

City of San Antonio



Minutes

Board of Adjustment

Development and Business Services
Center
1901 S. Alamo

Monday, January 23, 2023

1:00 PM

1901 S. Alamo

1:00 PM – Call to Order

SeproTec translator were present.

Roll Call – Present: Spielman, Menchaca, Lynde, Cruz, Zuniga, Manna, Kaplan, Bragman, 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.

Commissioner Zuniga joined the meeting at 1:07 PM

Item #4

BOA-23-10300266: 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 recommends denial. (Council District 1) (Joshua Orton AICP, Senior Planner (210) 207-7945, Joshua.Orton@sanantonio.gov, Development Services Department).

Public Comment

Voicemail

Mr. Garcia, member of Tier 1 Neighborhood Coalition, spoke in opposition.

Justin Ramirez, applicant, stated he has obtained legal counsel and would like is requesting a continuance until February 6, 2023, to further discuss and prepare.

MOTION

The motion was made by Commissioner Manna and seconded by Commissioner Kaplan to continue this case until February 6, 2023.

All voted in affirmative.

MOTION PASSES

Chair Oroian exited the meeting for recusal purposes and passed the meeting to Vice Chair Ozuna

Item #1

BOA-22-10300240 (Continued from 12/12/22): 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 SW 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 currently vacant and has become a dumping site. He stated the owner is purposing to build a small office building with trees, shrubs and ground cover to serve as buffers. He stated he has meet with the opposing citizens to present his proposal and feels their concerns were addressed.

Public Comment

Mr. Juarez, stated he is working with Mr. Peters and is in support of the proposed project. He feels this would be good for the neighborhood.

MOTION

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-22-10300240**, I move that the Board of Adjustment grant a request 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, situated at 995 Southwest 36th Street, applicant being Alvin Peters, 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 request landscape variances and the side setback variances are not contrary to the public's interest as there are similar lots in the area with landscape and setbacks of what is being proposed.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Without the variances the applicant would have to comply to the landscape buffer requirements and side setback requirements. This would result in an unnecessary hardship as the lot is small.
3. *By granting the variance, the spirit of the ordinance will be observed, and substantial justice will be done.*
Reducing the landscape buffer requirements as side setback requirements will observe the spirit of the ordinance and will not adversely affect surrounding properties 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.*
If granted, the landscape buffer variances and side setback variance will not alter the essential character of the district.
6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial and are not due to or the result of general conditions in the district in which the property is located.*
Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. The unique character of the business would be hindered by the existing buffer and setback standard.

The motion was seconded Commissioner Menchaca

Favor: Kaplan, Menchaca, Spielman, Lynde, Zuniga, Bragman, Ozuna

Oppose: Cruz, Manna

MOTION FAILS

Commissioner Manna made a motion to reconsider and was seconded by Commissioner Menchaca.

All voted in affirmative

2nd MOTION

A motion was made by Commissioner Manna and was seconded by Commissioner Bragman to continue until February 6, 2023.

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

Oppose: None

MOTION PASSES

Chair Oroian re-entered meeting

Item #2

BOA-22-10300243 (Continued from 12/12/22): A request by Budget Signs for a 30'-8" variance from the 24' sign height maximum, to allow a sign to be 54'-8" tall, located at 2900 Fredericksburg Road. Staff recommends approval. (Council District 1) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 31 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and no response from Los Angeles Heights Neighborhood Association.

Patrick Christensen, representative, stated the purpose of this request is replace damaged sign. The existing sign was damaged due to a windstorm roughly a year ago. He stated they would be keeping the pole however the new sign is smaller in size and height. He stated he has met with Los Angeles and Monticello Neighborhood associations to present their proposal and address their concerns.

Public Comment

Voicemail

Bianca Maldonado, spoke in support.

MOTION

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-22-10300243**, I move that the Board of Adjustment grant a request for a 30'-8" variance from the 24' sign height maximum, to allow a sign to be 54'-8" tall, situated at 2900 Fredericksburg Road, applicant being Budget Signs, 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 24' in height, however due to the height of the existing trees the applicant is requesting a variance to erect a sign at 54'-8" in height.

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 and enjoyed by others similarly situated or potentially similarly situated.
The proposed sign does not appear to provide a special privilege and will not impede the vision of customers who are looking for neighboring companies in the immediate 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 most of the other signs are existing and do not appear to be exceeding the sign regulation standards in as great capacity as the proposed sign.
 - C. Granting the variance will not substantially conflict with the stated purposes of this article.
The requested variances will not substantially conflict with the stated purpose of the chapter. A sign exceeding the 24' in height by 30' – 8" will not impede the vision of the customers who are looking for neighboring companies in the immediate area.

The motion was seconded by Commissioner Manna.

Favor: Ozuna, Manna, Spielman, Lynde, Cruz, Zuniga, Kaplan, Bragman, Oroian
Oppose: Menchaca

MOTION PASSES

Commissioner Manna exited the meeting for resucal purposes.

Item #3

BOA-22-10300258 (Continued from 1/9/23): A request by Morales Design Group for a 15' variance from the minimum 30' rear setback requirement to allow a structure to be 15' from the rear property line, located at 6690 Prue Road. Staff recommends approval. (Council District 8 and 7) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 23 notices had been mailed out, 0 returned in favor, 0 returned in opposition and 4 opposition outside the 200-foot radius, and Alamo Farmstead Babcock Road Neighborhood Association is in opposition.

Jaime Morales, applicant, stated they are proposing a convenience store on the subject property. He stated the structure would slightly encroach onto the 30' rear setback that abuts the residential development which is the purpose of this variance request.

Public Comment

Anna Belford, representing Alamo Farmstead Babcock Road Neighborhood Association, spoke in opposition.

MOTION

A motion was made by Commissioner Kaplan. Regarding Case No. **BOA-22-1030258**, I move that the Board of Adjustment grant a request for a 283 square foot variance for the rear minimum setback to allow a structure to be 15' from the rear property line, situated at 6690 Prue Road, applicant being Morales Design Group, 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 variance for the rear setback to allow a structure to be 283 square feet from the rear property line and does not appear to be contrary to the public interest as it will leave sufficient space between the multi-family development to the south.
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 having to maintain 30' from the rear property line requirement. Staff finds an unnecessary hardship due to the configuration of the lot to allow the development of a structure with this requirement.

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

The structure has not been constructed and the proposed setback is 15' from the rear property line. The spirit of the ordinance will be observed as there will still be reasonable space between the structure and neighboring properties.

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.

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 and size of the lot and configuration of the existing property the request is not merely financial.

Mirko Maravi, Principal Planner, stated there is a property west that has just been newly built as condos. Unfortunately, those residents did not make staff's mailing notification list, therefore, this case would have to be reconsidered at a later date.

Case will be rescheduled.

Commissioner Manna re-entered the meeting at 2:36 pm

Item #10

BOA-22-10300263: A request by Blanca Lara for 1) a 1'-6" variance to minimum required 20' rear setback, for a structure to be 18'-6" away from rear property line, 2) a 2'-6" special exception from the maximum 3' front fence height requirement, to allow a 5'-6" solid screened fence in the front yard, 3) a 19'-9" variance from the 25' minimum clear vision requirement, to allow a solid screened privacy fence to be 5'-3" from the corner curb, 4) a 4' variance from the 15' minimum clear vision requirement, to allow a solid screened privacy fence to be 11' from the side yard driveway, 5) a 10' variance from the 15' minimum clear vision requirement, to allow a solid screened fence to be 5' from the front driveway, 6) a 4'-11" variance from the minimum 5' side setback requirement, to allow a structure to be 1" from the side property line, 7) a variance from the fence materials, to allow corrugated metal along the rear property line, and 8) a variance from the maximum 50% impervious cover requirement, to allow the front yard to exceed the 50% impervious cover, located at 2001 Santiago Street. Staff recommends approval in the Rear Setback Variance. Staff recommends denial in the Special Exception Fence Height, Fence Material, Clear Vision for Driveways and Corner, Side Setback and Impervious Cover. (Council District 5) (Joseph Leos, Planner, (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 51 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and El Charro Neighborhood Association is in opposition.

Sergio Lara, owner, stated he is wanting to know what the issues are and how can they be corrected to comply with surrounding neighbors. He stated he pulled permits for all work that has been done but the fence was built taller for safety due to the increase in violence in the neighborhood. He stated the neighborhood association has never been in agreement with any construction that he has done.

No Public Comment

MOTION

A motion was made by Commissioner Manna. Regarding Case No. **BOA-22-1030263**, I move that the Board of Adjustment grant A request for 1) a 1'-6" variance to minimum required 20' rear setback, as described in Section 35-310.01, for a structure to be 18'-6" away from rear property line, situated at 2001 Santiago Street, applicant being Blanca Lara because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance to the rear and side setback. The proposed distance to the rear property line is 18'-6". These distances provide adequate spacing between structures and neighboring properties.

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

A literal enforcement of the ordinance would result in the applicant altering the proposed and existing to abide by the 20' rear setback requirements. This would result in an unnecessary hardship, as the proposed addition and existing structure cannot be altered to meet the 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 law. The requested variances will observe the spirit of the ordinance, as these requests provide an acceptable distance between structures, property lines and curbs.

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 existing and proposed structures, and fences will be situated at the proposed distances and height, which is not likely to alter the essential character of the district as the surrounding properties have similar setback distances. The proposed variances will not alter or injure the appropriate use of the adjacent conforming properties.

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

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

The motion was seconded by Commissioner Bragman.

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

Oppose: None

MOTION PASSES

Chair called for the second motion. No motion was made.

Item #5

BOA-22-10300233: A request by Gilbert Rodriguez for 1) a 5' variance from the maximum 10' front yard carport maximum height in the Jefferson Neighborhood Conservation District (NCD) design standards to allow a carport to be 15' in height, 2) a request for a front yard carport roof design variance from the Jefferson Neighborhood Conservation District (NCD) design standards to allow a carport to have a pitched roof, 3) a request for a 5' variance from the 10' minimum front setback requirement to allow a carport to be 5' from the front property line, and 4) a request for a 4'-11" variance from the minimum 5' side yard requirement to allow a carport to be 1" from the side property line, located at 338 Senisa Drive. Staff recommends Denial with an Alternate Recommendation for the Carport Side Setback variance. Staff recommends denial to the Carport Front Setback, Carport Height and Roof Pitch variance. (Council District 7) (Vincent Trevino, Senior Planner (210) 207-5501, Vincent.Trevino@sanantonio.gov, Development Services Department)

Staff stated 24 notices had been mailed out, 3 returned in favor, 2 returned in opposition and 1 in opposition outside 200' foot radius, and no response from Woodlawn Lake Homeowners Association and Jefferson Homeowners Association is in opposition.

Staff stated there is a correction to the carport being 13' rather than 15' in carport height.

Gilbert Rodriguez, owner, stated he did measure the carport and it measures at 13'. He stated the existing carport was deteriorating and rebuilt this new one. He stated the new carport does extend further than normal due to the tree in the front yard. The purpose for that is to avoid causing any damage to root of the tree. He stated that he would like to amend his request to include gutters to drain towards the street.

Public Comment

Voicemails

Adele Donnelly, spoke in support.

Julie Vasquez, spoke in support.

In Person

Patty Zaiontz, spoke in opposition

MOTION

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-22-10300233**, I move that the Board of Adjustment grant a request for 1) a request for a 5' variance from the maximum 10' front yard carport maximum height in the Jefferson Neighborhood Conservation District (NCD) design standards to allow a carport to be 13' 1" in height, 2) a request for a front yard carport roof design variance from the Jefferson Neighborhood Conservation District (NCD) design standards to allow a carport to have a pitched roof, 3) a request for a 5' variance from the 10' minimum front setback requirement, as described in Sec 35-516(g), to allow a carport to be 5' from the front property line, and 4) a request for a 4'-11" variance from the minimum 5' side yard requirement to allow a carport to be 1" from the side property line, situated at 338 Senisa Drive, applicant being Gilbert Rodriguez, 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 for 1) a request for a 5' variance from the maximum 10' front yard carport maximum height in the Jefferson Neighborhood Conservation District (NCD) design standards to allow a carport to be 13' 1" in height, 2) a request for a front yard carport roof design variance from the Jefferson Neighborhood Conservation District (NCD) design standards to allow a carport to have a pitched roof, 3) a request for a 5' variance from the 10' minimum front setback requirement to allow a carport to be 5' from the front property line and 4) a request for a 4'-11" variance from the minimum 5' side yard requirement to allow a carport to be 1" from the side property line, which does not appear to be contrary to provide adequate spacing along the side property line. The applicant made testimony that he would provide gutters along the side property line that would drain towards the street.

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 to construct the carport less than 15' in height and the carport to be with a non-pitched roof, and a carport to be 10' from the front property line. Staff finds an unnecessary hardship due to the location of the driveway on the lot and the large tree that the applicant was trying to preserve.
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. Due to the configuration of the property and location of the driveway, this will 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 finds that the requested variance will not alter the essential character of the district. Upon site visits, staff observed other properties with carports were found 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.*
The variance is not sought is due to unique circumstances existing on the property such as the location of driveway on the lot. The variance request is not merely financial.

The motion was seconded by Commissioner Manna.

Commissioner Manna added a friendly amendment to set the variance to be 2' 9" to cover the height versus 5'. Commissioner Ozuna accepted the friendly amendment.

Favor: Ozuna, Lynde, Cruz, Zuniga, Bragman, Oroian

Oppose: Spielman, Menchaca, Manna, Kaplan

MOTION FAILS

Commissioner Bragman exited the meeting for resucal purposes.

Item #7

BOA-22-10300260: A request by Brio Builders for 1) a request for a 7' variance from the minimum 20' garage setback requirement to allow a garage to be 13' from the front property line, 2) a request for a 4'-5" variance from the minimum 10' rear setback requirement to allow a structure to be 5'-7" from the rear property line, and 3) a variance from the maximum 50% impervious cover requirement to allow the front yard to exceed the 50% impervious cover, located at 103 Saint Ann. 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, 2 returned in opposition, and no response from Uptown Neighborhood Association.

Jim Tafolla, contractor, stated he is the new contractor for this project. He stated prior to Covid, permits were initially pulled by the previous contractor however due to financial situations and Covid, the permits expired. He stated they are proposing to develop duplex and he is seeking approval for the garage rear and side setbacks.

No Public Comment

MOTION

A motion was made by Commissioner Manna. Regarding Case No. **BOA-22-1030260**, I move that the Board of Adjustment grant a request for 1) a request for a 7' variance from the minimum 20' garage setback requirement, to allow a garage to be 13' from the front property line, 2) a request for a 4'-5" variance from the minimum 10' rear setback requirement, to allow a structure to be 5'-7" from the rear property line, and 3) a variance from the maximum 50% impervious cover requirement, to allow the front yard to exceed the 50% impervious cover, situated at 103 Saint Ann, applicant being Brio Builders, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The public interest is defined as the general health, safety, and welfare of the public. In this case, the interest of the public is depicted by the enforcement of garage setbacks to ensure that vehicles do not interfere with the Right of Way. The requested variance provides adequate distance between the garage and front property line, which is not contrary to the public interest. Additionally, the applicant is requesting a variance for the rear setback and to exceed the impervious cover requirement. Staff finds that the distance between the structure and rear property line is not contrary because there would be enough room for maintenance and will not create water runoff on the adjacent property. Furthermore, the requested impervious cover is not contrary, as this will allow for more space to park vehicles on the owner's property and off the public street.

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 having to alter the garage setback to 20', adjust the rear setback to 10', and reduce the impervious coverage. This would result in an unnecessary hardship by having the applicant altering the existing main structure to abide by the enforced limitations.

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. Substantial justice will be served as this will allow for vehicles to use the garages for the required off street parking. The current rear setback of 5'-7" will observe the spirit of the ordinance as this request provides a suitable amount of spacing between the subject and adjacent properties. Furthermore, the impervious cover request provides a decent amount of permeable surfaces in the front yard.

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 requested variances will not injure the appropriate uses of adjacent properties or alter the essential character of the neighborhood as the requested garage setback variance is highly unlikely to affect the public right of way and is the only property on the block face addressed off Saint Ann Street. The requested rear setback variance will not alter the essential character of the district, as smaller lots were found 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 the narrow lot size and orientation of the newly addressed structure off Saint Ann Street.

The motion was seconded by Commissioner Kaplan.

Favor: Manna, Kaplan, Spielman, Menchaca, Lynde, Cruz, Zuniga, Ozuna, Oroian

Oppose: None

MOTION PASSES

Commissioner Bragman re-entered the meeting.

Chair Oroian exited the meeting for recusal purposes and passed the meeting to Vice Chair Ozuna

Item #8

BOA-22-10300261: A request by Elizabeth Haynes Architect for 1) a 2' special exception from the maximum 6' fence height requirement to allow a predominately open fence to be 8' tall along the rear and side yard, 2) a 3' special exception from the maximum 5' front fence height requirement to allow a predominately open fence to be 8' tall along the front yard, and 3) a 7' variance from the minimum 15' clear vision requirement to allow a fence to be 8' from the front and side driveways, located at 2803 Mossrock Drive. Staff recommends approval. (Council District 1) (Joseph Leos, Planner, (210)

207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 22 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and no response from Colonial Hills Neighborhood Association.

Elizabeth Haynes, Rise Recovery, she stated they are a non-profit organization that provides assistance to for teens, young adults and families overcome substance abuse through counseling and education. She stated the purpose of this request is for safety and protection of the property, residents and staff.

No Public Comment

1st MOTION

A motion was made by Commissioner Manna. Regarding Case No. **BOA-22-1030261**, I move that the Board of Adjustment grant a request for a 7' variance from the minimum 15' clear vision requirement, as described in Section 35-514(a)(2), utilizing that specified utilizing predominately open fencing to allow a fence to be 8' from the front and side driveways, situated at 2803 Mossrock Drive, applicant being Elizabeth Haynes Architect, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a clear vision variance to allow a fence to be 8' from the front and side driveways. Staff finds that this request will not be contrary to the public interest as this is an acceptable distance.

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 re-constructing the fence to meet the minimum 15' clear vision requirement for the front and side driveways. This would result in an unnecessary hardship as there exists 8' clear vision on a driveway that would not have any vehicles back out.

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

The clear vision request to allow a fence to be 8' from the front and side driveways 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 clear vision distance will be maintaining 8' from the front and side driveways, 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. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Kaplan.

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

Oppose: None

MOTION PASSES

2nd MOTION

A motion was made by Commissioner Manna. Regarding Case No. **BOA-22-10300261**, I move that the Board of Adjustment grant a request for 1) a 2' special exception from the maximum 6' fence height requirement as described in Section 35-514, to allow a predominately open fence to be 8' tall along the rear and side yard, and 2) a 3' special exception from the maximum 5' front fence height requirement, as described in Section 35-514, to allow a predominately open fence to be 8' tall along the front yard, situated at 2803 Mossrock Drive, applicant being Elizabeth Haynes Architect, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

- A. The special exception will be in harmony with the spirit and purpose of the chapter.*
The UDC states the Board of Adjustment can grant a special exception for a fence height modification. The fence height being requested is predominantly open, located along the front, side, and rear property lines and does not exceed 8' in height. If granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance.
- B. The public welfare and convenience will be substantially served.*
In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The proposed fence be requested will be located along the front, side, and rear property lines and is exceeding the maximum height requirement by 2' and 3'. The fence is predominantly open which 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. Additionally, there is 30' public earthen channel, which separates the residentially zoned districts from the subject property.
- D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*
The additional fence height in the front, side, and rear yards of the subject property does not appear to alter the location for which the special exception is sought, as the abutting base zoning districts are commercially zoned. Additionally, the property is zoned for more intense commercial uses that would be beneficial to add an 8' fence.
- E. The special exception will not weaken the general purpose of the district, or the regulations herein established for the specific district*
The requested special exception will not weaken the general purpose of the district.

The motion was seconded by Commissioner Cruz

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

Oppose: None

MOTION PASSES

Item #9

BOA-22-10300262: A request by Censeo Homes for a variance from the maximum 50% impervious cover requirement, to allow the front yard to exceed the 50% impervious cover, located at 7523 Casina Run. Staff recommends denial. (Council District 8) (Jacob Exler, Planner, (210) 207-5876, Jacob.Exler@sanantonio.gov, Development Services Department)

Staff stated 17 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and no response from Cedar Park Neighborhood Association.

Rob Wasyiw, representative, stated these lots were developed during Covid and original applicant decided not to move forward with the project at that time. He stated this area is zoned “MF-18” they are proposing duplexes 1 car garage and some with 2 car garages.

Public Comment

Voicemail

Nicholas Mohat stated his property abuts the proposed area and want to ensure they will maintain the 22-foot distance from subject property to his abutting property.

MOTION

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-22-10300262**, I move that the Board of Adjustment grant a request for a variance from the maximum 50% impervious cover requirement, to allow the front yard to exceed the 50% impervious cover, situated at 7523 Casina Run, applicant being Censeo Homes, 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 impervious cover to exceed the 50% minimum. The regulations are provided to prevent front yards from being covered by impervious surfaces, which can diminish the character of the community. The development will bolster the housing supply and will provide value to the community. The request 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 needing to either reconfigure the floor plan and build smaller units or eliminate the driveways, as the lot size is relatively small for a duplex. This 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 spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. Impervious coverage requirements are intended to provide a safe environment for the mitigation of water flooding during heavy rain events. Exceeding the 50% impervious coverage requirement appears to observe the spirit of the ordinance as there is no other way to build the homes with parking on the small lot.

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 impervious coverage on the subject property does not pose a threat to adjacent properties as all the properties are undeveloped and will require a similar variance since they have similar lot sizes and zoning. It will not alter the essential character of the 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 found that the lot size is too small to realistically conform to the impervious coverage requirements.

The motion was seconded by Commissioner Kaplan.

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

Oppose: None

MOTION PASSES

Commissioner Kaplan left meeting at 4:56 pm

Item #6

BOA-22-10300235: A request by Eluterio Tenorio for 1) a 22'-6" variance from the required 30' minimum rear setback requirement, to allow a structure to be 7'-6" from the rear property line, 2) a 15' variance from the required 15' minimum rear buffer yard requirement, to allow the elimination of the rear buffer yard, and 3) a 4' variance from the required 10' minimum front buffer yard requirement, to allow a buffer yard to be 6' on a Secondary Arterial Type B, located at 3106 Commercial Avenue. Staff recommends approval. (Council District 3) (Joseph Leos, Planner, (210) 207-3074, Joseph.Leos@sanantonio.gov, Development Services Department)

Staff stated 22 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and no response from Harlandale McCollum Neighborhood Association.

Eluterio Tenorio, applicant, stated the owner was seeking to remodel and proceeded to pull permits to demolish for the remodeling. Unfortunately, with the demolition of that prompted the owner to now comply with the new codes.

No Public Comment

MOTION

A motion was made by Commissioner Bragman. Regarding Case No. **BOA-22-1030235**, I move that the Board of Adjustment grant a request for 1) a 22'-6" variance from the required 30' minimum rear setback requirement, to allow a structure to be 7'-6" from the rear property line, 2) a 15' variance from the required 15' minimum rear buffer yard requirement, to allow the elimination of the rear buffer yard, and 3) a 4' variance from the required 10' minimum front buffer yard requirement, to allow a buffer yard to be 6' on a Secondary Arterial Type B, situated at 3106 Commercial Avenue, applicant being Eluterio Tenorio, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance to the rear setback to allow a structure to be 7'-6" from the rear property line. Staff finds that this a suitable amount of spacing, as the structure is abiding by the front and side setback requirements. Additionally, the applicant is requesting a 15' variance to allow the elimination of the rear buffer yard and a 4' variance to allow a 6' buffer yard in the front yard, which is not contrary to the public interest as it is in the rear yard and cannot be seen from any street right-of-way. Furthermore, the applicant has a 6' bufferyard in the front yard, allowing for a buffer between the public Right of Way and subject property.

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 proposed structure to adhere by the rear setback and rear buffer yard requirements. This would result in an unnecessary hardship, as this would not allow for the expansion of the parking lot as proposed.

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

In this case, the proposed rear setback of 7'-6", elimination of the rear buffer yard, and maintaining a 6' front buffer will adhere to the spirit of the ordinance and substantial justice will be done by allowing for suitable distances between structures and neighboring properties.

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 proposed structure will be 7'-6" from the rear property line, have no rear buffer yard, and maintain a 6' buffer in the front. These requests will not alter the essential character of the district, as the new structure will have the same building footprint as it did previously. Additionally, neighboring properties were observed with similar rear setbacks and buffer yards.

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 length of the parcel. Due to this, the applicant would not be able to build a sizeable structure without reducing the amount of required parking spaces in the front. The circumstances do not appear to be merely financial.

The motion was seconded by Commissioner Cruz

Favor: Bragman, Cruz, Spielman, Menchaca, Lynde, Zuniga, Manna, Ozuna, Oroian

Oppose: None

MOTION PASSES

Item #11

BOA-22-10300265: A request by Oscar Montiel for 1) a 2'-2" special exception from the maximum 3' fence height to allow a 5'-2" solid screened privacy fence along the front yard, and 2) a 5'-5" variance from the minimum 15' clear vision requirement to allow a solid screened fence to be 9'-7" from the front curb, located at 730 West Olmos Drive. Staff recommends Approval in Clear Vision variance. Staff recommends denial in Fence Height Special Exception. (Council District 1) (Jacob Exler, Planner, (210) 207-5876, Jacob.Exler@sanantonio.gov, Development Services Department)

Staff stated 28 notices had been mailed out, 1 returned in favor, 1 returned in opposition, and Edison Neighborhood Association is in opposition.

Oscar Montiel, applicant, stated built the fence in March 2021 for safety and protection since he was a victim of physical abuse.

No Public Comment

1st MOTION

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-22-10300265**, I move that the Board of Adjustment grant a request for a 3'-5" special exception from the maximum 3' fence height, as described in Section 35-514, to allow a 6'-5" privacy fence with 3' of solid screen from the bottom and the remaining height up to 6'-5" to be 70% open, situated at 730 W Olmos Dr, applicant being Oscar Montiel, 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.*
The front fence will create enhanced security and privacy for the subject property, and it 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 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 Manna.

Favor: Ozuna, Manna, Spielman, Menchaca, Lynde, Cruz, Zuniga, Bragman, Oroian

Oppose: None

MOTION PASSES

2nd MOTION

A motion was made by Commissioner Ozuna. Regarding Case No. **BOA-22-10300265**, I move that the Board of Adjustment grant a request for a 5'-5" variance from the minimum 15' clear vision requirement, as described in 35-514(a)(2), to allow a solid screened fence to be 9'-7" from the front curb, situated at 730 W Olmos Dr, applicant being Oscar Montiel, 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's variance requests does not appear contrary to the public interest, as there is sufficient space between the curb and the fence.
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
Requiring the fence to be moved back would require the applicant to move their fence line behind neighboring houses.
3. *By granting the variance, the spirit of the ordinance will be observed, and substantial justice will be done.*
The recommended variances appear to observe the spirit of the ordinance. Neighboring houses have similar fence placements, and the variance allows adequate front spacing.
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 other houses in the area have a similar fence location.
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, such as the location of the property. The requested clear vision variance will ease the hardship by allowing the fence line to remain the same and in line with neighboring houses.

The motion was seconded by Commissioner Manna

Favor: Ozuna, Manna, Spielman, Menchaca, Lynde, Cruz, Zuniga, Bragman, Oroian
Oppose: None

MOTION PASSES

Item #12

BOA-22-10300267: A request by K-Love Engineering for 1) an 8’-6” variance from the minimum 15’ clear vision requirement to allow a solid screened fence to be 6’-6” from the front curb, and 2) a 25’ variance from the 25’ buffer to allow an elimination of the rear buffer, located at 817 West Mayfield Boulevard. Staff recommends approval for the Clear Vision Variance. Staff recommends Denial with an Alternate Recommendation for the Buffer Variance. (Council District 5) (Jacob Exler, Planner, (210) 207-5876, Jacob.Exler@sanantonio.gov, Development Services Department)

Staff stated 35 notices had been mailed out, 0 returned in favor, 0 returned in opposition, and there is no registered Neighborhood Association.

Abraham Perez, pastor, stated the purpose of this request is to allow for more access to the existing church

No Public Comment

MOTION

A motion was made by Commissioner Manna. Regarding Case No. **BOA-22-10300267**, I move that the Board of Adjustment grant a request for 1) an 8’-6” variance from the minimum 15’ clear vision requirement, to allow a solid screened fence to be 6’-6” from the front curb, 2) a 25’ variance from the 25’ buffer, as described in Section 35-510, to allow an elimination of the rear and side buffer, situated at 817 W Mayfield, applicant being Robin Knowlton, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship.

Specifically, we find that:

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

The public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance to the clear vision requirement for the fence to be 6’-6” from the curb. The reduced buffer will leave enough room between properties to reduce noise. This is still sufficient space between the curb and the fence and so is not contrary to the public interest. The requested landscape variance is contrary to the public’s interest as the buffer reduces vehicular noise and light to surrounding houses.

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 fence needing to comply with the 15' clear vision requirement. The fence appears to have been there for years and enforcing the ordinance would require the applicant to demolish and rebuild the fence. The full landscape buffer would reduce parking and driveway area proposed. Without the variances, the applicant would need to comply with the buffer requirement. This would not result in an unnecessary hardship, as the lot appears to be large enough to have a buffer.

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. A 6'-6" clear vision variance for the fence aligns with neighboring houses and allows adequate front spacing, and so appears to observe the spirit of the ordinance. The reduced landscape buffer will observe the spirit of the ordinance as it will leave space between properties.

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.*

A 6'-6" clear vision variance is fitting with the character of the neighborhood as there are other fences observed in the area with similar fence location. The reduced setback will keep in character of the neighborhood as no industrial uses exist in the 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 variances are sought is due to unique circumstances existing on the property, such as the location of the property. The requested clear vision variance will ease the hardship by allowing the fence line to remain the same and the landscape buffer to be reduced.

The motion was seconded by Commissioner Cruz

Favor: Manna, Cruz, Spielman, Menchaca, Lynde, Zuniga, Bragman, Ozuna, Oroian

Oppose: None

MOTION PASSES

Item #13

Approval of the minutes from the Board of Adjustment meeting on January 9, 2023.

MOTION

A motion was made by Commissioner Manna and seconded Commissioner Bragman for approval.

All voted in affirmative.

MOTION PASSES


No Director's Report.

Adjournment.

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

APPROVED BY: _____
Chairman  OR _____
Vice-Chair

DATE: 2/4/2023

ATTESTED BY: 
Executive Secretary

DATE: Feb 7, 2023