

## City of San Antonio



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

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**Monday, July 24, 2023**

**1:00 PM**

**1901 S. Alamo**

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**1:01 PM – Call to Order**

**SeproTec translator were present.**

**Roll Call – Present:** Spielman, Menchaca, Dean, Caudill, Zuniga, Manna, Kaplan, Bragman, Ozuna, Oroian

**Absent:** Cruz

**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.*

**Commissioner Manna exited the meeting at 1:07 pm for recusal purposes.**

**Item #10**

**BOA-23-10300185:** An appeal by Cedrric Trevino of the Administrator's decision to revoke the short-term rental permit, located at 9210 Big Bethel Drive. Staff recommends denial. (Council District 7) (Emily Garcia, Planner (210) 207-0271, [Emily.Garcia@sanantonio.gov](mailto:Emily.Garcia@sanantonio.gov), Development Services Department)

Staff stated 39 notices were mailed to property owners, 0 returned in favor, 4 returned in opposition, and Alamo Farmstead Babcock Road Neighborhood Association is in opposition.

Cedrric Trevino & Candice Trevino, applicants, stated they have 2 rental properties that have been in operation for a few years, and both are current with their taxes. All rentals have never been for commercial use. He stated he listed his rentals on Peerspace for advertisement purposes. They have been in compliance and have never had any complaints from surrounding neighbors.

## **No Public Comment**

### **Motion**

A motion was made by Commissioner Zuniga. Regarding Case No. **BOA-23-10300185**, I move that the Board of Adjustment grant the appeal for the property, situated at 9210 Big Bethel Drive, applicant being Cedrric Trevino, 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 Kaplan.

**Favor:** Kaplan Menchaca, Caudill, Ozuna, Oroian

**Opposed:** Zuniga, Spielman, Dean, Bragman

## **MOTION FAILS**

Chair Oroian stated Item #1 BOA-23-10300187 (Council District 5): located at 1601 and 1615 Buena Vista Street has been postponed.

**Commissioner Manna rejoined at 1:34pm**

**Commissioner Riahi joined Web Ex at 1:38pm**

### **Item #9**

**BOA-23-10300184:** An appeal by Cedrric Trevino of the Administrator's decision to revoke the short-term rental permit, located at 9031 Mountain Field Drive. Staff recommends denial. (Richard Bautista-Vazquez, Planner (210)207-0215, richard.bautistavazquez@sanantonio.gov, Development Services Department)

Staff stated 41 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no registered neighborhood association.

Cedrric Trevino & Candice Trevino, applicants, stated this is similar to the previous case. They listed their rental on Peerspace for advertisement purposes. They have been in compliance and have never had any complaints from surrounding neighbors. He does not recall renting for a photo shoot as stated by staff, he would have to confirm with the property manager.

## **Public Comment**

### **Motion**

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-23-10300184**, I move that the Board of Adjustment grant the appeal for the property, situated at 9031 Mountain Field Drive, applicant being Cedrric Trevino, 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 Zuniga.

**Favor:** Caudill,

**Opposed:** Kaplan, Zuniga, Spielman, Menchaca, Dean, Manna, Bragman, Ozuna, Riahi, Oroian

## **MOTION FAILS**

### **Item #2**

**BOA-23-10300112:** A request by Jacob Dady for a 17' variance from the minimum 20' garage setback requirement to allow a garage to be 3' from the side property line, located at 434 Adams Street. Staff recommends denial. (Council District 1) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 29 notices were mailed to property owners, 0 returned in favor with 4 received in favor outside 200' radius, 1 returned in opposition, and no response from King William Homeowners Association.

Jacob Dady, applicant, stated there is 5 feet between the back fence line and the garage. He stated his request is for a 17' variance from the property line 3 feet back for a 2-car garage with a second level. He further stated there is 10 feet between the home to where the garage apartment would start. He went before HDRC (Historic Design Review Commission) and his 2 story garage was approved.

### **Public Comment**

#### **Voicemail**

Maria Burger, spoke in support.

### **Motion**

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-23-10300112**, I move that the Board of Adjustment grant a request for a 17' variance from the minimum 20' garage setback requirement to allow a garage to be 3' from the side property line. Situated at 434 Adams Street, applicant being Jacob Dady, 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. The applicant is requesting a variance to the side setback to allow a garage to be 3' from the side property line. Staff finds this distance is suitable, as it will 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 mitigated.**

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 limited side yard space for egress and ingress. If the literal enforcement of the ordinance was applied, the applicant would need to abide by the 20' garage setback requirement. This would result in an unnecessary hardship, as the garage square footage would be reduced.**

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 and property lines. The garage will be 3' from the side property line, which observes the spirit of the ordinance as the structure will be 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 detached garage will maintain 3' from the side property line. The request will not injure adjacent properties or 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 limited side yard space for egress and ingress. The circumstances do not appear to be merely financial.**

The motion was seconded by Commissioner Bragman.

Chair Oroian offered a friendly amendment to 15' variance to allow the garage 5' from the side property line. Commissioner Ozuna and Commissioner Bragman accepted the friendly amendment.

**Favor:** Ozuna, Bragman, Spielman, Menchaca, Dean, Caudill, Zuniga, Manna, Kaplan, Riahi, Oroian

**Opposed:** None

**MOTION PASSES**

**Item #3**

**BOA-23-10300176:** A request by Erika Limon for a 9'11" variance from the minimum 10' front setback requirement to allow a carport to be 1" from the front property line, located at 4319 Greco Drive. Staff recommends approval. (Council District 3) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 40 notices were mailed to property owners, 1 returned in favor, 1 returned in opposition, and no response from Pecan Valley Neighborhood Association.

Erica and Christopher Limon, applicants, stated the purpose of this request to allow for a carport. They stated they will be installing gutters on both sides to mitigate water runoff. They have visited surrounding neighbors and collected a support expressing their support. They are agreeable to make necessary changes as recommended.

**No Public Comment****Motion**

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300176**, I move that the Board of Adjustment grant a request for a 7' variance from the minimum 10' front setback requirement to allow a carport to be 3' from the front property line situated at 4319 Greco Drive, applicant being Erika Limon, 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 represented by setback requirements to prevent water runoff and adequate spacing between properties. The applicant is requesting a variance to the front setback to allow a detached carport to be 3' from the front property line. The carport in its current location will not be contrary, as the mitigation of storm water runoff will fall on the property of the applicants.**

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 size. The front property line is 10' inwards from the curb and has a zero-lot line along the side property line, resulting in the variance being necessary for the construction of the carport. Without it, the applicant would undergo a hardship, as the construction of a sizeable carport to fit their vehicles would be unattainable.**

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 granting of this variance will observe the spirit of the ordinance, as the carport is located within their property and is abiding by all other setback requirements. Additionally, building permits were issued but once notified about the need for the variance, the applicant abruptly halted construction to obtain one. All of which appears to observe the spirit of the ordinance.**

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 carport will be 3' from the front property line. This will not injure the appropriate use of adjacent conforming properties, as other carports imposing into the setback were found in the immediate vicinity and approved by the Board of Adjustment. The request does not seem to be out of character with the district and is harmonious with the 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.*

**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 limited spacing on the property.**

The motion was seconded by Commissioner Kaplan.

**Favor:** Manna, Kaplan, Spielman, Menchaca, Dean, Caudill, Zuniga, Bragman, Ozuna, Riahi, Oroian

**Opposed:** None

## **MOTION PASSES**

### **Item #4**

**BOA-23-10300178:** A request by Margaret Mann for 1) a 9'11" variance from the minimum 10' front setback to allow a carport with a 1" front setback and 2) a 4'10" variance from the minimum 5' side setback to allow a carport with a 2" side setback, located at 211 Channing Avenue. Staff recommends denial. (Council District 3) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 37 notices were mailed to property owners, 0 returned in favor, 1 returned in opposition, and no response from Highland Park Homeowners Association.

Margaret Mann & Paul Johnson, applicants, stated the purpose of this request is to allow for their existing carport. She stated they hired a contractor to build their carport and unfortunately city staff informed them no permits were pulled for the carport. Mr. Johnson stated they are agreeable to make necessary changes as requested.

### No Public Comment

### Motion

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300178**, I move that the Board of Adjustment grant a request for 1) a 9'-11" variance from the minimum 10' front setback to allow a carport with a 1" front setback and 2) a 4'-10" variance from the minimum 5' side setback to allow a carport with a 2" side setback, situated at 211 Channing Avenue, applicant being Margaret Mann, 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 proposed carport has adequate distance from the right-of-way and so is not contrary to the public interest.**
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*  
**A literal enforcement of the ordinance would result in unnecessary hardship as the applicant could not build a carport conforming to the code.**
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. Reducing the front and side setback would not injure neighboring properties as there appears to be similar nonconforming carports in the area.**
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 reduced front and side setback would not injure neighboring properties as other properties in the areas have similar carports and it would not obstruct the neighbors' views.**

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 reduced front and side setback variance is sought is due to unique circumstances existing on the property, such as the location and the space available in the driveway.**

The motion was seconded by Commissioner Kaplan.

**Favor:** Manna, Kaplan, Spielman, Menchaca, Dean, Caudill, Zuniga, Bragman, Ozuna, Riahi, Oroian

**Opposed:** None

**MOTION PASSES**

**Commission went into recess at 3:00 pm**

**Commission reconvened at 3:10 pm**

**Item #5**

**BOA-23-10300179:** A request by Arihan, LLC DBA; Fantastic Sam's for a one and a half story variance from the maximum 2.5 stories, to allow a building with 4 stories, located at 2203 East Commerce Street. Staff recommends denial. (Council District 2) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 29 notices were mailed to property owners, 0 returned in favor, 2 returned in opposition, and no response from Jefferson Heights Neighborhood Association and Denver Heights Neighborhood Association is in opposition.

Rakesh Vazir, applicant, stated he has owned the property since 2006. He stated they have an MOU (Memorandum of Understanding) with American GI for this development. They are proposing to develop a 4-story building for homeless veterans. This structure would be ADA compliance to make it accessible for veterans. With the help of American GI they would provide shelter, food, medical services and job training services. He stated they have made attempts to make contact with Denver Heights Neighborhood Association and surrounding property owners but not have been successful.

**Motion**

Chair Oroian made a motion to continue case **BOA-23-10300179** to August 21, 2023, and was seconded by Commissioner Manna.

**All voted in affirmative.**

**MOTION PASSES**



**Item #6**

**BOA-23-10300180**: A request by Celso G. Enriquez for 1) a 1,725 square foot variance from the minimum 4,000 square foot requirement to allow a development on a 2,275 square foot lot and 2) a 10' variance from the minimum 20' rear setback requirement to allow a structure to be 10' from the rear property line, located at 831 South San Eduardo Avenue. Staff recommends approval for the Rear Setback Variance. Staff recommends denial for Lot Size Variance. (Council District 5) (Richard Bautista-Vazquez, Planner (210) 207-0215, richard.bautistavazquez@sanantonio.gov, Development Services Department)

Staff stated 40 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no response from Las Palmas Neighborhood Association.

Celso G. Enriquez, applicant, stated he is proposing to develop a small single-family home on the subject property like the surrounding houses in the neighborhood.

**No Public Comment****Motion**

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-23-10300180**, I move that the Board of Adjustment grant a request for 1) a 1,725 square foot variance from the minimum 4,000 square foot requirement to allow a development on a 2,275 square foot lot and 2) a 10' variance from the minimum 20' rear setback requirement to allow a structure to be 10' from the rear property line, situated at 831 South San Eduardo Avenue, applicant being Celso G. Enriquez, 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 applicant is requesting a 10' variance from the minimum 20' rear setback requirement to allow a structure to be 10' from the rear property line, which does not appear to be contrary to the public interest. The surrounding area would have similar rear setbacks and are appropriate for the area. The applicant's request for a 1,725 square foot variance from the minimum 4,000 square foot requirement to allow a development on a 2,275 square foot lot appears to be not contrary to the public interest.**

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

**Staff finds an unnecessary hardship for the rear setback variance due the narrowness of the lot. The proposed structure does not have ample space to extend to the sides therefore requires a tapered structure to be built on the site. Staff finds hardship for the lot size variance would require rezoning and replatting to be developed.**

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

**The requested rear setback variance is to allow a structure to be closer to the rear property line. The request will observe the spirit of the ordinance because the proposed structure will still maintain a reasonable distance between the structure and the surrounding properties. The requested lot size variance is to allow the construction of a single-family residence on a small lot. This will observe the spirit of the ordinance as there is similar development in the area.**

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.*

**Staff does not find evidence that the requested rear setback variance would alter the essential character of the district. Additional properties located along South San Eduardo Avenue were observed to have similar structures with similar rear setbacks, therefore the request would not alter the essential character of the neighborhood. Staff does not find evidence that the requested lot size variance would 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 rear setback variance is sought due to unique circumstances existing on the property such proposed structure needing more space due to the configuration of the lot. The variance request is not merely financial. The lot size variance is sought due to unique circumstances existing on the property. This variance will alleviate the need to rezone.**

The motion was seconded by Commissioner Bragman.

**Favor:** Kaplan, Bragman, Spielman, Menchaca, Dean, Caudill, Zuniga, Manna, Ozuna, Riahi, Oroian

**Opposed:** None

**MOTION PASSES**

**Item #7**

**BOA-23-10300183**: A request by Gerardo Gonzalez for a 29'-11" variance from the minimum 30' rear setback requirement to allow a structure to be 1" from the rear property line, located at 1710 McCullough Avenue. Staff recommends denial. (Council District 1) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 20 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and Tobin Hill Neighborhood Association is in opposition.

Gerardo Gonzalez, applicant, stated his restaurant is adjacent to the subject property. He purchased it with the intent to provide more parking for his restaurant. Instead, he decided to open a store for Mexican imports. Due to safety concerns, he built a patio with a medal fence. He stated he enclosed the medal fence to prevent trespassers onto his property. He is using this enclosed patio for storage of his restaurant and his store. He stated he is agreeable to a continuance to revisit and possibly amending his request.

**Motion**

A motion was made by Commissioner Kaplan to continue case **BOA-23-10300183** to August 21, 2023, and was seconded by Commissioner Menchaca.

**All voted in affirmative.**

**MOTION PASSES****Item #8**

**BOA-23-10300177**: An appeal by Lashelle Wilson of the Administrator's decision to revoke the short-term rental permit, located at 209 Idaho Street. Staff recommends denial. (Council District 2) (Emily Garcia, Planner (210) 207-0271, Emily.Garcia@sanantonio.gov, Development Services Department)

Staff stated 33 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no response from Downtown Neighborhood Association.

Lashelle Wilson, attorney, stated in October 2022, city staff informed her client that he was delinquent on the HOT tax for 209 Idaho. He immediately made contact with Finance Department to submit payment. She stated her client was under the impression his property manager was taking care of the HOT tax. On November 2022 he emails the Finance Department to obtain his Hotel Occupancy ID number so his property manager can submit payment. He was asked to not submit payment until their review has been completed. In December 2022 he receives notice that his permit has been revoke and cannot operate his business for a year. She stated her client never received notice of being delinquent as all correspondence was being mailed to the previous owner at a different address. The permit was reinstated in January and has 90 days to comply. In February, he receives the invoice reflecting unpaid tax from September 2020 to September 2022. Upon receiving the invoice, he emails Finance to request his Hotel Tax ID number he was directed to the Hot tax link to submit payment. His property owner contacted the Finance Department because the system would not take his payment and no response. She stated her client's property

owner made several attempts in contacting Finance Department for assistance or alternate payment options but unfortunately is unsuccessful.

**No Public Comment**

**Motion**

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-23-10300177**, I move that the Board of Adjustment grant the appeal for the property, situated at 209 Idaho Street, applicant being Lashelle Wilson, 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 Bragman.

**Favor:** Kaplan, Bragman, Spielman, Menchaca, Caudill Manna, Ozuna, Riahi, Oroian

**Opposed:** Dean, Zuniga

**MOTION PASSES**

**Item #11**

Approval of the minutes from the Board of Adjustment meeting on July 10, 2023.

A motion was made by Commissioner Bragman and seconded Commissioner Menchaca for approval of the June 26, 2023, minutes as presented.

**All voted in affirmative.**

**MOTION PASSES**

**Adjournment**

There being no further business, the meeting was adjourned at 4:55 PM.

APPROVED BY: \_\_\_\_\_ or \_\_\_\_\_  
Chairman Vice-Chair

DATE: \_\_\_\_\_

ATTESTED BY: \_\_\_\_\_ DATE: \_\_\_\_\_  
Executive Secretary