

## City of San Antonio



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

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**Monday, February 6, 2023**

**1:00 PM**

**1901 S. Alamo**

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**1:00 PM – Call to Order**

**SeproTec translator were present.**

**Roll Call – Present:** Spielman, Menchaca, Lynde, Cruz, Zuniga, Manna, Kaplan, Vasquez,  
Bragman, Ozuna  
**Absent:** Oroian

#### **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 #1**

**BOA-22-10300240** (Continued from 1/23/23): A request by Alvin Peters for 1) a 7’-6” variance from the required 15’ buffer to allow a 7’-6” side buffer next to a residential lot, 2) a 9’-9” variance from the required 15’ buffer to allow a 5’-3” side buffer along a Minor Arterial, 3) a 7’-4” variance from the required 10’ buffer to allow a 2’-8” side buffer along a Collector, and 4) a 20’ variance from the required 30’ side setback to allow a structure to have a 10’ side setback, located at 995 Southwest 36th Street. Staff recommends approval. (Council District 6) (Joseph Leos, Planner (210) 207-3074, joseph.leos@sanantonio.gov, Development Services Department)

Staff stated 12 notices were mailed to property owners within 200 feet, 0 returned in favor, 0 returned in opposition, and Los Jardines and Westwood Square Homeowners Association are in opposition.

Alvin Peters, applicant, stated the property is zoned "C-3NA". His client is proposing to develop a 2,400 square foot single story structure that consist of 4 lease spaces with 6 parking spaces. He stated buffer will be reduced with trees and ground cover. He further stated he has reached out to Council representative for Districts 5 and 6 to assist in coordinate a meeting with Los Jardines and Westwood Square Neighborhood Association to further discuss and address their concerns who are now in support of this request.

### **Public Comment**

Donna Pina, Westwood Square Neighborhood Association, stated they did meet with Mr. Peters however in speaking with owner they needed more clarification regarding type of development, proposed movement of the Via Bus Stop and primary entrance of the proposed building.

### **MOTION**

The motion was made by Commissioner Manna and seconded by Commissioner Cruz to continue this case until February 20, 2023.

All voted in affirmative.

### **MOTION PASSES**

#### **Item #2**

**BOA-23-10300266** (Continued from 1/23/23): A request by Justin Ramirez, for a Special Exception to allow one (1) additional Type 2 Short Term Rental permit on the block face, located at 245 West Fest. Staff recommend denial. (Council District 1) (Joshua Orton, AICP, Senior Planner, (210) 207-7945, joshua.orton@sanantonio.gov, Development Services Department)

Staff stated 29 notices were mailed to property owners within 200 feet, 0 returned in favor, 0 returned in opposition, and no response from Collins Garden Neighborhood Association.

### **Commissioner Zuniga joined the meeting at 1:36 PM**

James McKnight, representative, stated the purpose of this request is to allow for a 2 story 2 bedroom with 2 parking spots short term rental. He stated the home is 1,283 square feet as the surrounding residential homes so this would not be out of character. He stated that have contacted the surrounding residents who have not expressed opposition and they have also received a letter of support from the Lone Star Neighborhood Association.

Justin Ramirez, owner, stated he owns another home within this area since 2007. He stated he has been working with Council District office along with the neighboring school along with the surrounding neighborhood association to explore various options to enhance the neighborhood.

**Public Comment**

## Voicemails

Tony Garcia, Tier 1 Neighborhood Coalition, spoke in opposition.

## In Person

Susan Powers, President, Lone Star Neighborhood Association, stated Mr. Ramirez is very active in the neighborhood and works on cleaning up and help improve the community.

Micah Harper, spoke in support with Mr. Ramirez's request.

**MOTION**

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-22-10300266**, I move that the Board of Adjustment grant a special exception to allow for (1) Type 2 short term rental unit, situated at 245 West Fest, applicant being Justin Ramirez, 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 not materially endanger the public health or safety.*

**The Board finds that the request to operate an additional short-term rental is unlikely to materially endanger the public health, safety, or welfare. There is nothing obvious that would distinguish a short-term rental versus a long-term rental at this facility.**

- B. *The special exception does not create a public nuisance.*

**There does not appear to be a reason to believe a public nuisance would be created if an additional short term rental permit was approved.**

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

**The neighboring properties consist of single-family structures. This scenario does not cause reason to believe it will substantially injure neighboring property as a Type 2 Short Term Rental.**

- D. *Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary faculties have been or are being provided.*

**The subject property provides off-street parking and appears to have adequate utilities, access, and open space.**

- E. *The applicant or owner for the special exception does not have any previously revoked short term rental licenses, confirmed citations, or adjudicated offenses convictions for violations of Chapter 16, Article XXII of the City Code within one year prior to the date of the application.*

**The applicant does not have any history of revocation, citations, or convictions for violations of Chapter 16.**

*F. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*

**The subject property is located in close proximity to other residential. With the property owner providing off-street parking and maintaining it from the neighboring property, the special exception does not appear to alter the essential character of the district and location in which the property is seeking the special exception.**

The motion was seconded Commissioner Manna.

**Favor:** Bragman, Ozuna

**Oppose:** Spielman, Menchaca, Lynde, Cruz, Manna, Kaplan, Vasquez

## **MOTION FAILS**

### **Item #3**

**BOA-23-10300004:** A request by Luis Aguilar to appeal the Administrator's decision to revoke the short-term rental permit, located at 222 Dresden Drive. Staff recommends denial. (Council District 1) (Joshua Orton, AICP, Senior Planner, (210) 207-7945, joshua.orton@sanantonio.gov, Development Services Department)

Staff stated 37 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and no response from North Central Neighborhood Association.

Luis Aguilar, owner, stated he is a small business owner and is simply trying to reinstate his permits. Unfortunately, due to oversight, he became delinquent, and his permit was revoke. He stated based off this unfortunate experience, he has taken the proper measures to prevent this issue from occurring again.

### **No Public Comment**

## **MOTION**

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-22-10300004**, I move that the Board of Adjustment grant the appeal for the property, situated at 222 Dresden Drive, applicant being Luis Aguilar, 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:** None

**Oppose:** Kaplan, Spielman, Menchaca, Lynde, Cruz, Zuniga, Manna, Vasquez, Bragman, Ozuna

## **MOTION FAILS**

**Item #4**

**BOA-23-10300005**: A request by Luis Aguilar to appeal the Administrator's decision to revoke the short-term rental permit, located at 1315 Willow Street. Staff recommends denial. (Council District 2) (Joshua Orton, AICP, Senior Planner, (210) 207-7945, joshua.orton@sanantonio.gov, Development Services Department)

Staff stated 29 notices had been mailed out, 0 returned in favor, 0 returned in opposition and no response from Government Hill Neighborhood Association.

**Public Comment**

Voicemail

Julia Rosenberg, spoke in support of the revoking the permit.

Luis Aguilar, owner, stated he is a small business owner and is simply trying to reinstate his permits. Unfortunately, due to oversight, he became delinquent, and his permit was revoke. He stated based off this unfortunate experience, he has taken the proper measures to prevent this issue from occurring again.

**MOTION**

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-22-10300005**, I move that the Board of Adjustment grant the appeal for the property, situated at 1315 Willow Street, applicant being Luis Aguilar, 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:** Ozuna

**Oppose:** Bragman, Kaplan, Spielman, Menchaca, Lynde, Cruz, Zuniga, Manna, Vasquez

**MOTION FAILS**

**Commission 5-minute break at 2:35 pm**

**Commission resumed at 2:43 pm**

**Item #5**

**BOA-22-10300269**: A request by Corben and Amy Pate for a 2' special exception from the maximum 6' fence height to allow for a 8' solid screened privacy fence along the side yard, located at 2126 Oak Ranch. Staff recommends denial. (Council District 2) (Joshua Orton, AICP, Senior Planner, (210) 207-7945, joshua.orton@sanantonio.gov, Development Services Department)

Staff stated 24 notices had been mailed out, 2 returned in favor, 0 returned in opposition, and there is no registered neighborhood association.

Corban Pate, owner, stated he was unaware a permit was needed to replace a fence. He stated he built his 8-foot fence just as his neighbor to the west of his home. In speaking to the neighbor east of his home, he also agreed with the fence.

### Public Comment

Greg Zimmerman, spoke in support.

### MOTION

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-22-10300269**, I move that the Board of Adjustment grant a request for a 2' special exception from the maximum 6' fence height, to allow a 8' solid screened privacy fence along the side yard, situated at 2126 Oak Ranch, applicant being Amy Pate, 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 additional fence height in the front is similar to others in the area. 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.*  
**The fence is unlikely to disturb the peace of the neighborhood and fits with the character of the neighborhood. The fence is solid screened and would serve the public welfare and convenience.**
- C. *The neighboring property will not be substantially injured by such proposed use.*  
**Privacy fences above the 6' maximum permitted were observed in the direct neighboring properties; therefore, the additional height would not substantially injure other properties in the neighborhood.**
- 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 for front yard fence will not alter the essential character of the district as there were other similar fence heights in the area.**
- E. *The special exception will not weaken the general purpose of the district, or the regulations herein established for the specific district.*  
**The current zoning permits the current use of a single-family home. The requested special exception will not weaken the general purpose of the district.**

The motion was seconded by Commissioner Kaplan.

Commissioner Menchaca offered a friendly amendment that the front be 6 feet in height with the sides being 8 feet in height. Commissioner Bragman accepted the friendly amendment.

**Favor:** Bragman, Cruz, Ozuna

**Oppose:** Kaplan, Spielman, Menchaca, Lynde, Zuniga, Manna, Vasquez

## **MOTION FAILS**

### **Item #6**

**BOA-23-10300001**: A request by Angela Aguinaga for a 770 square feet variance from the minimum 4,000 square foot lot requirement to allow a lot to be 3,230 square feet, located at 126 Huerta Street. Staff recommends approval. (Council District 5) (Joseph Leos, Planner, (210) 207-3074, joseph.leos@sanantonio.gov, Development Services Department)

Staff stated 46 notices had been mailed out, 1 returned in favor, 0 returned in opposition and no response from San Juan Gardens nor Collins Garden Neighborhood Associations.

Angela Aguinaga, owner, stated the purpose of this request is to allow for development of a residential home on the subject property.

### **No Public Comment**

## **MOTION**

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-23-10300001**, I move that the Board of Adjustment grant a request for a 770 square feet variance from the minimum 4,000 square feet lot size requirement to allow a lot to be 3,230 square feet, situated at 126 Huerta Street, applicant being Angela Aguinaga, 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 for 770 square feet from the 4,000 minimum lot size to allow a lot to be 3,230 square feet, which does not appear to be 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 not being able to construct the single-family dwelling, as the lot size does not meet the minimum square footage required.**

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

**The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. The proposed variance of 770 square feet will observe the spirit of the ordinance and substantial justice will be served as there are other properties with similar lot sizes and dimension were observed in the immediate 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 essential character of the district will not be altered, as the request for a 770 square feet variance will be harmonious with the lot shape and sizes in the surrounding area.**

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

**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 amount of available space. Concluding, the request is not merely financial.**

The motion was seconded by Commissioner Cruz.

**Favor:** Kaplan, Cruz, Spielman, Menchaca, Lynde, Zuniga, Manna, Vasquez, Bragman, Ozuna

**Oppose:** None

## **MOTION PASSES**

### **Item #7**

**BOA-23-10300002:** A request by Ray Lopez for 1) a 1,270 square feet variance from the minimum 4,000 square foot lot size requirement to allow a lot to be 2,730 square feet and 2) a 10' variance to the maximum 20' rear setback, to allow a 10' rear setback, located at 119 Chico Alley. Staff recommends approval. (Council District 5) (Vincent Trevino, Senior Planner, (210) 207-5501, vincent.trevino@sanantonio.gov Development Services Department)

Staff stated 45 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and no response from Palm Heights Homeowners Association.

Ray Lopez, representative, stated the purpose of this request is to develop a residential home on the subject property.



**Public Comment**

Voicemail

Danielle Wilkins, spoke in support.

**MOTION**

A motion was made by Commissioner Cruz. Regarding Case No. **BOA-23-10300002**, I move that the Board of Adjustment grant a request for 1) a 1,270 square foot lot size variance from the minimum 4,000 square foot lot size to allow a lot to be 2,730 square feet and 2) a 10' variance to the maximum 20' rear setback to allow a 10' rear setback, situated at 119 Chico Alley, applicant being Ray 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 1,270 square foot variance from the 4,000 minimum lot size requirements. Additionally, the proposed single-family residence will maintain a 10' rear setback. The variance request does not appear to be contrary to the public interest, as granting the variance would allow the development of a single-family residence.**

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 inability to construct a single-family residence on the lot. Due to the size of the lot and square footage of the proposed residence, the structure is unable to meet the rear setback requirement.**

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. Variance will permit a single-family dwelling near surrounded by lots similar in size. The request 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.*

**Staff does not find evidence that the requested variance would alter the essential character of the district. The property is part of the original 36 square miles of the City of San Antonio where smaller lots are commonly found. The properties adjacent to the subject property also do not meet the minimum lot size requirements of the "R-4" base zoning district therefore injury to adjacent properties is highly unlikely.**

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. Due to the current configuration of the lot, it cannot maintain the minimum lot size requirement. In addition, a setback reduction to the rear would help accommodate a reasonable sized residence on the lot. The request does not appear merely financial.**

The motion was seconded by Commissioner Kaplan.

**Favor:** Cruz, Kaplan, Spielman, Menchaca, Lynde, Zuniga, Manna, Vasquez, Bragman, Ozuna

**Oppose:** None

## **MOTION PASSES**

### **Item #8**

**BOA-23-10300003:** A request by Raymundo and Adel Olvera for a 4' – 7" variance from the minimum 5' side setback requirement to allow a structure to be 5" from the side property line, located at 1826 Barrett Palms. Staff recommends denial. (Council District 4) (Joseph Leos, Planner, (210) 207-3074, joseph.leos@sanantonio.gov, Development Services Department)

Staff stated 18 notices had been mailed out, 2 returned in favor, 0 returned in opposition, and there is no registered neighborhood association.

Raymundo & Adelfina Olvera, stated they are requesting this variance to install an elevator shaft for her health conditions.

### **No Public Comment**

## **MOTION**

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-23-10300003**, I move that the Board of Adjustment grant a request for a 4'-7" variance from the minimum 5' side setback requirement to allow a structure to be 5" from the side property line, situated at 1826 Barrett Palms, applicant being Raymundo & Adelfina Olvera, 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 setback restrictions to provide uniformity within the community. The applicant is requesting a variance to the side setback to allow a structure to be 5” from the side property line. Staff finds this distance provides suitable spacing, 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 five feet from the side property line, which would result in an unnecessary hardship. Special conditions on the subject property include the side setback area being close to the main structure preventing the applicant from constructing a sizable 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. The structure would be 5” from the side property line, which observes the spirit of the ordinance as it would not be too close to the side property line and 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.*

**If granted, the structure will be 5” from the side property line, which is 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. Upon site visits, staff did observe unique land configurations, such as the property being irregular in shape.**

The motion was seconded by Commissioner Bragman.

**Favor:** Kaplan, Bragman, Spielman, Menchaca, Lynde, Cruz, Zuniga, Manna, Vasquez, Ozuna

**Oppose:** None

**MOTION PASSES**

**Item #9**

**BOA-23-10300007**: A request by Robert Saenz for a 1,607 square feet variance and below from the minimum 4,000 square foot lot size requirement to allow the lots to be 2,393 square feet and above for 11 lots, located at 5146 – 5166 Kelwood Street and 5143 – 5163 North Trails Drive. Staff recommends denial. (Council District 6) (Jacob Exler, Planner, (210) 207-5876, jacob.exler@sanantonio.gov, Development Services Department)

Staff stated 33 notices had been mailed out, 2 returned in favor, 1 returned in opposition, and there is no registered neighborhood association.

Robert Saenz, applicant, stated his intent for this project is to bring medium housing which is a transition phase for further homeowners going from apartments to single family dwellings.

John Cortez, stated the property is currently “RM-4” for townhomes however their intent is to develop duplex, lessen the density, on the subject property.

**Public Comment**

Staff received an email from L R Flores expressing opposition.

**MOTION**

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-23-10300007**, I move that the Board of Adjustment grant a request for a 1,607 square feet variance and below from the minimum 4,000 square feet lot size requirement, to allow the lots to be 2,393 square feet and above for 11 lots, situated at 5146 – 5166 Kelwood Street and 5143 – 5163 North Trails Drive, applicant being Robert Saenz, 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 1,607 square foot variance and below from the 4,000 minimum lot size requirements for 11 lots. The variance request does not appear to be 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 having to replat or reconfigure the floor plan which would result in unnecessary hardship.**

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

**The request appears to be in the spirit of the ordinance as the lot sizes are large enough for these 11 units.**

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 evidence that the requested variances would not alter the essential character of the district or injure the use of adjacent property.**

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 variances are sought is due to unique circumstances existing on the property.**

The motion was seconded by Commissioner Menchaca.

**Favor:** Kaplan, Menchaca, Spielman, Lynde, Cruz, Bragman, Ozuna

**Oppose:** Zuniga, Manna, Vasquez

## **MOTION FAILS**

### **Item #10**

**BOA-23-10300010:** A request by Michael Potter for a 3' – 4" variance from the minimum 5' side setback to allow a structure to be 1' – 8" from the side property line, located at 257 Lovera Boulevard. Staff recommends approval. (Council District 1) (Joseph Leos, Planner, (210) 207-3074, joseph.leos@sanantonio.gov, Development Services Department)

Staff stated 28 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and no response from Olmos Park Terrace Neighborhood Association.

Michael Potter, applicant, stated during the permitting phases for repairs of structure, they encounter a few other issues that required a different permit which led to requesting this variance.

### **No Public Comment**

## **MOTION**

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-23-10300010**, I move that the Board of Adjustment grant a request for a 3'-4" variance from the minimum 5' side setback to allow a structure to be 1'-8" from the side property line, situated at 257 Lovera Boulevard, applicant being Michael Potter, 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 ample spacing between structures. The applicant is requesting a variance to the side setback to allow a structure to be 1' 8" from the side property line with 1' of overhang. Per BCAD, the structure was constructed and has been in its existing footprint since 1940, which has not been contrary to the public interest with its reduced setback.**

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 five feet from the side property line, which results in unnecessary hardship considering the structure is existing.**

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 accessory structure is currently 1' 8" from the side property line with a 1' overhang, which will observe the spirit of the ordinance considering it was established before the current UDC 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 structure will maintain 1' 8" from the side property line. Upon site visits, staff observed older homes and structures with reduced side and rear setbacks, which does not alter the essential character of the district or impose on the fabric of the community.**

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

**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 structure being existing. Additionally, the request does not seem unusual with the characteristic of the neighborhood. The circumstances do not appear to be merely financial.**

The motion was seconded by Commissioner Manna.

**Favor:** Bragman, Manna, Spielman, Menchaca, Lynde, Cruz, Zuniga, Kaplan, Vasquez, Ozuna

**Oppose:** None

**MOTION PASSES****Item #11**

**BOA-23-10300019**: A request by Pape-Dawson Engineers for a parking location variance to allow parking within the front 20' of the front setback, located at 13985 FM 1560 North. Staff recommends approval. (Council District 8) (Vincent Trevino, Senior Planner, (210) 207-5501, vincent.trevino@sanantonio.gov Development Services Department)

Staff stated 61 notices had been mailed out, 1 returned in favor, 1 returned in opposition, and 1 oppose outside of 200-foot radius and no response from Bavarian Forest Homeowners Association.

Andrew Belton, applicant, stated they are proposing apartment complex development on the subject property with trees and landscaping as per code. He stated they were issued a site work permit however after further review staff informed them that they did not have a building within the 20-foot maximum setback which is the purpose of this variance request.

**Public Comment**

## Voicemail

Daniel Seal, spoke in support.

Mrs. Villarreal, spoke in opposition.

Gertrudys Leal, spoke in opposition.

Mr. Castillo, spoke in opposition.

Frank Bennet, spoke in opposition.

## In Person

Tom Newton, representing an adjacent property owner, stated his client was not informed of this proposal until this morning and is not oppose to the apartment complex however they are concerned with the impact on traffic patterns, increase in traffic flow and parking on Sonoma Parkway.

**MOTION**

A motion was made by Commissioner Manna. Regarding Case No. **BOA-23-10300019**, I move that the Board of Adjustment grant a request for a parking location variance, to allow parking within the front 20' of the front setback, situated at 13985 FM 1560, applicant being Pape-Dawson Engineers, 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.*

**Due to the design and configuration of the proposed buildings the parking within the 20' front setback requirement does not appear to be contrary to the public interest.**

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

**Staff finds hardship on the property as there is not adequate space to meet the 20' front setback requirement for no parking.**

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

**The spirit of the ordinance will be observed as the parking cannot be outside the 20' front setback requirement.**

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 evidence that the requested variance for placing parking within the 20' setback 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.*

**Because of the configuration of the proposed buildings, proposal of parking within the 20' front setback is appropriate for the area. The request is not merely financial.**

The motion was seconded by Commissioner Bragman.

**Favor:** Manna, Bragman, Spielman, Menchaca, Lynde, Cruz, Zuniga, Kaplan, Vasquez, Ozuna

**Oppose:** None

## **MOTION PASSES**

### **Item #12**

Approval of the minutes from the Board of Adjustment meeting on January 23, 2023.

All voted in affirmative.

## **MOTION PASSES**

**No Director's Report.**



**Adjournment.**

There being no further business, the meeting was adjourned at 4:48 pm.

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

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

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