

City of San Antonio



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

Monday, April 17, 2023

1:00 PM

1901 S. Alamo

1:02 PM – Call to Order

SeproTec translator were present.

Roll Call – Present: Spielman, Bragman, Menchaca, Zuniga, Manna, Kaplan, Vasquez, Ingalls, Ozuna, 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.

Ms. Cruz joined the meeting a 1:03 PM

Item #1

(Continued from 4/3/2023) **BOA-23-10300040:** A request by Filimon Hernandez for a 9’-11” variance from the minimum 10’ front setback to allow a carport to be 1” from the property line, located at 8930 Fabens. Staff recommends Denial. (Council District 6) (Vincent Trevino, Senior Planner, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 35 notices were mailed to property owners, 10 returned in favor, 2 returned in opposition, and there is not registered neighborhood association.

Filimon Hernandez, applicant, states he wants to build a carport to protect his vehicle from harsh weather conditions, but he does not have enough room for all his vehicles. The hardship is building big enough carport that is allowed on the property line, like his neighbors. Additionally, he will insert gutters facing down his driveway so that drainage does not affect neighboring

properties.

No Public Comment

Mr. Ozuna made a **Motion** for **BOA-23-10300040** for approval as presented.

Regarding Case No. **BOA-23-10300040**, I move that the Board of Adjustment grant a request for an 8' variance from the 10' front setback requirement to allow a carport to be 2' from the front property line, situated at 8930 Fabens, applicant being Filimon Hernandez, 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 is far from the street 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 setback would not injure neighboring properties as there are other 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 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 setback variance is sought is due to unique circumstances existing on the property, such as the location.

Second: Kaplan

Ms. Kaplan moved to amend the motion to “to a 5’ variance with gutters”

Second: Oroian

In favor: Spielman, Menchaca, Ingalls, Cruz, Zuniga, Manna, Kaplan, Vasquez, Bragman, Oroian

Opposed: Ozuna

Motion amended to a 5’ variance.

In favor: Spielman, Menchaca, Ingalls, Cruz, Zuniga, Manna, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

Item #4

(Continued from 4/3/2023) **BOA-23-10300060:** A request by Alberto Cubillos for 1) a 3’4” variance from the minimum 5’ side setback requirement to allow a carport to have a 1’8” side setback, 2) a 5’11” variance from the minimum 10’ front setback requirement to allow a carport to have a 4’1” front setback, 3) a variance from the fence materials to allow a corrugated metal fence along the western property line, 4) a 3’ variance from the maximum 3’ front yard fence height requirement to allow a 6’ solid screened fence along the western property line, 5) an 8” variance from the maximum 5’ front yard fence requirements to allow a 5’8” predominately open fence along the northern property line, and 6) a 7’3” variance from the minimum 15’ driveway clear vision requirement to allow a fence to be 7’9” from the front curb, located at 924 Iowa Street. Staff recommends Denial (Council District 2) (Joseph Leos, Planner, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 27 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no response from Denver Heights Neighborhood Association.

Jaime Jose Gamboa, applicants’ relative/translator, states he is in the process of replacing his carport roof. The homeowner anticipates finishing but was cited by code enforcement. He requests permitting approval because the carport has been built for the past two decades and is under construction due to roof maintenance. The corrugated metal fence is his neighbor’s fence not his to discuss visual safety hazards.

No Public Comment

Ms. Kaplan made a **Motion** for **BOA-23-10300060** for approval as amended.

Regarding Case No. **BOA-23-10300060**, I move that the Board of Adjustment grant a request for 1) a 3'-4" variance from the minimum 5' side setback to allow a carport to have a 1'-8" side setback, 2) a 5'-11" variance from the minimum 10' front setback to allow a carport to have a 4'-1" front setback, 4) a 7'-3" variance from the minimum 15' driveway clear vision to allow a predominately open fence to be 7'-9" from the front curb, situated at 924 Iowa Street, applicant being Alberto Cubillos, 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 interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance to the side and front setback to allow a carport to be to be 1'- 8" from the side property line and 4'-1" from the front property line. These distances provide adequate spacing between the carport and neighboring property/city right of way, which is not contrary to the public interest. Additionally, the applicant is requesting a 7'-3" variance to allow a fence to be 7'-9" from the front driveway. In this case, the public interest is represented by sight distances for driveways to assure vehicular traffic protection. Staff finds that this request is not contrary as this distance provides a suitable amount of space.

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 carport being reduced to maintain and 5' side and 10' front setback, which would decrease the square footage of the carport. Further, altering the fence to meet the clear vision distance requirement of 15' would result in an unnecessary hardship by reducing the size of the front yard.

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 side and front setback appear to observe the spirit of the ordinance as the current distance is a reasonable distance to the adjacent property and front property line. Further, the clear vision request will observe the spirit of the ordinance by providing a safe distance between the two points, allowing vehicular traffic to not be obstructed.

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 maintain 1’-8” from the side property line and 4’-1” from the front property line, which is not likely to alter the essential character of the district or injure neighboring conforming properties. Furthermore, the clear vision request will not injure adjacent properties, as other front yard fences were observed in the immediate vicinity.

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

Staff 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 buildable area and is not merely financial.

Second: Manna

Mr. Manna made a friendly amendment to the motion to include “predominately open” with regards in fencing which was accepted by the maker of the motion.

In favor: Spielman, Menchaca, Ingalls, Zuniga, Manna, Cruz, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

Mr. Manna made a **Motion** for **BOA-23-10300060 special exemption** for approval as presented.

Regarding Case No. **BOA-23-10300060**, I move that the Board of Adjustment grant a request for 1) a 3’ special exception from the maximum 3’ front yard fence height to allow a 6’ predominately open fence along the western property line and 2) an 8” special exception from the maximum 5’ front yard fence to allow a 5’-8” predominately open fence along the northern property line, situated at 924 Iowa Street, applicant being Alberto Cubillos, 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. A 5'-8" predominantly open fence was observed along the northern property line that deviates from the 5' maximum height requirement. If granted, staff finds the request to be harmonious 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 residential property owners while still promoting a sense of community. The fences in the front and side yards are exceeding the maximum height requirement and are predominately open. The fences at their current height appear to serve the public welfare and convenience.

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

The front and side yard fences would provide additional privacy for not only the subject property but the adjacent properties. They will not substantially injure neighboring property or adjacent conforming 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.

Upon site visits, staff observed other fences that appeared to be deviating from the maximum front yard fence height requirements were found in the community. The exceptions do not alter the essential 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 current zoning permits the current use of a single-family home. The requested special exception will not weaken the general purpose of the district.

Second: Kaplan

In favor: Spielman, Menchaca, Ingalls, Cruz, Zuniga, Manna, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

Item #2

(Continued from 4/3/2023) **BOA-23-10300049:** A request by Killen, Griffin & Farrimond, PLLC for 1) a 15' variance from the maximum 35' Corridor sign height allowance, to allow a 60' tall single-tenant sign with a 10' elevated adjacent grade bonus and 2) a 140 square foot variance from the maximum 200 square footage allowance, to allow a single-tenant sign to be

340 square feet, generally located in the 26000 Block of Bulverde Road. Staff recommends Denial. (Council District 9) (Vincent Trevino, Senior Planner, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 4 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and there is no registered neighborhood association.

James Griffin, representative, requests extra height for McDonald's signage due to the elevated expressways, and the predominately open- air design. He states he wants to reduce safety hazards by having a visible and clear viewing for potential customers to plan their stop. The applicant includes the height would reduce visual clutter, help with the low elevation that the restaurant is residing in, and promote effective advertising.

Public Comment

Voicemail:

Coleen Wagaspack spoke in opposition.

Ms. Bragman made a **Motion** for **BOA-23-10300049** for approval as presented.

Regarding Case No. **BOA-23-10300049**, I move that the Board of Adjustment grant a request for 1) a 15' variance from the maximum 35' Corridor sign height allowance to allow a 60' tall single-tenant sign with a 10' elevated adjacent grade bonus and 2) a 140 square foot variance from the maximum 200 square footage allowance to allow a single-tenant sign to be 340 square feet, generally located in the 26000 Block of Bulverde Road, applicant being Killen, Griffin & Farrimond, 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 necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
- 2. A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property.*

The property currently qualifies for a sign 45' in height/200 square feet for a single-tenant sign, that includes a 10' bonus height due to adjacent elevated grade of overpass. The applicant is requesting a variance to erect a new sign at 60' in height and to be 340 square feet due to the elevated grade of the overpass.

After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:

- A. Granting the variance does not provide the applicant with a special privilege not enjoyed by

others similarly situated or potentially similarly situated.

The proposed sign does not appear to provide a special privilege as there are other signs of this height or square footage in the surrounding area.

B. Granting the variance will not have a substantially adverse impact on neighboring properties.

The proposed variance will not have an adverse impact on neighboring properties as there are other signs of this height or square footage and appear similar to the sign regulation standards for the US 281 North Gateway Corridor District Plan.

C. Granting the variance will not substantially conflict with the stated purposes of this article.

A sign exceeding the 45' in height (to include 10' bonus)/ 200 square feet will not substantially conflict with the US Hwy 281 North Gateway Corridor District Plan.

Second: Zuniga

Chair Oroian made a friendly amendment to the motion for "5' variance on the sign height" and removing the sign size (Item 2) from the motion which was accepted by the maker and the Second of the motion.

In favor: Spielman, Menchaca, Ingalls, Zuniga, Manna, Cruz, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

The meeting went to recess at 3:03 PM and reconvened at 3:18 PM

Chair Oroian moved Item #2 to be readdressed after discussion with legal.

Mr. Ozuna made a **Motion** for **BOA-23-10300049** for approval as amended.

Regarding Case No. **BOA-23-10300049**, I move that the Board of Adjustment grant a request for a 140 square feet variance from the maximum 200 square footage allowance to allow a single-tenant sign to be 340 square feet, generally located in the 26000 Block of Bulverde Road, applicant being Killen, Griffin & Farrimond, 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 necessary because strict enforcement of this article prohibits any reasonable*

opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or

- A. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

The proposed sign does not appear to provide a special privilege as there are other signs of this height or square footage in the surrounding area.

- B. Granting the variance will not have a substantially adverse impact on neighboring properties.

The proposed variance will not have an adverse impact on neighboring properties as there are other signs of this height or square footage and appear similar to the sign regulation standards for the US 281 North Gateway Corridor District Plan.

- C. Granting the variance will not substantially conflict with the stated purposes of this article.

A sign exceeding the square footage will not substantially conflict with the US Hwy 281 North Gateway Corridor District Plan.

Second: Oroian

In favor: Ingalls, Zuniga, Bragman, Ozuna, Oroian

Opposed: Spielman, Menchaca, Cruz, Manna, Kaplan, Vasquez,

Motion fails. 6-5

Item #3

(Continued from 4/3/2023) **BOA-23-10300050:** A request by Killen, Griffin & Farrimond, PLLC for 1) a 10' variance from the 50' maximum expressway sign height, to allow a 60' sign height and 2) a 90' variance from the minimum Right of Way distance of 100' to allow a sign within 10' of a Right of Way, generally located in the 10000 Block of South Zarzamora Street. Staff recommends Denial. (Council District 4) (Vincent Trevino, Senior Planner, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 6 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and there is no registered neighborhood association.

James Griffin, representative, states he is seeking extra height for signage. He requests to place McDonald's sign further away from nearby residences, and is trying to keep in ordinance with provisions, while having signage placed in a visible convenient spot for the business and for drivers the prepare and react with the intersection.

No Public Comment

Voicemail:

Coleen Wagaspack spoke in opposition.

Mr. Manna made a **Motion** for **BOA-23-10300050** for approval as amended.

Regarding Case No. BOA-23-10300050, I move that the Board of Adjustment grant a request for a 90' variance from the minimum Right of Way distance of 100' to allow a sign within 10' of a Right of Way, Generally located in the 10000 Block of South Zarzamora Street, applicant being Killen, Griffin & Farrimond, 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 necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography; or*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property.*

The property currently qualifies for a sign 50' in height. The applicant is requesting a variance to be located within 10' of the Right of Way.

3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*

A. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

The proposed sign does not appear to provide special privilege and will not impede the flow of traffic entering and exiting the property.

B. Granting the variance will not have a substantially adverse impact on neighboring properties.

The proposed variance will not have an adverse impact on neighboring properties as there are other signs similar in height and size in the area.

C. Granting the variance will not substantially conflict with the stated purposes of this article.

The requested variance will not substantially conflict with the stated purpose of the chapter.

Second: Oroian

In favor: Ingalls, Zuniga, Manna, Cruz, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: Spielman, Menchaca

Motion Granted.

Mr. Ozuna made a **Motion** for **BOA-23-10300050** for approval as amended.

Regarding Case No. **BOA-23-10300050**, I move that the Board of Adjustment grant a request for 1) a 10' variance from the 50' maximum expressway sign height to allow a 60' sign height, Generally located in the 10000 Block of South Zarzamora Street, applicant being Killen, Griffin & Farrimond, 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 necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as the adjacent signage at the Valero store, etc.*
2. *A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property.*

The property currently qualifies for a sign 50' in height. The applicant is requesting a variance to erect a new 60' tall sign.

3. *After seeking one or more of the findings set forth in subparagraphs (1) and (2), the Board finds that:*
 - A. Granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated.

The proposed sign does not appear to provide special privilege and will not impede the flow of traffic entering and exiting the property.

- B. Granting the variance will not have a substantially adverse impact on neighboring properties.

The proposed variance will not have an adverse impact on neighboring properties as there are other signs similar in height and size in the area.

- C. Granting the variance will not substantially conflict with the stated purposes of this article.

The requested variance will not substantially conflict with the stated purpose of the chapter. A sign exceeding the 50' in height by 10' will observe the spirit of the ordinance.

Second: Manna

In favor: Kaplan, Bragman, Ozuna, Oroian

Opposed: Spielman, Menchaca, Manna, Ingalls, Cruz, Zuniga, Vasquez

Motion fails. 7-4

Item #5

(Continued from 4/3/2023) **BOA-23-10300061:** A request by Eliseo Garcia for a 4'-9" variance from the minimum 5' side setback to allow a carport with an 3" side setback, located at 5903 Knoll Krest Street. Staff recommends Denial (Council District 4) (Joseph Leos, Planner, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 27 notices were mailed to property owners, 5 returned in favor in addition to 2 outside 200', 1 returned in opposition, and there is no neighborhood association.

Eliseo Garcia, applicant, states that he was unaware of the requirement to obtain a permit to build a carport big enough for all his vehicles. He intends to install gutters that flush down his driveway toward the street and away from neighboring properties. He seeks permit approval so that he can install his carport.

No Public Comment

Ms. Kaplan made a **Motion** for **BOA-23-10300061** for approval as presented.

Regarding Case No. **BOA-23-10300061**, I move that the Board of Adjustment grant a request for a 4'-9" variance from the minimum 5' side setback to allow a carport to have a 3" side setback not to exceed the front of the house, situated at 5903 Knoll Krest Drive, applicant being Eliseo Garza, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by restricted setbacks to provide ample spacing between property line and structures. The applicant is requesting a variance to the side setback to allow a carport to be 3" from the side property line. Staff finds this distance is suitable, as it does not impose on the public interest of the neighbor.

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

A literal enforcement of the ordinance would result in the applicant building the carport 5' from the side property line or demolishing the carport, which would result in an unnecessary hardship as it will prevent the applicant from fitting two cars comfortably with the reduced setback.

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

The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. The carport would be 3" from the side property line, which will observe the spirit of the ordinance because it would provide adequate distance from the sidewalk and is abiding by all other building requirements.

4. The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district in which the variance is located.

No uses other than those allowed within the district will be allowed with this variance.

5. Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.

If granted, the carport will maintain 3" from the side property line. This distance provides adequate spacing, which is not likely to injure adjacent conforming properties and alter the essential character of the district, as other carports were seen in the immediate 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 limited spacing in the side yard. The circumstances appear to be the results of general conditions in the district in which the property is located.

Second: Cruz

In favor: Spielman, Menchaca, Zuniga, Manna, Cruz, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

Item #6

BOA-23-10300064: A request by Juan Montelongo for 1) a 4'-11" variance from the 5' minimum side setback requirement to allow a carport with overhang to be 1" from the side property line, 2) a 2'-5" variance from the 5' minimum side setback requirement to allow a structure with a 1'-8" overhang to be 2'-7" from the side property line, 3) a 2' variance from the 5' minimum rear setback requirement to allow an accessory structure with a 1'-5" overhang to be 3' from the rear property line, 4) a variance from the permitted fence materials to allow a corrugated metal fence along the side property line, 5) a 6' variance from the maximum 6' fence height requirement to allow a 12' solid screened fence in the rear yard, 6) a 2'-9" variance from the minimum 15' clear vision requirement to allow a predominately open fence to be 12'-3" from the front driveway curb, and 7) a variance from the maximum 50% impervious cover requirement to allow the front yard to exceed the 50% impervious cover, located at 1114 South Mesquite Street. Staff recommends Denial for Carport Side Setback, Fence Height and Material, and Impervious Cover Variances. Staff recommends Approval for Accessory Structure Side and Rear Setbacks, and Clear Vision Variances. (Council District 2) (Joseph Leos, Planner, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 37 notices were mailed to property owners, 1 returned in favor, 0 returned in opposition, and no response from Denver Heights Neighborhood Association.

Juan Montelongo, applicant, states he has resided in the home for a while, when both neighboring homes were vacant. After time, someone moved into a neighboring property and lived there unsanitary resulting in unwanted smells, appearance, and a dog that caused the death of their family pet. For those reasons, he installed a wooden fence twice before it was ruined by the neighbors. His final resort was to put a corrugated metal fence to block out those disturbances. He requests permit approval to keep his privacy that the corrugated metal fence provides. Regarding his carport, he was not aware that he needed a permit for a detached carport made of metal. He amends putting wooden caps on corrugated metal.

No Public Comment

Mr. Ozuna made a **Motion** for **BOA-23-10300064** for approval as presented.

Regarding Case No. **BOA-23-10300064**, I move that the Board of Adjustment grant request A request for 2) a 2'-5" variance from the 5' minimum side setback requirement to allow a structure with a 1'-8" overhang to be 2'-7" from the side property line, 3) a 7' variance from the 10' minimum rear setback requirement to allow an accessory structure with a 1'-5" overhang to be 3' from the rear property line, 4) a variance from the permitted fence materials to allow a corrugated metal fence to include a cap along the side property line 6) a 2'-9" variance from the minimum 15' clear vision requirement to allow a predominately open fence to be 12'-3" from the front driveway curb, and 7) a variance from the maximum 50% impervious cover requirement to allow the front yard to exceed the 50% impervious cover, situated at 1114 S. Mesquite, applicant being Juan Montelongo, 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 enforced setbacks to provide space between properties, fencing materials to allow for a safe environment, fence height for uniformity, and impervious cover requirements to allow water penetration into the soil. Staffs finds the requests are not contrary to the public interest. Staff found that 1) there is a suitable amount of distance between the carport and accessory structures from the side and rear property lines; 2) the 12' corrugated metal fence is located on only one portion of the side property line, which is located in the rear yard away from the public right of way; and 3) there is a suitable amount of pervious cover in the front yard and an adequate distance between the front yard fence and curb.

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 carport and accessory structures to be 5' and 10' from the side and rear property lines, reconstructing the 12' corrugated metal fence along the side property line to 6' with allowable fence material, alter the front yard fence to meet the minimum 15' clear vision requirement, and remove impervious surfaces to abide by the 50% requirement. This would result in an unnecessary hardship, as the items are already constructed.

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

The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. The carport and accessory structures in their current positions, additional fence height, corrugated fence material, clear vision distances, and impervious cover 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 variances will not injure the appropriate use of adjacent conforming property or alter the essential character of the district as the proposed carport and accessory structure side and rear setbacks and 12' corrugated metal fence are located within the rear yard, not affecting surrounding property owners. Additionally, other similar clear vision distances and impervious coverage were seen in the immediate area. All requests do not seem out of character with the surrounding area and assigned base zoning 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 property being narrow in size. The requests are not merely financial.

Second: Oroian

Chair Oroian made a friendly amendment to the motion “to remove Item 1 and Item 5” which was accepted by the maker of the motion.

In favor: Spielman, Menchaca, Ingalls, Zuniga, Cruz, Manna, Vasquez, Bragman, Ozuna, Oroian

Opposed: Kaplan

Motion Granted.

Item #7

BOA-23-10300065: A request by One Stop Code Consulting, LLC for a variance from the frontage requirements to allow the frontage of three single-family residential lots on a Collector Street, located at 3727 Commercial Ave. Staff recommends Approval. (Council District 3) (Joseph Leos, Planner, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 14 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no response from Harlandale- McCollum Neighborhood Association.

Fernando DeLeon, applicant, states he wants to plat three fenced residential structures with garages included.

Public Comment

Voicemail:

Citizen (name not mentioned), spoke in opposition.

Ms. Bragman made a **Motion** for **BOA-23-10300065** for approval as presented.

Regarding Case No. **BOA-23-10300065**, I move that the Board of Adjustment grant request for a variance from the frontage requirements to allow the frontage of three single-family residential lots on a Collector Street, situated at 3727 Commercial Avenue, applicant being OneStop Code, 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 frontage requirements for single-family dwellings to allow for the safety of vehicular traffic and uniform development patterns. If granted, staff finds the request is not contrary to the public interest, as per dated imagery, a single-family dwelling was previously in this location and was not contrary to the public interest.

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

The special condition found on the subject property includes non-vehicular access throughout the lot. The subject property is surrounded by other privately owned lots, with access limited to Commercial Avenue. A literal enforcement of the ordinance would result in an unnecessary hardship, as the development of this lot would be prohibited if the variance is not granted.

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 new one-story residential structures have all been located towards the rear of the property, but still allowing the 20 feet minimum rear setback requirement. The structures will be located approximately 48 feet from the front property line to the proposed garage. Additionally, the applicant is providing a permanent vehicular turn around on each of the subdivided lots, preventing the reversing onto Commercial Avenue. The requested variance observes 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.*

The applicant is constructing 3 single-family dwellings, which are allowed by right within the current base zoning districts and meet the minimum lot size requirements. The granting of this variance will not injure the appropriate use of adjacent properties or alter the essential character of the district, as other single-family uses were found fronting on Commercial Avenue. The requested variance does not seem out of character with the assigned base zoning district and neighborhood fabric.

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 only thoroughfare abutting the subject property is classified as a Collector Road. The circumstances do not appear to be merely financial.

Second: Cruz

In favor: Spielman, Menchaca, Ingalls, Zuniga, Manna, Cruz, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

Item #8

BOA-23-10300066: A request by HOMETEK LLC for 1) a 2' special exception from the maximum 6' side yard fence height requirement to allow an 8' fence along the western property line, 2) a 2'-8" variance from the minimum 5' side setback requirement to allow a structure to be 2'-4" from the western property line, and 3) a 2'-1" variance from the maximum 5' side setback requirement to allow an accessory structure with an 11" overhang to be 2'-11" from the eastern property line, located at 509 West Mistletoe Avenue. Staff recommends Denial for the Fence Special Exception. Staff recommends Approval for the Side Setback Variances. (Council District 1) (Joseph Leos, Planner, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 14 notices were mailed to property owners, 0 returned in favor, 0 returned in opposition, and no response from Alta Vista Neighborhood Association.

Laura Fernandez, applicant, states she wants an 8' fence to set boundaries between an intrusive belated neighbor. She mentions the neighbor trespasses, uses utilities, and have received several police reports on subject property due to narcotic uses, disturbances, etc. The height of the fence will provide security and privacy.

No Public Comment

Ms. Manna made a **Motion** for **BOA-23-10300066** for approval for only Item 1 as presented.

Regarding Case No. **BOA-23-10300066**, I move that the Board of Adjustment grant a request for a 2' special exception from the maximum 6' side yard fence height requirement to allow an 8' fence along the western property line, situated at 509 West Mistletoe, applicant being Hometek, LLC, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The UDC states the Board of Adjustment can grant a special exception for a fence height modification. Staff finds the proposed 8' solid screened fence being requested along the western property line is in harmony with the spirit and purpose of the ordinance as it is intended to provide safety and security for the subject property.

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

In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The proposed fence at its anticipated height appears to serve the public welfare and convenience.

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

The fence will create enhanced security and privacy for the subject and adjacent properties; therefore, the additional fence height will not substantially injure 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 fence height will not alter the essential character of the district, as the fence will only be located on the western property line and behind the front façade of the home.

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, as the property is zoned "R-6" and allows for special exception for fence heights.

Second: Bragman

In favor: Ozuna

Opposed: Spielman, Menchaca, Ingalls, Zuniga, Manna, Cruz, Kaplan, Vasquez, Bragman, Oroian

Motion fails. 10-1

Item #9

BOA-23-10300068: A request by Mark Sanchez for 1) a 2'-6" variance from the minimum 10' front setback requirement to allow a detached carport with a 1'-7" overhang to be 7'-6" from the front property line, and 2) a 1'-5" variance from the minimum 5' side setback requirement to

allow a detached carport with a 1' overhang to be 3'-7" from the side property line, located at 5934 Seacroft Drive. Staff recommends Denial. (Council District 6) (Vincent Trevino, Senior Planner, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 38 notices were mailed to property owners, 1 returned in favor, 0 returned in opposition, and no response from Thunderbird Hills Neighborhood Association.

Mark Sanchez, applicant, states this is his first major project on his home. He prematurely built a carport without a permit assuming the contractor would pull a permit on their end; however, that was not the case. He states he intends to add gutters. Applicant request permit approval for his carport. Applicant presented a letter in support from adjacent property in support

No Public Comment

Mr. Ozuna made a **Motion** for **BOA-23-10300068** for approval as presented.

Regarding Case No. **BOA-23-10300068**, I move that the Board of Adjustment grant a request for 1) a 2'-6" variance from the minimum 10' front setback requirement to allow an attached carport with a 1'-7" overhang to be 7'-6" from the front property line, and 2) a 1'-5" variance from the minimum 5' side setback requirement to allow an attached carport with a 1' overhang to be 3'-7" from the side property line, situated at 5934 Seacroft Drive, applicant being Mark Sanchez, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The front and side yards do not have adequate space to have a front setback of 10'-0" and a side setback of 5'-0". The structure is 18' wide and will allow for multiple vehicles to park and 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 lot as there is not adequate space to meet the minimum front setback requirement for the carport.

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 detached carport cannot meet the 10' minimum front setback and 5' minimum side setback requirement and fit multiple vehicles.

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 would not alter the essential character of the district as the front and side yards cannot support the multiple vehicles under a carport.

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 width of the lot and configuration of the existing residence, maintaining a 10' front setback and 5' side setback is not appropriate for the area. The request is not merely financial.

Second: Kaplan

In favor: Spielman, Menchaca, Ingalls, Zuniga, Manna, Cruz, Kaplan, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

Ms. Kaplan left the meeting at 5:27 PM.

Item #10

BOA-23-10300070: A request by Peter B. Stainken for 1) a 13'-10" variance from the minimum 20' rear setback requirement to allow a structure (with 5' alley credit) to be 1'-2" from the rear property line and 2) a 2'-2" variance from the minimum 5' side setback requirement to allow a structure with a 1'-3" overhang to be 2'-10" from the side property line, located at 431 Larkwood Drive. Staff recommends Approval. (Council District 10) (Vincent Trevino, Senior Planner, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 20 notices were mailed to property owners, 2 returned in favor 0 returned in opposition, and Oak Park Northwood Neighborhood Association are in support.

Peter Stainken, applicant, states he is renovating his house and wants to connect his house to his garage.

No Public Comment

Ms. Bragman made a **Motion** for **BOA-23-10300070** for approval as presented.

Regarding Case No. **BOA-23-10300070**, I move that the Board of Adjustment grant a request for 1) a 13'-10" variance from the minimum 20' rear setback requirement to allow a structure (with 5' alley credit) to be 1'-2" from the rear property line and 2) a 2'-2" variance from the minimum 5' side setback requirement to allow a structure with a 1'-3" overhang to be 2'-10" from the side property line, situated at 431 Larkwood Drive, applicant being Peter Stainken, 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 rear setback of 20'-0" and a side setback of 5'-0" cannot be met as the garage is existing and a new addition will be added, this is not 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 lot as the garage is existing and would have to be relocated to meet the rear and side yard setback requirements.

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

The spirit of the ordinance will be observed as the existing garage cannot meet the 20' minimum rear setback and 5' minimum side setback requirement due to a new addition.

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 the rear and side yards would not alter the essential character of the district due to a new addition connecting the main structure and garage.

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

Because of the existing garage and an addition to the garage, maintaining a 20' rear setback and 5' side setback is not appropriate for the area. The request is not merely financial.

Second: Cruz

In favor: Spielman, Menchaca, Ingalls, Zuniga, Manna, Cruz, Vasquez, Bragman, Ozuna, Oroian

Opposed: None

Motion Granted.

Item #11 Approval of minutes from Zoning Board of Adjustments meeting on April 3, 2023

A **Motion** was made by Ms. Bragman and seconded Chair Oroian for approval.

Ms. Cruz abstained from vote.

All voted affirmative.

Adjournment

There being no further business, the meeting was adjourned at 5:37 PM

APPROVED BY: _____ OR _____
Chairman Vice-Chair

DATE: _____

ATTESTED BY: _____ DATE: _____
Executive Secret