



City of San Antonio

Legislation Details (With Text)

File #: 17-1719

Type: Zoning Case

In control: Board of Adjustment

On agenda: 2/20/2017

Title: A-17-053: A request by Joseph Milligan for a 6 foot variance to allow a deck 14 feet from the rear property line, located at 1005 Hays Street. Staff recommends Approval. (Council District 2)

Sponsors:

Indexes:

Code sections:

Attachments: 1. A-17-053 Attachments

Date	Ver.	Action By	Action	Result
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Case Number: A-17-053

Applicant: Joseph Milligan

Owner: Joseph Milligan

Council District: 2

Location: 1005 Hays Street

Legal: S. 100 feet of Lot 19, Block C, NCB 1655

Description:

Zoning: “R-5 H AHOD” Residential Single-Family Dignowity Hill
Historic Airport Hazard Overlay District

Case Manager: Margaret Pahl, AICP, Senior Planner

Request

A request for a 6 foot variance from the minimum 20 foot rear setback, as described in Table 35-310, to allow a covered deck 14 feet from the rear property line.

Executive Summary

The subject property is located in the Dignowity Hill Historic District and includes a home built in 1910. The applicant purchased the property in 2013 from Bexar County and has since pulled permits to remodel, and build an addition to the rear. The work has all been reviewed and approved by the Office of Historic Preservation, including the deck that is the subject of the requested variance. The work more than doubled the value of the property according to the Appraisal District. The 12 foot wide deck satisfies the side setbacks, but encroaches into the minimum rear setback by six feet.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
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“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling
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Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling
South	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling
East	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling
West	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Dignowity Hill Neighborhood Plan and currently designated Low Density Residential in the future land use component of the plan. The subject property is located within the boundaries of the Dignowity Hill Neighborhood Association. As such, they were notified and asked to comment.

Criteria for Review

According to Section 35-482(e) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following

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 the rear setback requirement. The property owner was given HDRC approval and a building permit for a building addition. Staff finds that 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.*

Literal enforcement of the ordinance would require that the small outdoor deck be removed, resulting in an unnecessary hardship. The rear setback provided is 14 feet on the 12 foot wide deck, with larger open space surrounding it.

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 the intent of the code, rather than the literal word. Since the 12 foot wide deck is the only structure encroaching into the rear setback, the need for open space is still observed.

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.*

The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-5 H AHOD” Residential Single-Family Dignowity Historic Airport Hazard Overlay District.

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 small deck is not visible from the street and therefore will not alter the character of the district. In addition, most of the residential zoning districts permit a 10 foot rear setback.

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 plight of the owner is not merely financial in nature. They are seeking approval for an open deck that encroaches 6 feet into the rear setback.

Alternative to Applicant’s Request

Denial of the requested variance will result in the applicant having to remove the rear exit and landing.

Staff Recommendation

Staff recommends **APPROVAL of the requested variances in A-17-053** based on the following findings of fact:

1. The deck is 12 feet wide encroaching into the rear setback, with the remaining 38 feet in width open and;
2. The deck does not detract from the essential character of the district.