

City of San Antonio



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

Monday, September 11, 2023

1:00 PM

1901 S. Alamo

1:07 PM – Call to Order

Spanish Interpreter presented.

Roll Call – Present: Brereton, Picasso, Brown, Dean, Cruz, Zuniga, Vasquez, Bragman, Ozuna, Riahi, Benavides, Oroian

Absent: None

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 Riahi joined meeting by Web Ex at 1:15 pm

Item #1

BOA-23-10300197 (Continued from 8/7/2023): A request by JoAnn Galvez for 1) a 4' special exception from the NCD-5 maximum 2' height to allow a 6' privacy fence along the front yard, 2) a variance from the NCD-5 to allow a gate structure across the driveway, and 3) a 1'8" variance from the minimum 15' clear vision requirement to allow a fence to be 13'4" from the front yard driveway curb, located at 935 Aganier Avenue. Staff recommends denial for the Neighborhood Conservation District Variance and Special Exception. Staff recommends approval for the Clear Vision Variance. (Council District 1) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 27 notices were mailed to property owners, 15 returned in favor, 1 returned in opposition, and Beacon Hill Neighborhood Association is in opposition.

JoAnn Galvez, applicant, stated she had this fence built for safety and security purposes. She stated the home next door is vacant and has attracted vagrants. She stated city officials are addressing this issue. As requested by Commission at the previous meeting, she has altered the fence for clear vision purposes.

Public Comment

Voicemail

Daniel Hubbeling, Beacon Hill Neighborhood Association, spoke in opposition.

In Person

Cynthia Spielman, President Beacon Hill Neighborhood Association, stated they have working with the applicant to address reach a compromise as well as addressing the homeless issue.

1st Motion

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-23-10300197**, I move that the Board of Adjustment grant a request for 1) a variance from the NCD-5 to allow a gate structure across the driveway, and 2) a 1'-8" variance from the minimum 15' clear vision requirement to allow a fence to be 13'-4" from the front yard driveway curb, situated at 935 Aganier Avenue, applicant being JoAnn Galvez, 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. Staffs finds the requests for the gate structure across the driveway and the reduced clear vision is not contrary to the public interest as it will increase safety on the lot for the property owner.

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

A literal enforcement of the ordinance would reduce safety on the property and would leave no room for a gate to further protect property owner's vehicle.

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 gate structure across the driveway and the reduced clear vision will observe the spirit of the ordinance, by creating enhanced security and privacy.

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 will maintain 13'-4" from the front yard driveway curb and the driveway gate matches the look of the front yard fence, which will not likely 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 gate structure across the driveway and clear vision variance is sought is a result of the general conditions of the district when established.

The motion was seconded by Commissioner Bragman.

Favor: Ozuna, Bragman, Brereton, Picasso, Brown, Dean, Cruz, Zuniga, Vasquez, Riahi, Oroian
Opposed: None

MOTION PASSES

2nd Motion

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-23-10300197**, I move that the Board of Adjustment grant request for a 4' special exception from the NCD-5 maximum 2' height to allow a 6' privacy fence along the front yard, situated at 935 Aganier Avenue, applicant being JoAnn Galvez, 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 proposed fence being requested is a privacy fence, located along the front yard. 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 height to protect residential property owners while still promoting a sense of community. The privacy fence still serves 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.

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 located along the front property yard of the subject property appear to not alter the character of the district.

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 requested special exception will not weaken the use of the single-family dwelling.

The motion was seconded by Commissioner Bragman.

Favor: Ozuna, Bragman, Brereton, Picasso, Brown, Dean, Cruz, Zuniga, Vasquez, Riahi, Oroian

Opposed: None

MOTION PASSES

Item #2

BOA-23-10300218 (Continued from 8/21/23): A request by Christensen P.C. for 1) a 1'7" variance from the minimum 5' side setback to allow a structure to be 3'5" from the side property line, 2) a variance to allow three separate structures on an "RM-4" lot that is less than one third of an acre, 3) a variance to exceed the maximum 50% impervious cover, and 4) a half story variance from the maximum 2.5 stories, to allow a building with 3 stories, located at 815 South Pine Street. Staff recommends approval for side setback variance. Staff recommends denial for the Three Separate Structures on an "RM-4" lot that is less than One-third of an Acre, Impervious Cover, and Half Story Variances. (Council District 2) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 46 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and Denver Heights Neighborhood Association is in opposition.

Patrick Christensen, representative, stated they are proposing condo development on the subject property. These condos would be for sale not rental units which is the purpose of the 1'7" from property line. They would be 3 separate 3 story structures. He stated the first floor would be a 2-car garage with a home office on the ground floor with the second and third floor for livable space. Water runoff is designed to fall to the north of the property that would go onto the street into the stormwater drains.

No Public Comment

Motion

A motion was made by Commissioner Cruz. Regarding Case No. **BOA-23-10300218**, I move that the Board of Adjustment grant a request for 1) a 1'-7' variance from the minimum 5' side setback to allow a structure to be 3'-5" from the side property line, 2) a variance to allow three separate structures on an "RM-4" lot that is less than one-third of an acre, and 3) a half story variance from the maximum 2.5 stories to allow a building with 3 stories, situated at 815 South Pine Street, applicant being Christensen, P.C., 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. Staff finds these requests are not contrary to the public interest as three structures will not cause overcrowding on smaller lots with a reduced setback and height requirements are enforced for the protection of view for adjacent residential uses, which the subject property will not interfere with.

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 limited buildable area for the intended uses. Staff finds a literal enforcement of the ordinance would result in an unnecessary hardship, as a reduction of livable area and parking spaces 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. The requested variances will observe 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.*

Staff finds these requests will not injure adjacent properties, as this type of development is common in the immediate area and will not be out of character.

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 applicant not having sufficient buildable area. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Bragman.

Chair Oroian made a friendly amendment to remove the 3rd variance request regarding 3 stories and was accepted by Commissioner Cruz and Commissioner Bragman.

Chair Oroian stated the vote would be to consider only items 1 and 2 of the variance requests.

Favor: Cruz, Bragman, Brereton, Picasso, Zuniga, Ozuna, Riahi

Opposed: Brown, Dean, Vasquez, Oroian

MOTION FAILS

Chair Oroian asked the motion to be reconsidered and was seconded by Commissioner Picasso.

Favor: Oroian, Picasso, Brereton, Brown, Cruz, Zuniga, Vasquez, Bragman, Ozuna, Riahi

Opposed: Dean

MOTION PASSES

Chair Oroian made a motion for a 1'-7' variance from the minimum 5' side setback to allow a structure to be 3'-5" from the side property line abutting the church and seconded Commissioner Ozuna.

Favor: Oroian, Ozuna, Brereton, Picasso, Cruz, Zuniga, Vasquez, Bragman, Riahi

Opposed: Brown, Dean

MOTION PASSES

Motion

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-23-10300218**, I move that the Board of Adjustment grant a request for a half story variance from the maximum 2.5 stories to allow a building with 3 stories, situated at 815 South Pine Street, applicant being Christensen, P.C., 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. The findings of fact are the same as Commissioner Cruz read into the record previously and was seconded by Commissioner Cruz.

Favor: Ozuna, Cruz, Picasso, Zuniga, Vasquez, Bragman, Riahi, Oroian

Opposed: Brereton, Brown, Dean

MOTION FAILS

Item #3

BOA-23-10300175

Mirko Maravi, Principal Planer, stated the applicant is not present however they requested this case be continued until September 25, 2023, meeting.

Motion

A motion was made by Chair Oroian to continue this case until September 25, 2023 and was seconded by Commissioner Ozuna.

A verbal was vote was taken and all voted in affirmative.

MOTION PASSES

Item #4

BOA-23-10300183: A request by Gerardo Gonzalez for 1) a 29'11" variance from the minimum 30' rear setback requirement to allow a structure to be 1" from the rear property line and 2) a variance to allow a corrugated metal fence along the side and rear property lines, 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 he owns the restaurant next door and utilizes this area for supply storage. When he purchased the property, it already has a metal fence which he replaced it with the corrugated metal fences. The purpose of this fence is for security, to keep thieves away. He stated the surrounding property owners are not in opposition of this fence.

No Public Comment

Motion

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-23-10300183**, I move that the Board of Adjustment grant a request for 1) a 29'-11" variance to allow a structure to be 1" from the rear property line, and 2) a variance to allow a corrugated metal fence along the side and rear property line, situated at 1710 McCullough Avenue, applicant being Gerardo Gonzalez, 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. Staff finds that this is an allowable distance, as it will not directly affect the adjacent neighbor. Additionally, staff finds the fencing material is suitable, as it is solely located within the rear yard.

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 structure to adhere by the rear setback requirements and reconstruct the fence using an allowable fencing material. This would result in an unnecessary hardship, as it appears the structure and fence can't be altered.

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. "C-2" zoned districts have the option to eliminate the rear setback distance if abutting commercial only and the fence is an allowable fence height, thus the spirit of the ordinance will be observed in this case.

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 the current 1" rear setback and have prohibited fencing materials. These requests will not injure the appropriate use of adjacent conforming 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 the applicant not having sufficient buildable space for the proposed use. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Cruz.

Chair Oroian offered a friendly amendment to strike the corrugated metal section of the motion and to change the 29' – 11' variance to a 20' variance from minimum 30' rear setback to allow a structure to be 10' from the rear property line and was accepted by Commissioner Bragman and Commissioner Cruz.

Chair Oroian state the motion on the floor has officially changed and it does not include the corrugated metal and is promoting a 20' variance to allow the structure to be 10' from the property line.

Favor: Bragman, Cruz, Brereton, Picasso, Brown, Dean, Zuniga, Vasquez, Ozuna, Riahi, Oroian
Opposed: None

MOTION PASSES

Item #5
BOA-23-10300223

Vincent Trevino, Senior Planner, stated the builders is requesting a continuance as he is working on collection more signatures for this variance request.

Motion

A motion was made by Chair Ozuna to continue this case until September 18, 2023 and was seconded by Commissioner Cruz.

A verbal was vote was taken and all voted in affirmative.

MOTION PASSES

Commission went into recess at 2:58 pm and reconvened at 3:06 pm.

Commissioner Riahi left meeting by Web Ex at 3:00 pm

Commissioner Benavides joined meeting by Web Ex at 3:06 pm

Item #6
BOA-23-10300226: A request by AMD Engineering, LLC for a 11'6" variance from the minimum 15' landscape buffer to allow a 3'6" landscape buffer, located at 1110 North Loop 1604 East. Staff recommends approval. (Council District 9) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 11 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and there is no registered Neighborhood Association.

Will Stephens, representative, stated the purpose of the buffer yard reduction is to maintain a parking and drive out layout that is consistent with the surrounding properties. He stated there is a gas line easement on the property and he has been in contact with CPS representatives to provide services to the property.

No Public Comment

Motion

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-23-10300226**, I move that the Board of Adjustment grant a request for 10'-6" variance from the minimum 15' landscape buffer to allow a 3'-6" landscape buffer, situated at 1110 North 1604 East, applicant being AMD Engineering, LLC, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

1. *The variance is not contrary to the public interest.*
The reduced buffer will be located along the north property line and will leave enough room between properties to reduce noise and therefore is not contrary to the public interest.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
The full landscape buffer would reduce the amount of space the applicant can develop on the property.
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 reduced landscape buffer will observe the spirit of the ordinance as there will still be a landscape buffer located along the north 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.*
The reduced landscape buffer will not substantially injure the appropriate use of adjacent properties as the buffer variances being sought after are bordering commercial uses.

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 landscape variances are sought is due to unique circumstances existing on the property, such as the location of the property.

The motion was seconded by Commissioner Ozuna.

Favor: Bragman, Ozuna, Brereton, Picasso, Brown, Dean, Cruz, Zuniga, Vasquez, Benavides, Oroian

Opposed: None

MOTION PASSES

Commissioner Bragman left meeting at 3:28 pm

Item #7

BOA-23-10300229: A request by Domingo Salinas for 1) a 3'10" variance from the minimum 5' side setback requirement to allow a carport to be 1'2" from the side property line, and 2) a 9'11" variance from the minimum 10' front setback to allow a 1" carport front setback, located at 114 Southway Drive. Staff recommends denial. (Council District 5) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 19 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no response from Palm Heights Neighborhood Association.

Domingo Salinas, applicant, stated he reconstructed and extended his carport further to the front for weather protection of his vehicles. He stated if his case gets approved, he would continue with the installation of rain gutters.

No Public Comment

Motion

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-23-10300229**, I move that the Board of Adjustment grant a request for 1) a 3'-10" variance from the minimum 5' side setback requirement to allow a carport to be 1'-2" from the side property line, and 2) a 9'-11" variance from the minimum 10' front setback to allow a 1" carport front setback, situated at 114 Southway Drive, applicant being Domingo Salinas, 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.*
Staff finds the setbacks cannot be met due to the unique circumstances existing on the property, such as the size of the lot and location of the main structure 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. The request would not injure neighboring property as it would have over 5' separation from the carport to the neighboring 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.*
The reduced side and front setback would not injure neighboring properties due to unique circumstances existing on the property, such as the size of the lot and the location of the main structure.
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 side and front setback variance is sought is due to unique circumstances existing on the property, such as the size and location of the main structure.

The motion was seconded by Commissioner Cruz. Commissioner Cruz stated she would like recognized that the applicant stated in his presentation that he would be installing gutters.

Commission Ozuna amended his motion to state variance request is contingent on the applicant providing gutters on the property as stated by the applicant. Commissioner Cruz accepted.

Favor: Ozuna, Cruz, Brereton, Picasso, Brown, Dean, Zuniga, Vasquez, Benavides, Oroian
Opposed: None

MOTION PASSES

Item #8

BOA-23-10300231: A request by Chesapeake Associates LTD II for 1) a 3' special exception from the maximum 5' front yard fence height to allow an 8' predominately open fence in the front yard, and 2) a 2' special exception from the maximum 6' fence height to allow an 8' predominately open fence in the side and rear yard, located at 3900 Rogers Road. Staff recommends approval. (Council District 6) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 7 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no there are no registered Neighborhood Association.

Rene Cavazos, applicant, stated the purpose of this request is for security and safety purposes. There has been several break ins, trespassing and items stolen from the property such as sod. It currently has masonry columns, and he is proposing to install a 7'11" rod iron fence. His request is in keeping and would be uniform surrounding properties.

Public Comment**Voicemail**

Frank Murphy, Plaza Realty Management, spoke in support.

Motion

A motion was made by Commissioner Cruz. Regarding Case No. **BOA-23-10300231**, I move that the Board of Adjustment grant a request for 1) a 3' special exception from the maximum 5' front yard fence height to allow an 8' predominately open fence in the front yard, and 2) a 2' special exception from the maximum 6' fence height to allow an 8' predominately open fence in the side and rear yard., situated at 3900 Rogers Road, applicant being Chesapeake Associates LTD, 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. 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. An 8' fence along the front, side, and rear property lines do not pose any adverse effects to the public welfare.

- C. *The neighboring property will not be substantially injured by such proposed use.*
The fence will add security to the subject property and adjacent properties. Other predominantly open fences were observed in the area therefore the request is unlikely to substantially injure any neighboring 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 height in fence along the front, side, and rear property lines will not alter the essential character of the district as the property is zoned commercial.
- 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 fence is located along all property lines and other properties appeared to have similar fences; thus, it does not appear out of character for the neighborhood.

The motion was seconded by Commissioner Picasso.

Favor: Cruz, Picasso, Brereton, Brown, Dean, Zuniga, Vasquez, Benavides, Ozuna, Oroian

Opposed: None

MOTION PASSES

Commissioner Bragman reentered the meeting at 4:00 pm

Item #9

BOA-23-10300239: A request by Brown & McDonald PLLC for a 15' variance from the required 15' buffer to allow the elimination of a buffer on the front property line, located at 9501 New Laredo Highway. Staff recommends denial with an alternate recommendation. (Council District 4) (Joseph Leos, Planner (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 15 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and there is no registered Neighborhood Association.

Commissioner Brown left the meeting at 4:04 pm

Caroline McDonald, applicant, stated the owner has owned the property for 30 years plus and have expanded as much as possible. They submitted a replat application which has been record and have submitted for building permits. The new development would consist of office space and storage. They will be providing landscaping as required by the code.

No Public Comment

Motion

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-23-10300239**, I move that the Board of Adjustment grant a request for a 5' variance from the required 15' buffer to allow the reduction of a buffer on the front property line, situated at 9501 New Laredo Highway, this 5' would be in line with the plat describe as Lot 2, NCB 14492, known as MG Builders which further defines a 5' buffer requirement that would also be considered as screening for the parking lot, 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 proposing to reduce the minimum 15' buffer along New Laredo Highway to 5'. This request is not contrary to the public interest as the area was developed in a similar development pattern.

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 abiding by the minimum buffer requirement. This would result in an unnecessary hardship as the applicant would not have sufficient parking space for the proposed use intended.

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

The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. In this case, the reduction of the buffer yard will adhere to 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 subject property will have a reduce buffer along New Laredo Highway. The granting of this variance will not injure the appropriate use of adjacent conforming properties and alter the essential character of the district, as other properties appeared to not abide by the minimum buffer 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. Providing the landscape buffer along New Laredo Highway is not attainable which is why they are proposing to a 5', as the property owner would need to reconfigure the parking. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Cruz.

Favor: Ozuna, Cruz, Brereton, Picasso, Dean, Zuniga, Vasquez, Benavides, Bragman, Oroian,
Opposed: None

MOTION PASSES

Commission went into recess at 4:25 pm and reconvened at 4:37 pm.

Item #10

BOA-23-10300230: An appeal by Sakib Shaikh of the Administrator's decision to revoke the short-term rental permit, located at 10810 Hillsdale Loop. Staff recommends denial. (Council District 7) (Ashley Leal, Senior Planner (210) 207-6311, Ashley.Leal@SanAntonio.gov, Development Services Department)

Staff stated 31 notices were mailed to property owners, 0 returned in favor, 3 returned in opposition, and there is no registered Neighborhood Association.

Sakib Shaikh, applicant, stated there several miscommunications along the way. He was under the impression that AirBnB was taking care of the taxes. He stated the home went vacant for several months and then went to a mid-term rental. When he started to understand the process, it was unfortunately too late. He stated he has corrected his mistake which can be verified with how he is managing his other rental properties.

Public Comment

Voicemail

Daniel Solis, spoke in opposition.

Motion

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-23-10300230**, I move that the Board of Adjustment grant the appeal for the property, situated at 10810 Hillsdale Loop, applicant being Sakib Shaikh 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: Picasso

Opposed: Bragman, Zuniga, Brereton, Dean, Cruz, Vasquez, Benavides, Ozuna, Oroian

MOTION FAILS

Item #11

BOA-23-10300235: An appeal by Raul Acosta of the Administrator's decision to revoke the short-term rental permit, located at 1932 West Ashby Place. Staff recommends denial. (Council District 7) (Ashley Leal, Senior Planner (210) 207-6311, Ashley.Leal@SanAntonio.gov, Development Services Department)

Staff stated 26 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no response from Woodlawn Lake Neighborhood Association.

Raul Acosta, stated the rental in questions is a granny flat. He was unaware that a permit was needed being that his mother lived in the home in the front of the property. It was not until July 2021 that he was notified that he came to submit for a STR permit and submitting taxes up until December 2021. He stated with the purchase of a new home and starting a family he failed to report and pay his HOT tax. When he started to comply with taxes, he was experiencing problems with the new system. He stated he has brought his account to current.

No Public Comment

Motion

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-23-10300235**, I move that the Board of Adjustment grant the appeal for the property, situated at 1932 West Ashby Place, applicant being Raul Acosta 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 Cruz.

Favor: Ozuna, Cruz, Brereton, Picasso, Dean, Zuniga, Vasquez, Benavides, Bragman, Oroian

Opposed: None

MOTION PASSES

Item #12

BOA-23-10300236: An appeal by Jacqueline Lopez of the Administrator's decision to revoke the short-term rental permit, located at 9442 Mulberry Path. Staff recommends denial. (Council District 4) (Ashley Leal, Senior Planner (210) 207-6311, Ashley.Leal@SanAntonio.gov, Development Services Department)

Staff stated 32 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and there is no registered Neighborhood Association.

Jacqueline Lopez, applicant, stated her received her STR permit in April 2022 and was current. Due to personal reasons, there was a lapse, April thru June 2023, where taxes were not paid. Upon receiving email notification in August 2023 stating her permit was revoke, she contact City staff to submit payment and make this right.

No Public Comment

Motion

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-23-10300236**, I move that the Board of Adjustment grant the appeal for the property, situated at 9442 Mulberry Path, applicant being Jacqueline Lopez 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 Picasso.

Favor: Bragman, Picasso, Brereton, Dean, Cruz, Zuniga, Vasquez, Ozuna Benavides, Oroian

Opposed: None

MOTION PASSES

Item #13

Approval of the minutes from the August 21, 2023, meeting.

A motion was made by Commissioner Zuniga and seconded Commissioner Cruz for approval of the August 21, 2023, minutes as presented.

Favor: Zuniga, Cruz, Dean, Vasquez, Benavides, Bragman, Ozuna Oroian

Opposed: None

Abstain: Brereton, Picasso

MOTION PASSES

Adjournment

There being no further business, the meeting was adjourned at 5:59 PM.

APPROVED BY: _____ or _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secretary