

**BOARD OF ADJUSTMENT  
OFFICIAL MINUTES  
March 16, 2009**

**Members Present:**

Michael Gallagher  
Paul Klein  
Liz Victor  
Helen Dutmer  
George Britton Jr.  
George Alejos  
Mary Rogers  
Andrew Ozuna  
Mike Villyard  
Gene Camargo

**Staff:**

Fernando De León, Assistant Director  
Rudy Niño, Senior Planner  
Jacob Floyd, Planner  
Michael Farber, Planner  
Paul Wendland City Attorney

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**Call to Order**

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

Case No **A-09-031** was withdrawn by the applicant.

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**CASE NO. A-09-018 cont.**

Applicant – Nathan Golik  
Lot P-14A, NCB 19221 or Lot 7, NCB 19221  
19100 Block of Stonehue  
Zoned: “C-2 S ERZD” Commercial Edwards Recharge Zone District with a Specific Use Authorization for a Hospital

The applicant is requesting a 23 parking space adjustment from the standard that hospitals with a gross floor area of 40,831 square feet maintain a minimum of 102 parking spaces, in order to allow only 79 parking spaces.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 21 notices were mailed, 1 was returned in favor and 3 were returned in opposition and Stone Oak Communities of Mutual Amenities is in favor and no response from Stone Oak Property Owners Association.

Tina Larson, representative, stated that when they started with the process they originally had 100 parking spaces because they were planning to meet the ordinance as it is written. She also stated it was San Antonio Water Systems' goal to try to increase the impervious area as much as possible and they suggested we look at this and try to identify what the real parking needs were rather than just go and put what the requirements were. The 46% was not a requirement they had to meet for impervious surface area on the site but as they got the plan approved because that is what we were showing that is what was written with the approval. The facility will be a special licensed hospital and it will not have an outpatient service or patients coming in for doctors appointment or x-rays like a regular hospital. The facility is here for patients who are not strong enough to go home after surgery and will stay anywhere between three to four weeks with rehab at this facility. These patients are encouraged to spend most of their time with the therapist and go to the gym as much as possible with visitors not being a part of this. The largest shift of employees will be 36 plus the 42 beds which equate to 78 spaces. She further stated it will be adequate parking due to not all employees having vehicles or all patients having visitors.

#### **No citizens to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-018 cont. closed.

#### **MOTION**

A motion was made by **Mr. Villyard**. Re appeal No. **A-09-018, parking adjustment from the standard that hospitals with a gross floor area of 40,831 square feet maintain a minimum 102 parking spaces, in order to allow only 79 parking spaces**, the property known as **19100 Block of Stonehue**, legal description **Lot P-14A, NCB 19221 or Lot 7, Block 9, NCB 19221** I move that the Board of Adjustment grant the application's request regarding Appeal No **A-09-018**, application for a parking adjustment to the subject property as described above, 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 literal enforcement of the parking regulations would result in a hardship in that **the owner of the property feels that adequate parking spaces for both the 36 employees and the 42 beds can be fit into 79 parking spaces. The owner also feels that the vacant adjacent land is not necessary to accommodate additional parking spaces.** The motion seconded by Ms. **Dutmer**.

**AYES: Dutmer, Camargo, Britton, Ozuna, Rogers, Alejos, Klein, Gallagher**

**NAY: Villyard, Victor**

#### **SUBSTITUTE MOTION**

A substitute motion was made by **Mr. Camargo**. I would like to move that in Case **A-09-018**, the request of **Nathan A. Golik**, on property that is known **Lot P-14A, NCB 19221 or Lot 7**,

Block 9, NCB 19221, also known as the 19100 Block of Stonehue, be granted a 13 parking space adjustment to the standard that hospitals with gross floor area of 40, 831 square feet maintain a minimum of 102 parking spaces, in order to allow only 89 parking spaces on the above described property. Specifically we find that a literal enforcement of the parking regulations would result in a hardship in that this finding has been supported by specific facts that have been mentioned earlier. One specifically that this property is on the recharge zone and after reviewing the site plan with the SAWS staff to determine the amount of impervious cover that should be provided has been met by the applicant. The applicant has also indicated that the percentage exceeds that which normally would be required for this property by SAWS. In the zoning process they proposed that in the site plan and that was what presented to City council and accepted. They are following that direction that is has been imposed on this property. No adjustment may be granted which results in an undue hardship on another parcel of land. It has been stated that the applicant owner owns adjacent property to the south which could be utilized for additional parking if in fact it is necessary, either on the side on the north end of the subject property or to the south. I would point out that even those properties that are not being utilized will still come under review by the SAWS staff to ensure that the impervious cover percentage that are imposed are met. So it is my feeling that there are enough safe guards in place by various entities and various codes that would ensure that the protection of the recharge, which is the reason for this impervious coverage requirement, would be met. That this adjustment is being made specifically for that use that the applicant has been indicated on the application for which the C of O will specifically state what that use will be. The motion was seconded by Mr. Alejos.

**AYES:** Camargo, Dutmer, Alejos, Villyard, Victor, Rogers, Britton, Ozuna, Klein, Gallgher

**NAY:** None

**THE SUBSTITUTE MOTION PASSES.**

**CASE NO. A-09-028**

Applicant – David J. Isham

Lot 9, Block 8, NCB 18215

21715 Rio Colorado

Zoned: “PUD R-6 ERZD” Residential Single-Family Planned Unit Development Edwards Recharge Zone District

The applicant is requesting a 40-foot variance from the requirement that a minimum 50-foot platted rear setback be maintained (recorded in Volume 9540, Page 210 of the Bexar County Deed and Plat Records), in order to erect an accessory structure 10 feet from the rear property line.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated that there were 22 notices mailed, none were returned in favor and 1 was returned in opposition which was from the Encino Rio Home Owners Association.

David Isham, applicant, stated he would like someday put a pool and large deck someday which is why he wants the accessory structure 10-feet from the rear property line. He also stated he has written a letter to the homeowner's association.

**No citizens to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-028 closed.

**MOTION**

A motion was made by **Mr. Ozuna to continue until the next regularly scheduled meeting on April 6, 2009.** The motion seconded by **Mr. Villyard.** All members voted in the affirmative.

**AYES: Villyard, Victor, Ozuna, Dutmer, Rogers, Britton, Alejos, Gallagher**

**NAY: Camargo, Klein**

**THE CONTINUANCE IS GRANTED.**



**CASE NO. A-09-023**

Applicant – Greg Zuschlag and Morgan Price

Lots 13 and 14, Block 6, NCB 3081

223 & 227 Pershing Street

Zoned: "R-4 NCD-6" Residential Single-Family Mahncke Park Neighborhood Conservation District

The applicant is requesting **1)** a 1-foot, 10-inch variance from the requirement that side and rear-yard fences not exceed 6 feet in height in order to erect a 7-foot, 10-inch tall fence in the rear yards and **2)** a 6-inch variance from the requirement that side and rear yard fences not exceed 6 feet in height in order to erect a 6-foot, 6-inch tall fence in the rear yard of 227 Pershing Street.

Jacob Floyd, Planner, presented background and staff's recommendation of denial of this variance. He indicated that there were 34 notices mailed, 9 were returned in favor and 1 was returned in opposition and no response from Mahncke Park Neighborhood Association.

Kenneth Zuschlag, representative, stated the fence on the west property line is an 8-foot fence which he inquired about and the neighbor had permission to build the fence because of the adjacent school where kids were throwing items into the backyard which created problems for the dog that was there. He also stated the rear east fence is at 6 feet and the fence at the rear property line has about a 22 inch drop which he wanted the fence to even out. He wanted to keep an open 100-foot between them and not have a dividing fence between the properties at 223 and 227 Pershing Street. On the east the plans indicate not to put the fence on the property line but to hold it off for the width of the drive that came in. At the back where it originates at the 6-foot mark by the time it reaches the house it is at about 6-feet 6-inches so therefore you can see

that it explains the 6 to 6'6". At the rear property line their rear garages on the opposite back up to the property line so you have a barrier there at an 8-foot height at the higher elevation, so he thought a continuous fence across the bottom would like appropriate.

Morgan Price, applicant, stated the notice that was sent said the fence was going to be on the property line between 227 and 235. The fence is going to line up to the edge of his house. He also stated the 8-foot fence was allowed because one piece of property beyond the 8-foot fence was a circle school.

**The following citizens appeared to speak:**

Selma Valdez, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-033 closed.

**MOTION**

A motion was made by **Ms. Victor**. Re Appeal No **A-09-033**, variance application for **223 & 227 Pershing Street**, property description **Lots 13 and 14, Block 6, NCB 3081**, applicant **Greg Zuschlag and Morgan Price**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No **A-09-033**, application for a variance to the subject property as described above, 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 such variance will not be contrary to the public interest in that **the surrounding neighborhood, the vast majority of responses were in favor of this variance**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **there is a grade issue between the two properties so that the 6-foot fence would not really be 6-feet in height if it was built strictly to code**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **there is fence surrounding the house. A 1-foot, 10-inch variance from the requirement that side and rear-yard fences not exceed 6 feet in height, in order to erect a 7-foot, 10-inch tall fence in the rear yards and 2) a 6-inch variance from the requirement that side and rear yard fences not exceed 6 feet in height, in order to erect a 6-foot, 6-inch tall fence in the rear yard of 227 Pershing Street**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **it will continue to be a residential property and the spirit of the law will be followed regarding the height of the fence with the 6-foot fence with the slope of the land**. 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 in that **the fence will be erected inside the of the property line with the neighbor and the back fence will be matching up to the house that is next door**. 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 in that **there is a grade difference between the two properties and there is already an existing fence which they wish to match up which will look much nicer.** The motion seconded by **Mr. Klein.**

**AYES: Victor, Klein, Alejos, Villyard, Britton, Ozuna, Rogers, Camargo, Dutmer, Gallagher**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

**Board members took a 10-minute recess.**

**CASE NO. A-09-034**

Applicant – Mike Lackey  
Lot 5, Block 3, NCB 13739  
3710 Marymont  
Zoned: “R-6” Residential Single-Family District

The applicant is requesting 1) a 16-foot variance from the requirement that a minimum 20-foot rear setback be maintained in “R-6” zoning districts, in order to erect a structure 4 feet from the rear property line and 2) a complete variance from the requirement that a minimum 5-foot side setback be maintained in “R-6” zoning districts, in order to erect a carport on the east side property line.

Michael Farber, Planner, presented background and staff’s recommendation of denial of the variance #1 and approval of variance #2. He indicated that there were 16 notices were mailed, 1 was returned in favor and 4 were returned in opposition.

Mike Lackey, applicant, applicant, stated he has a letter from the Neighborhood Association and has been in effect for a long time. He also stated he sent approval letters from six applicants.

Charles Gates, representative, stated the request is to increase the storage for the master bedroom and provide some storage for personal items that are now sitting outside. Looking at the house and the lot, trying to respect the neighborhood, it is already tight pushed to the back. The original requirement for a 30-foot setback and with the current “R-6” zoning they expect to lose 20-foot of site. They are requesting to get some of that back by adding on to the back in order to make larger closets. The carport request is because of no parking for the modular office in the house. His preference is putting the carport closer to the house but they are requesting to push the carport to the east to save two Spanish oak trees.

**The following citizens appeared to speak:**

Melinda Lange, citizen, spoke in opposition.

Jerry Kurek, citizen, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-034 closed.

### **MOTION FOR VARIANCE #1**

A motion was made by **Mr. Klein**. **This is a motion for request #1 regarding the rear setback.** Re Appeal Case No. A-09-034, this is a variance application for a **16-foot variance from the requirement that a minimum 20-foot rear setback be maintained in "R-6" zoning districts, in order to erect a structure 4-feet from the rear property line**, the subject property is described as **Lot 5, Block 3, NCB 13739**, commonly known as **3710 Marymont**, the zoning is **"R-6" Residential Single-Family District**, the applicant is **Mike Lackey**. I move that the Board of Adjustment grant the applicant's request in this case for this request for a variance for the subject property as described above, 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 such variance will not be contrary to the public interest in that **the proposed building addition as presented to the board will be in the rear yard of the subject property and the neighbor most affected is limited to an established residential tennis court which is located on the adjoining property at 3527 Barrington**. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the proposed building addition would be constructed on an existing concrete slab that currently exists that may or may not be used for construction of the building addition itself but nonetheless is located in the rear yard and is within the 20-foot UDC rear setback**. The spirit of the ordinance is observed and substantial justice is done in that **if this variance is approved by the Board of Adjustment it will allow the property to utilize fullest extent of his property without undo hardship to an adjoining neighbor**. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the zoning is "R-6" Residential Single-Family District and the use of the property will remain the same**. 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 in that **the proposed addition will be totally screened from public view, from Marymont Drive, and the adjacent conforming property is limited to primarily a large lot that the closest use to this particular property for which the variance is sought is a residential tennis court**. 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 in that **the applicant will comply with all building codes if this variance is granted and secure all required permits, and not create a traffic or safety hazard**. The motion seconded by **Mr. Villyard**.

**AYES:** Klein, Villyard, Dutmer, Ozuna, Victor, Rogers, Alejos, Camargo, Britton, Gallagher

**NAY:** None

**VARIANCE #1 WAS GRANTED.**

**MOTION FOR VARIANCE #2**

A motion was made by **Mr. Camargo**. I would move that in Case No **A-09-034**, the request of **Mike Lackey**, for a complete variance from the requirement that a minimum 5-foot side setback be maintained in "R-6" zoning districts, in order to erect a carport on the east side property line on property known as **Lot 5, Block 3, NCB 13739**, also known as **3710 Marymont**. It is felt that this variance will not be contrary to the public interest in that the opposition that has been stated that appeared before the board was generally from what I heard in opposition to having this open carport in the front. There did not seem to be any objection stated that there was objection to the carport being built on the property line. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the hardship, if we want to call it that, would in fact be that if this carport were constructed 5-feet from the side property line as is required by code, it would require the removal of some substantial trees that exist on this property and on surrounding properties, but specifically on this property would require the removal. The spirit of the ordinance is observed and substantial justice is done in that by the spirit of the ordinance the applicant and the architect have agreed to provide some form of screening in the form of gates in front of this carport to hopefully alleviate the concerns that have been expressed by the property owner directly across the street and to the west. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that carports are permitted in this zoning classification. Further I might add there was concern stated of a business being operated on this property and from the description that the applicant gave, it appears that what he had at one point in time was a home occupation that is a permitted use in a residential zone. 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 in that the manner in which the applicant proposes this construction with the volunteered fencing in front of the carport will not detract from the surrounding area. 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 in that is has been stated by the applicant that there is, and we have seen on the slide, a large amount of landscaping and recreational area, I guess you might say, in the rear that would discourage someone from placing the carport to the rear. Further again, I will state the issue of the trees, I think this board in the past has used that issue of having to remove substantial trees as a justification for granting a variance. The motion seconded by **Ms. Victor**.

**AYES: Camargo, Victor, Rogers, Britton, Ozuna, Alejos, Dutmer, Klein, Gallagher**  
**NAY: Villyard**

**VARIANCE #2 WAS GRANTED.**

**CASE NO. A-09-035**

Applicant – Reata Property Management, Inc.  
The northeast irregular 587.61 feet if Lot 1, Block 1, NCB 18206  
999 East Basse Road  
Zoned: “C-3” General Commercial District

The applicant is requesting a 75-foot variance from the requirement that freestanding signs be space a minimum of 150 linear feet apart along streets classified as Arterial “Type A or B”, in order to construct two freestanding signs 75 linear feet apart along a street classified as an Arterial “Type A”.

Jacob Floyd, Planner, presented background and staff’s recommendation of approval of this variance. He indicated that there were 156 notices mailed, 3 were returned in favor and 9 were returned in opposition.

Blake Crawford, representative, stated the property is a long existing property that has had the signs for a long time. Both are the entry signs will be replaced with a limestone block similar to what has been done at the Quarry. It has taken a 30 percent reduction in overall size on either side of the driveway. A traffic assesment report was done that because of the way the driveway pulle in, it created an issue to where the vehicles would have to stop when they would turn into the HEB which was causing rear-end accidents. This forced the market to redesign the whole entry way which was extended to eliminate the cross traffic with the parking lot. They wanted to address all the signs along Broadway and Basse and all the signs but two met the spacing requirement. He further stated the signs are indentification of the shopping center.

**No citizens to speak.**

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-035 closed.

**MOTION**

A motion was made by **Ms. Rogers**. Re Appeal Case No **A-09-035**, variance application for a **75-foot variance from the requirement that freestanding signs be spaced a minimum of 150 linear feet apart along streets classified as Arterial “Type A or B”, in order to construct two freestanding signs 75 linear feet apart along a street classified as an Arterial “Type A”,** subject property lot description **the northeast irregular 597.61 feet of Lot 1, Block 6, NCB 18206**, applicant being **Reata Property Management, Inc.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No **A-09-035**, application for a sign

variance to the subject property as described above, 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 **because of the way the cars enter into the parking and the way traffic moves within the parking area, it is necessary to have the entry way redesigned and old signage is to be removed requiring new signage which will be constructed uniformed and appropriate for the property. Additionally the new sign is less than size than the maximum allowable signage.** The motion seconded by Ms. Dutmer.

**AYES: Rogers, Dutmer, Ozuna, Britton, Villyard, Alejos, Camargo, Victor, Klein, and Gallagher**

**NAY: None**

**THE VARIANCE WAS GRANTED.**

**CASE NO. A-09-036**

Applicant – Abraham Hernandez  
Lots 56 and 57, Block 20, NCB 7506  
3834 Culebra Road

Zoned: “C-3” General Commercial District and “C-3 R” General Commercial Restricted Alcoholic Sales District

The applicant is requesting a 10-foot variance from the requirement that a minimum 30-foot rear setback be maintained in “C-3” zoning districts when abutting residential uses or zoning districts, in order to keep an existing structure 20 feet from the rear property line.

Jacob Floyd, Planner, presented background and staff’s recommendation of denial of this variance. He indicated that there were 156 notices mailed, 3 were returned in favor and 9 were returned in opposition.

Andrew Guerrero, representative, stated the setback requirement is 30-feet however the existing setback is 20-feet which provides an open space that the owner intended to have. There are 20-feet that separates the adjoining property owners which provides an open area. He also stated the owner will bring the building up to city code if it includes a firewall.

**The following citizens appeared to speak.**

Theresa Kilmer, citizen, spoke in opposition.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-09-036 closed.

**MOTION**

A motion was made by Mr. Alejos. Re Appeal Case No A-09-036, applicant **Abraham Hernandez, requesting a 10-foot variance from the requirement that a minimum 30-foot rear setback be maintained in "C-3" zoning districts when abutting residential uses or zoning districts, in order to keep an existing structure 20 feet from the rear property line,** legal description of subject property being **Lots 56 and 57, Block 20, NCB 7506, also known as 3834 Culebra Road.** I move that the Board of Adjustment grant the applicant's request regarding this appeal No A-09-036, for variances to the subject property as described above, 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 such variance will not be contrary to the public interest in that **the existing structure that is 20-feet from the rear property line will remain the same and used for the intended purposes.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the minimum rear yard setback requirement between commercial and residential uses is to protect residential uses from commercial activities.** The spirit of the ordinance is observed and substantial justice is done in that **the continued use of the existing structure will remain the same.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the existing structure although constructed back in 2006 will be used for the same purposes as originally intended.** 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 in that **the subject property does not appear to have any unique characteristics that would create an undo hardship due to the literal enforcement of the rear setback requirement.** 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 in that **again the structure has been in existence for three years and the continued use of the structure will remain the same.** The motion seconded by Ms. Dutmer.

**AYES: Alejos, Dutmer, Gallagher**

**NAY: Ozuna, Britton, Villyard, Victor, Camargo, Rogers, Klein**

**THE VARIANCE WAS NOT GRANTED.**

**Approval of the Minutes**

**The February 23, 2009 minutes were approved with all members voting in the affirmative.**

**Staff Report**

Rudy Niño, Senior Planner, briefed board members about sending the Board of Adjustment agenda through email. Mr. Gallagher informed Rudy that it would be okay to send the Board of Adjustment via email.

Paul Wendland, City Attorney, briefed the board members about the case on PowWow Street.

A motion was by Mr. Camargo. I would like to move that this board request from the city attorney a representative from the staff to explain to this board the city's position on this particular case and its legality of the decision. Mr. Alejos seconded it. All members voted in the affirmative.

**THE MOTION CARRIES.**

There being no further discussion, meeting adjourned at 5:03 p.m.

APPROVED BY: Michael R. Gallagher OR Paul Klein, Vice-Chair  
Michael Gallagher, Chairman

DATE: 4-20-09

ATTESTED BY: [Signature] DATE: 4/21/09  
Executive Secretary