



# City of San Antonio

## Legislation Details (With Text)

**File #:** 21-5372

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 9/20/2021

**Title:** BOA-21-10300102: A request by Paula and Daniel Minesinger for a 4' 11" variance from the minimum 5' side setback requirement to allow an addition to be 1" from the side property line, located at 235 Yellowstone. Staff recommends Denial with an Alternate Recommendation. (Council District 5) (Roland Arsate, Planner (210) 207-3074, Roland.Arsate@sanantonio.gov, Development Services Department)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachments

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
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|                    |   |
|--------------------|---|
| Case Number:       | BOA-21-10300102   |
| Applicant:         | Paula and Daniel Minesinger   |
| Owner:             | Paula and Daniel Minesinger   |
| Council District:  | 5   |
| Location:          | 235 Yellowstone   |
| Legal Description: | Lot 9, Block 1, NCB 6305  |
| Zoning:            | "R-6 H RIO-4 AHOD" Residential Single-Family Historic River Improvement Overlay 4 Airport Hazard Overlay District |
| Case Manager:      | Roland Arsate, Planner  |

### Request

A request for a 4' 11" variance to the minimum 5' side setback requirement, as described in Section 35-310, to allow an addition to be 1" from the side property line.

### Executive Summary

The subject property is located along Yellowstone Street near Roosevelt Avenue. There is currently a single-family residence constructed on the property and is it is zoned "R-6" Residential Single-Family District. The applicant is proposing to build a room addition in the rear of the property and is requesting a variance to the side setback in order to better-accommodate the new construction. Upon staff's site visit, it was observed that

the structure currently has a setback of 1' from side property line. Due to conflicting surveys, the applicant is requesting the variance to allow the structure to be 1" from the side property line. With the addition being constructed near the side property line, DSD Plan Review and Inspectors have required fire-rating of the side of the addition, to which the applicant has agreed to comply with.

**Code Enforcement History**

A Stop Work Order was issued for the addition to the rear of the structure.

**Permit History**

Permits have recently been pulled for the renovation of the structure.

**Zoning History**

The subject property is located within the Original 1938 City Limits of San Antonio and was zoned "B" Residence District. The property was rezoned from "B" to "R-1" One Family Residence District by Ordinance 61454, dated September 23, 1985. Upon adoption of the 2001 Unified Development Code, the zoning converted from "R-1" to the current "R-6" Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001.

**Subject Property Zoning/Land Use**

| Existing Zoning   | Existing Use            |
|---|-------------------------|
| "R-6 H RIO-4 AHOD" Residential Single-Family Historic River Improvement Overlay 4 Airport Hazard Overlay District | Single-Family Residence |

**Surrounding Zoning/Land Use**

| Orientation | Existing Zoning District(s)   | Existing Use            |
|-------------|---|-------------------------|
| North       | "R-6 H RIO-4 AHOD" Residential Single-Family Historic River Improvement Overlay 4 Airport Hazard Overlay District | Single-Family Residence |
| South       | "R-6 H RIO-4 AHOD" Residential Single-Family Historic River Improvement Overlay 4 Airport Hazard Overlay District | Single-Family Residence |
| East        | "R-6 H RIO-4 AHOD" Residential Single-Family Historic River Improvement Overlay 4 Airport Hazard Overlay District | Single-Family Residence |
| West        | "R-6 H RIO-4 AHOD" Residential Single-Family Historic River Improvement Overlay 4 Airport Hazard Overlay District | Single-Family Residence |

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Downtown Area Regional Center Plan and is designated “Neighborhood Mixed Use” in the future land use component of the plan. The subject property is located within the Roosevelt Park Neighborhood Association and were notified of the case.

### **Street Classification**

Yellowstone Street is classified as a local road.

### **Criteria for Review - Side and Rear Setback Variances**

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. The applicant is requesting a variance to the side setback in order to allow a room addition on the property. The applicant is proposing the addition to be 1” from the side property line, which is contrary to the public interest. Staff finds a 3’ setback from the side property line to be appropriate in maintaining 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 having to demolish and reconstruct five feet from the side property line. There are other non-conforming structures in the area that are already built closer to the property lines than required.

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

The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. The room addition will maintain 1” of space which does not observe the spirit of the ordinance. With a 3’ setback from the side property line, staff finds the spirit of the ordinance will be 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.*

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.*

Shall the variance be granted, the applicant will be able to construct 1” from the side property line, which is likely to alter the essential character of the district. There is currently 1’ of space between the property line markers and the proposed additions, and staff is recommending a 3’ 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.*

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 property line is close to the existing structure on this property where existing lots are small, and the variance will accommodate a room addition. The circumstances were created by the owner and are not merely financial.

### **Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the side setbacks of the UDC Sections 35-310.

### **Staff Recommendation - Side Setback Variance**

Staff recommends Denial in BOA-21-10300102 **with an Alternative Recommendation of a 2' variance to allow the addition to be 3' from the side property line** based on the following findings of fact:

1. The primary structure was existing; and
2. The proposed design has been heard and approved by the Historic Design Review Commission; and
3. It is required that the side wall of the room addition and patio be fire-rated; and
4. Construction of the room addition does not appear to adversely affect neighboring properties; and
5. Being constructed 3' away from the property line reduces the risk for fire hazards.