adjustment grant a request for 1) a 5'-2" variance from the minimum 15' clear vision requirement to allow a solid screened fence to be 9'-10" from the side yard driveway curb, 2) a request for a 7'-4" variance from the minimum 20' rear setback requirement to allow a structure to be 12'-8" from the rear property line, and 3) a 2'-7" variance from the minimum 5' rear setback requirement, to allow a carport accessory structure to be 2'-5" from the rear property line, situated at 4123 Barrington Street, applicant being Antonio Lopez, 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 applicant is requesting a clear vision variance to allow a fence to be 9'-10" from the side driveways. Staff finds that this request will not be contrary to the public interest as this is an acceptable distance. The applicant is also requesting a variance to deviate from the minimum rear setback requirement. In this case, the public interest is represented by restricted setbacks to provide suitable spacing between structures. Staff finds that this an allowable amount of spacing, as the structures will provide a suitable distance from neighboring properties.

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 applicant altering the fence to meet the minimum 15' clear vision requirement for the side driveway. This would result in an unnecessary hardship as the rear yard of the subject property would decrease in size. Further, the enforcement of the rear setback for the attached and detached structures would result in an unnecessary hardship, as there is limited room in the rear yard to adhere to the ordinance.

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

The clear vision request to allow a fence to be 9'-10" from the side driveway will observe the spirit of the ordinance by providing a safe distance between the two points, allowing vehicular traffic to not be obstructed. Additionally, the driveway reverses onto a cul-de-sac street. The proposed rear setback will adhere to the spirit of the ordinance and substantial justice will be done by allowing for suitable distances between structures and neighboring properties. Additionally, the structures are abiding by all other building regulations.

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.*

If granted, the clear vision distance will be 9'-10" from the side driveway and the structures will maintain their reduced setbacks, which are not 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.*

Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, such as the orientation of the lot and limited space for adjustments in rear yard.

The motion was seconded by Commissioner Cruz.

Favor: Oroian, Cruz, Spielman, Bonillas, Menchaca, Dean, Manna, Hayes, Vasquez, Ozuna

Opposed: None

MOTION PASSES

Item #14

BOA-23-10300121: A request by Jose Sepulveda for 1) a 3,231 square feet variance from the minimum 6,000 square foot minimum lot size requirement to allow a lot to be 2,769 square feet and 2) a 11' variance from the minimum 50' lot width requirement to allow a lot to be 39', located at 1722 North Olive Street. Staff recommends denial. (Council District 2) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 34 notices were mailed to property owners, 0 returned in favor 0 returned in opposition, and no response from Government Hill Alliance Neighborhood Association.

Motion

A motion was made by Commissioner Manna and seconded by Commissioner Cruz to continue this case until July 10, 2023.

All voted in affirmative.

MOTION PASSES

Item #15

BOA-23-10300122: A request by Randolph Alston for a 4'11" variance from the minimum 5' side setback to allow an accessory structure with a 1" side setback, located at 1247 Essex Street. Staff recommends denial. (Council District 2) (Mirko Maravi, Principal Planner (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 28 notices were mailed to property owners, 0 returned in favor 1 returned in opposition, and Denver Heights Neighborhood Association is in opposition.

Randolph Alston, applicant, stated he was not aware he was in violation. He stated he is agreeable to make necessary modifications as requested.

Larry Gonzales, state the structure is not mounted to the concrete and could be moved if necessary.

No Public Comment

Motion

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300122**, I move that the Board of Adjustment grant a request for a 3'-6" variance from the minimum 5' side setback, to allow an accessory structure with a 1'-6" side setback, situated at 1247 Essex Street, applicant being Randolph Alston, 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 restricted side setback to provide spacing between the property line and the accessory structure. The applicant is requesting a variance to the side setback to allow an accessory structure to be 18 inches from the side property line, after it is trimmed down. Staff finds this distance is suitable, as the location is not physically next to a structure.

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

Staff found special conditions on the subject property that warrant the need for the accessory structure to have 18 inches side setback. An unnecessary hardship seems to be presented in this case, as the applicant would have no room to relocate the accessory structure.

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. In this case, the intention is for sufficient spacing between the accessory structure and the property line. The accessory structure will be 18 inches from the side property line, which will observe the spirit of the ordinance or intent of the code as it has separation between the shared property line.

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.*

If granted, the structure will be 18 inches from the side property line which is unlikely to injure the appropriate use of the adjacent conforming property by having a structure an inch from an abutting garage.

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.*

Staff found unique circumstances on the subject property that would warrant the need for a reduced side setback. The property does not sufficient space in the rear yard to relocate the structure.

The motion was seconded by Commissioner Cruz.

Favor: Manna, Cruz, Spielman, Bonillas, Menchaca, Dean, Hayes, Vasquez, Ozuna, Oroian

Opposed: None

MOTION PASSES

Item #16

BOA-23-10300124: A request by Jose Jaramillo Maldonado for 1) a 3'4" variance from the minimum 5' side setback, to allow accessory structures with a 1'8" side setback, 2) a 4'11" variance from the minimum 5' rear setback, to allow an accessory structure with a 1" rear setback, 3) a 1' variance from the minimum 15' clear vision to allow a driveway with a 14' clear vision from a predominantly open fence, 4) a 2'4" special exception from the maximum 5' fence height to allow a 6'5" predominantly open fence in the front property line with a 7'4" fence posts and a 6' predominantly open fence in the front yard eastern property line, and 5) a 3' special exception from the maximum 3' fence height to allow a 6' privacy fence in the front yard western property line, located at 1525 Delgado Street. Staff recommends denial for Side and Rear Setback Variance and Fence Height Special Exception. Staff recommends approval for the Clear Vision Variance. (Council District 5) (Mirko Maravi, Principal Planner (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 38 notices were mailed to property owners, 0 returned in favor 0 returned in opposition, and no response from Prospect Hill nor West End Hope in Action Neighborhood Associations.

Jose Jaramillo Maldonado, applicant, stated when he purchased the home, there was an existing structure in the backyard that needed repairs. He hired a contractor to do the repairs and the fence however the contractor did not finish the job. When he came to Development Services to inquire about the permits, he was told there were no permits pulled his address. He further stated he is agreeable to make changes as needed.

Public Comment

In Person

Joann Coleman, spoke in opposition.

Richard Sanchez, stated he has not issues.

Rebuttal

Jose Jaramillo Maldonado, applicant, stated he has issues with his neighbor to where police have been called. She also stated there is numerous people passing by in and out of his property which is not correct.

Motion

The motion was made by Commissioner Oroian. Regarding Case No. **BOA-23-10300124**, I move that the Board of Adjustment grant a request for a 1' variance from the minimum 15' clear vision, to allow a driveway with a 14' clear vision from a predominantly open fence, situated at 1525 Delgado Street, applicant being Jose Jaramillo-Maldonado, 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 a 1' variance from the minimum 15' clear vision requirement to allow a fence to be 14' from the front driveway. Staff finds this distance is suitable, does not impose on the public interest of the adjacent neighbor.

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 applicant altering the fence to meet the minimum 15' distance requirement as this would create an unnecessary hardship, as the fence is existing.

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

The fence is currently 14' from the front driveway. Staff finds the spirit of the ordinance will be observed and substantial justice will be done with the requested variance as adequate sight distance is presented.

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.*

The clear vision distance will maintain 14' from the front driveway which will not likely alter the essential character of the district. Upon site visits, staff observed other front yard predominantly open fences in the immediate vicinity.

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.*

Staff found unique circumstances on the subject property that would warrant the need for a reduced side and rear setback. Staff finds the plight of the owner of the property for which the variance is sought do not appear to be merely financial.

The motion was seconded by Commissioner Manna.

Favor: Oroian, Manna, Spielman, Bonillas, Menchaca, Dean, Cruz, Hayes, Vasquez, Ozuna

Opposed: None

MOTION PASSES

Vice Chair Ozuna stated the other variances were not granted.

Item #17

BOA-23-10300126: A request by Stephen Urias for a 4'11" variance from the minimum 5' side setback to allow an accessory structure with a 1" side setback, located at 343 Carnahan Street. Staff recommends denial. (Council District 2) (Mirko Maravi, Principal Planner (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 25 notices were mailed to property owners, 2 returned in favor 0 returned in opposition, and Manhcke Park Neighborhood Association is in opposition.

Stephen Urias, applicant, stated he removed the existing structure and replaced it with the current structure. He is in a Neighborhood Conservation District which he complied with as to not offend surrounding neighbors. He further stated he has support from his neighbor.

Public Comment

Voicemails

Melissa Weiner, spoke in support.

Ruth Rodriguez, spoke in opposition.

Rebuttal

Stephen Urias, applicant, stated he is agreeable to place a firewall if requested.

Motion

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300126**, I move that the Board of Adjustment grant a request for a 4'-11" variance from the minimum 5' side setback, to allow an accessory structure with a 1" side setback, situated at 343 Carnahan Street, applicant being Stephen Urias, 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 restricted side setback to provide spacing between the property line and the accessory structure. The applicant is requesting a variance to the side setback to allow an accessory structure to be 1" from the side property line. Staff finds this distance is suitable and does not impose on the public interest of the adjacent neighbor by being too close to the shared property line.

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

Staff found special conditions on the subject property that warrant the need for the accessory structure to have a 1" side setback. Unnecessary hardship seems to be present in this case, as the applicant could not relocate the accessory structure.

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. In this case, the intention is for sufficient spacing between the accessory structure and the property line. The accessory structure will be 1" from the side property line, which will observe the spirit of the ordinance or intent of the code as it will have space between the shared property line.

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.*

If granted, the structure will maintain 1" from the side property line, which is unlikely to injure the appropriate use of the adjacent conforming property, as staff observed other neighboring properties with shared property line violation within setbacks for accessory structures.

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.*

Staff found unique circumstances on the subject property that would warrant the need for a reduced side setback. The rear yard has a swimming pool established that reduced the space to have an accessory structure with proper side setback.

The motion was seconded by Commissioner Spielman.

Favor: Manna, Spielman, Bonillas, Hayes, Ozuna, Oroian

Opposed: Menchaca, Dean, Cruz, Vasquez

MOTION FAILS

Commissioner Manna asked for a friendly amendment. Commission Ozuna asked for a reconsideration from the prevailing side maybe not 1' but perhaps some measurement of distant that they can provide as an alternate motion.

Commissioner Menchaca made a motion to reconsider and was seconded by Commissioner Oroian

All voted in affirmative.

Commissioner Ozuna called for an alternate motion.

Commission Manna made a friendly amendment to allow for the structure to be 12" from the side setback so it would be for a 4' variance from the minimum 5' setback.

Stephen Urias, applicant, stated he would amend his variance request to be 1' from side setback with add gutters.

Commissioner Cruz seconded the motion.

Favor: Manna, Cruz, Spielman, Bonillas, Menchaca, Vasquez, Ozuna, Oroian

Opposed: Dean, Hayes

MOTION FAILS

Commissioner Ozuna asked if prevailing side would want to reconsideration.

Commissioner Hayes stated she would not reconsider.

Item #18

BOA-23-10300130: A request by LA Enterprises Inc. for 1) a 25'6" variance from the minimum 30' rear setback to allow a structure with a 4'6" rear setback and 2) a 10'6" variance from the minimum 15' buffer yard to allow a structure with a 4'6" rear buffer yard, located at 1264 South WW White Road. Staff recommends denial. (Council District 2) (Mirko Maravi, Principal Planner (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 10 notices were mailed to property owners, 0 returned in favor 0 returned in opposition, and no responses from Dellcrest Area nor Hein Orchard Neighborhood Associations.

Mohammed Rahman, owner, stated he has been operating his business since March 2016 to present. He recently purchased the business in November 2022. The purpose of this request is to allow for additional storage for extra merchandise.

Public Comment**In Person**

Lorie Ewing, spoke in support.

Will Ewing, spoke in support.

William Moravits, spoke in support.

Motion

A motion was made by Commissioner Cruz. Regarding Case No. **BOA-23-10300130**, I move that the Board of Adjustment grant a request for 1) a 25'-6" variance from the minimum 30' rear setback, to allow a structure with a 4'-6" rear setback and 2) a 10'-6" variance from the minimum 15' buffer yard, to allow a structure with a 4'-6" rear buffer yard, situated at 1264 South WW White Road, applicant being LA Enterprises Inc., 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 restricted rear setback and buffer yard to provide spacing between the commercial use lot and the abutting residential lot. The applicant is requesting a variance to the rear setback and buffer yard to be 4'-6" from the rear property line. Staff finds this distance is suitable, as the residential structure is a distance away from the property line in question.

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

Staff found special conditions on the subject property that warrant the need for the addition to have a 4'-6" rear setbacks and buffer yard. The amount of space available to expand while leaving parking area available is limited.

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. In this case, the intention is for sufficient spacing between a commercial use and a residential use to the rear. The addition observes the spirit of the ordinance or intent of the code as it leaves enough room from the residential lot and the residential structure has a significant distance from the side property line.

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.*

If granted, the structure will maintain 4'-6" from the rear property line, which is unlikely to injure the appropriate use of the adjacent conforming property since there will still be separation between the lots and the residential property has a large, detached garage on the side with the commercial use.

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.*

Staff found unique circumstances on the subject property that would warrant the need for a reduced rear setback and buffer yard. Addition to the side of the structure would reduce parking spaces and prevent the property owner to add storage space for the commercial use.

The motion was seconded by Commissioner Manna.

Favor: Cruz, Manna, Spielman, Bonillas, Menchaca, Dean, Hayes, Vasquez, Ozuna, Oroian

Opposed: None

MOTION PASSES

Item #19

BOA-23-10300131: A request by Ziga Architecture Studio PLLC for a 1,040 square feet variance from the minimum 4,000 square feet lot to allow development on a 2,960 square feet lot, located at 118 May Street. Staff recommends Approval. (Council District 2) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 36 notices were mailed to property owners, 0 returned in favor 0 returned in opposition, and no response from Dignowity Hill Neighborhood Association.

Adriana Ziga, applicant, stated her client purchase the subject property to build a small one and half story home. She stated they have already received approval from the Historic Design Review Commission. She does not feel this development would negatively impact to the surrounding neighbors.

Public Comment

Voicemail

Vela Montserrat, spoke in opposition.

Rebuttal

Adriana Ziga, stated as mentioned, she does not feel this would have any negative impact on the community.

Motion

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300131**, I move that the Board of Adjustment grant a request for a 1,040 square feet variance from the minimum 4,000 square feet lot to allow a 2,960 square feet lot, situated at 118 May Street, applicant being Ziga Architecture Studio, PLLC, 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 minimum lot sizes to maintain the integrity of the assigned base zoning district and to prevent the overcrowding of smaller lots. Given that there are other non-conforming lots in the immediate area, the request seems highly unlikely to be contrary to the public interest.

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

The special condition found on the subject property is the lot is smaller in size. A literal enforcement of the ordinance would result in the applicant not being able to build on the vacant lot, which would result in an unnecessary 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 defined as the intent of the code, rather than the exact letter of the law. The lot with its current dimensions will observe the spirit of the ordinance, as the applicant is abiding by all other building requirements.

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.*

If granted, the lot will be 2,960 square feet, which is highly unlikely to alter the essential character of the district. The anticipated structure is proportional with the size of the lot. Additionally, the structure is abiding by the minimum setback requirements, which won't interfere with surrounding 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.*

Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, such as the small size of the lot. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Cruz.

Favor: Manna, Cruz, Spielman, Bonillas, Menchaca, Hayes, Vasquez, Ozuna, Oroian

Opposed: Dean

MOTION PASSES

Item #20

BOA-23-10300132: A request by Linda Kelley for 1) a variance from the permitted fence materials to allow a corrugated metal fence along the side and rear property line, 2) a 2'4" variance from the maximum 6' fence height requirement to allow an 8'4" solid screened fence in the side and rear yard, and 3) a 4'11" variance from the minimum 5' side setback requirement to allow a detached carport to be 1" from the side property line, located at 735 Hammond Avenue. Staff recommends denial. (Council District 3) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 25 notices were mailed to property owners, 2 returned in favor 0 returned in opposition, and no response from Highland Park Neighborhood Association. Staff received 2 notices in support outside the 200' radius.

Linda Kelley, applicant, stated she lives alone and suffers from health issues. With the crime rate going up in the neighborhood and 2 halfway homes nearby, she does not feel safe which is why she had this fence put up for safety reasons.

No Public Comment

Motion

A motion was made by Commissioner Oroian. Regarding Case No. **BOA-23-10300132**, I move that the Board of Adjustment grant a request for 1) a variance from the permitted fence materials to allow a corrugated metal fence along the side and rear property line, 2) a 2'-4" variance from the maximum 6' fence height requirement to allow an 8'-4" solid screened fence in the side and rear yard, and 3) a 4'-11" variance from the minimum 5' side setback requirement to allow a detached carport not to exceed 22' in length to be 1" from the side property lines, situated at 735 Hammond Avenue, applicant being Linda Kelley, 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 represented by restrictions in fence height to provide uniformity within an established neighborhood, prohibited fence materials to prevent injury, and setbacks, which are important for a well-designed built environment. The applicant is requesting a variance to allow a fence to exceed the maximum 6' height requirement, the incorporation of corrugated metal in fence design, and a carport not to exceed 22' in length to be 1" from the side property line. A small portion of the fence can be seen from the public right of way, which will not impose of the safety of the public. Additionally, the height does not appear to detract from the architectural integrity of the principal dwelling. Moreover, the carport in its current location cannot be seen from the public right of way, however, due to the closeness it is to the property line allows for adequate natural light, ventilation, and access without trespass for maintenance.

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

The literal enforcement of the ordinances would result in an unnecessary hardship for the applicant, as the fence and carport are already constructed. The fence in its current form appears to be not pose a threat to the public. Staff recognizes the home was constructed prior to current building setback regulations. With that, it will be nearly impossible to construct a detached carport without imposing into the side setback, which poses as a hardship for the applicant.

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 requested variances appear to adhere to the spirit of the ordinance, as the fence and carport provide for safe and suitable building conditions. Additionally, the applicant is abiding by all other building requirements.

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.*

Upon site visits and research conducted by staff, it does appear that the neighborhood has an established precedence of deviated fence heights, prohibited fence materials, and reduced setbacks. Many of the homes were constructed prior to 2001, where different building regulations were enforced. The structures in their current form and locations do not pose a risk to the adjacent property owners, which will 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.*

Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, such as the small size of the lot. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Manna.

Chair Oroian would like to include caps on the corrugated metal on the exposed edges. Commissioner Manna accepted.

Favor: Oroian, Manna, Spielman, Bonillas, Menchaca, Cruz, Hayes, Vasquez, Ozuna

Opposed: Dean

MOTION PASSES

Item #21

BOA-23-10300133: A request by BTWM410 LLC for 1) a 3' special exception from the maximum 5' fence height to allow an 8' predominantly open fence in the front property line, 2) a 5' special exception from the maximum 3' fence height to allow an 8' privacy fence in the front and side yard, and 3) a 1' special exception from the maximum 6' fence height to allow a 7' predominantly open fence on the south rear property line, located at 9350 SE Loop 410. Staff recommends approval. (Council District 3) (Mirko Maravi, Principal Planner (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 9 notices were mailed to property owners, 1 returned in favor 0 returned in opposition, and Villa Coronado Neighborhood Association is in neutral.

Rob Carey & Kara Williams, applicant, stated the purpose of this request is to allow for an 8-foot privacy fence in the front of the proposed mini storage unit for security reasons.

Kara Williams, applicant, they have been in contact with the adjacent neighbor, Mr. Allen, in support of the proposed fence.

No Public Comment

Motion

A motion was made by Commissioner Oroian. Regarding Case No. **BOA-23-10300133**, I move that the Board of Adjustment grant a request for 1) a 3' special exception from the maximum 5' fence height, to allow an 8' predominantly open fence in the front property line, 2) a 5' special exception from the maximum 3' fence height, to allow an 8' privacy fence in the front and side yard, situated at 9350 SE Loop 410, applicant being BTWM410 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:

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

The UDC states the Board of Adjustment can grant a special exception for a fence height modification. The fence height being requested is predominantly open, and a portion is a privacy fence located along the front yard and does not exceed 8' in height. If granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance.

- B. *The public welfare and convenience will be substantially served.*

In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The proposed fence be requested will be located along the front yard and is exceeding the maximum height requirement by 1' for the predominantly open fence and 5' for the privacy fence. The fence will still serve the public welfare and convenience.

- C. *The neighboring property will not be substantially injured by such proposed use.*

The fence will create enhanced security and privacy for the subject and adjacent properties. Additionally, the additional fence height will be along SE Loop 410 and abutting a vacant residential lot.

- 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 additional fence height in the front yard of the subject property does not appear to alter the location for which the special exception is sought, as the abutting base zoning district is residentially zoned along a highway. Additionally, the property is zoned for more intense commercial uses that would be beneficial to add an 8' fence.

- E. *The special exception will not weaken the general purpose of the district, or the regulations herein established for the specific district.*

The requested special exception will not weaken the general purpose of the district.

The motion was seconded by Commissioner Cruz.

Favor: Oroian, Cruz, Spielman, Bonillas, Menchaca, Dean, Manna, Hayes, Vasquez, Ozuna

Opposed: None

MOTION PASSES

Item #22

BOA-23-10300139: A request by Rogelio Dipp for 1) a 5' variance from the minimum 10' front setback requirement to allow a structure to be 5' from the front property lines, 2) a 2' variance from the minimum 5' side setback requirement to allow a structure to be 3' from the side property lines, 3) a 10' variance from the minimum 20' rear setback requirement to allow a structure to be 10' from the rear property lines, 4) a 2,740 square feet variance from the minimum 4,000 square feet requirement to allow a 1,260 square feet lots, and 5) a 14' variance from the minimum 35' lot width requirement to allow lots with 21' width, located at 1330 and 1332 Montezuma Street. Staff recommends denial. (Council District 5) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 48 notices were mailed to property owners, 0 returned in favor 1 returned in opposition, and no response from Historic Westside Neighborhood Association.

Rogelio Dipp, applicant, stated they are proposing a tiny home on the subject property. Unfortunately, these lots are extremely small, so they applied and were approved for a Certificate of Determination (COD) to build over the lot line. He further stated with the approved COD, the applied and received an address. He further stated City staff presented 2 options, a variance, or a zoning change to a IDZ Infill Development Zone. He does not feel the proposed development would not negatively impact the community.

No Public Comment

Motion

A motion was made by Commissioner Cruz. Regarding Case No. **BOA-23-10300139**, I move that the Board of Adjustment grant a request for 1) a 5' variance from the minimum 10' front setback requirement to allow a structure to be 5' from the front property lines, 2) a 2' variance from the minimum 5' side setback requirement to allow a structure to be 3' from the side property lines, 3) a 10' variance from the minimum 20' rear setback requirement to allow a structure to be 10' from the rear property lines, 4) a 2,740 square feet variance from the minimum 4,000 square feet requirement to allow a 1,260 square feet lots, and 5) a 14' variance from the minimum 35' lot width requirement to allow lots with 21' width, situated at 1330 and 1332 Montezuma, applicant being Aragon Builders, 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 restricted setbacks to provide spacing between property line and structures and by minimum lot sizes and width to prevent the overcrowding of development into smaller lots. Staff finds the anticipated setback distances are suitable, as it does not impose on the public interest of the adjacent neighbor by being too close to the shared property line, water runoff will not impose, and risk of fire spread is mediated. Additionally, the increasement of density for the assigned zoning district will not infringe on surrounding property owners by the lot being smaller in size.

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

The requests provide spacing for the front, side, and rear yard maintenance without trespass, allows for storm water mitigation or fire spread mitigation. A literal enforcement of the ordinance would result in the applicant rezoning the property to “R-1” to allow for the development on this lot. This would result in an unnecessary hardship, as the lots are non-conforming.

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. In this case, the intention is for sufficient spacing between structures, property lines, and right of ways. The structures observe the spirit of the ordinance or intent of the code as it will not be too close to the shared property line and neighboring structure. If approved, the lot will not meet the minimum lot size and width in the assigned zoning district. Staff finds the spirit of the ordinance will be observed.

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.*

If granted, the structures will be constructed at their anticipated distances, which are not likely to injure the appropriate use of the adjacent conforming properties. Staff does recognize that the homes in the immediate area impede into the setback, mainly because they were constructed prior to current setback regulations. It will be too close to neighboring structures. Additionally, staff finds these requests will not injure the appropriate use of adjacent conforming properties and alter the essential character of the district, as majority of properties in the immediate vicinity are not abiding by the minimum lot size requirement.

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.*

Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, such as the small size of the lots. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Oroian.

Favor: Cruz, Oroian, Spielman, Bonillas, Menchaca, Manna, Vasquez, Ozuna

Opposed: Dean, Hayes

MOTION FAILS

Commissioner Ozuna stated the motions fails. Commissioner Ozuna if anyone from the prevailing side wish to reconsider.

Commissioner Hayes and Commissioner Dean wish to maintain their vote for opposition.

Item #23

BOA-23-10300141: A request by Jamell Yarborough and David Schlenker for a 2' special exception from the maximum 6' fence height to allow an 8' privacy fence in the side and rear yard, located at 945 West Summit Avenue. Staff recommends denial. (Council District 1) (Mirko Maravi, Principal Planner (210) 207-0107, Mirko.Maravi@sanantonio.gov, Development Services Department)

Staff stated 22 notices were mailed to property owners, 6 returned in favor 0 returned in opposition, and Beacon Hill Neighborhood Association is in opposition. Staff received 1 notice in support outside the 200' radius.

Jamell Yarborough & David Schlenker, owners, stated they are requesting approval for their 2' foot variance for their fence. He stated he does not feel this would pose any harm to neighbors. The fence is within their property and the portion that is visible to the public is back facing the alley. He stated they have been in contact with their surrounding neighbors who have expressed support. He further stated they have been working with the neighborhood association.

Public Comment

Voicemail

Alyssa Shaw, spoke in support.

Katy Bingham, spoke in support.

Daniel Hubbeling, Chair of Beacon Hill Zoning and Urban Design Committee, spoke in opposition.

Rebuttal

David Schlenker, owners, stated they are in the process for an ADU and have complied with all requirements. He further stated every one of their engineer reports that parking is satisfactory. He further stated they have not formally meet with the neighborhood association board but have been in contact with the president. They are agreeable to a continuance to allow for them to present to the neighborhood association board on August 14, 2023.

Motion

A motion was made by Commissioner Oroian and seconded by Commissioner Cruz for a continuance until August 21, 2023.

Favor: Oroian, Cruz, Spielman, Bonillas, Menchaca, Manna, Hayes, Vasquez, Ozuna

Opposed: Dean

MOTION PASSES

Item #24

Approval of the minutes from the Board of Adjustment meeting on June 5, 2023.

A motion was made by Commissioner Manna and seconded Commissioner Ozuna for approval of the June 5, 2023, minutes as presented.

All voted in affirmative.

Adjournment

There being no further business, the meeting was adjourned at 10:37 PM.

APPROVED BY: _____ or _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary