



City of San Antonio

Legislation Details (With Text)

File #: 16-5608

Type: Zoning Case

In control: Board of Adjustment

On agenda: 11/7/2016

Title: A-16-168: A request by Chris Conger for 1) a 24 foot variance from the minimum 30 foot rear setback to allow an addition to be 6 feet from the rear property line; 2) a request for the elimination of the Type C 15 foot rear and side bufferyard requirement; and 3) a 25 foot variance from the 30 foot side setback to allow an accessory structure to be five feet from the side property line, located at 106 Pershing Avenue. Staff recommends Approval. (Council District 2)

Sponsors:

Indexes:

Code sections:

Attachments: 1. A-16-168 Photos, 2. A-16-168 Site Plan, 3. BOA16-168 Notification Plan, 4. BOA16-168 Plot Plan

Date	Ver.	Action By	Action	Result
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Case Number: A-16-168

Applicant: Chris Conger

Owner: Roy E. Leslie

Council District: 2

Location: 106 Pershing Avenue

Legal: Lot 17, 18, and 19, Block 1, NCB 6089

Description:

Zoning: "C-3 UC-2 RIO-1 AHOD" General Commercial Broadway Urban Corridor River Improvement Overlay Airport Hazard Overlay District and "C-3 UC-2 RIO-1" General Commercial Broadway Urban Corridor River Improvement Overlay District

Case Manager: Shepard Beamon, Senior Planner

Request

A request for 1) a 24 foot variance from the minimum 30 foot rear setback to allow a building addition 6 feet from the rear property line, as described in Section 35-510.01; 2) a request for the elimination of the Type C 15 foot rear and side bufferyard requirement, as described in Section 35-510.01, to allow no bufferyard; and 3) a 25 foot variance from the 30 foot side setback to allow an accessory structure to be five feet from the side setback, as described in 35-370(a)(8).

Executive Summary

The subject property is located at 106 Pershing Avenue, within the Mahncke Park neighborhood. The subject

property is currently operating as a bar, which is permitted under the “C-3” zoning district. The new addition is used as an outdoor bar area and encroaches in the rear setback and bufferyard.

There is also an accessory structure, used to serve food, which encroaches in the side setback and bufferyard. Per the UDC, *where accessory uses are permitted, the standards of the applicable base zoning district, as well as any overlay district on the property, shall apply including but not limited to setbacks, building heights, landscaping and other requirement.* The Code goes on to say that *within nonresidential districts, accessory structures, except for carports, are prohibited within the side and rear setback areas of lots adjacent to residential district.* The property previous went before the Board to request a 10 foot fence along the rear and side, where the request was approved May 2016.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“C-3 UC-2 RIO-1 AHOD” General Commercial Broadway Urban Corridor River Improvement Overlay Airport Hazard Overlay District	Bar

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“C-2 UC-2 RIO-1” Commercial District; “C-1 RIO-1” Light Commercial District; “R-4 RIO-1” and “R-4 UC-2 RIO-1” Residential Single-Family District	Parking Lots, Restaurants, Salon, Photolab
South	“MF-33 NCD-6 AHOD” Multi-Family Mahncke Park Neighborhood Conservation Airport Hazard Overlay District; “C-2 RIO-1 UC-2 AHOD” Commercial Broadway Urban Corridor River Improvement Airport Hazard Overlay District	Single-Family Dwellings, Multi-Family Dwelling, Garden Supply
East	“MF-33 NCD-6 AHOD” Multi-Family Mahncke Park Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwellings
West	“C-2 UC-2 RIO-1 AHOD” Commercial Broadway Urban Corridor River Improvement Overlay Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Mahncke Park Neighborhood Plan and currently designated Low Density Mixed Use in the future land use component of the plan. The subject property located within the Mahncke Park Neighborhood Association. As such, the neighborhood association was 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, these are represented by requiring bufferyards to beautify our urban streetscapes and to provide landscaped separation from incompatible uses. The public interest is also represented by minimum setback requirements. If the bufferyard and setback were established, the commercial development would lose a majority of the usable space, pushing the development out of compliance. This would not serve the public interest.

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

The special condition in this case is that new construction must comply with all required setbacks and current development standards. The property currently has usable space that measures less than 50 feet in depth and 100 feet in width. The literal enforcement of the bufferyard and setback would severely limit the developable space on the property.

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

The spirit of the setback requirements, in this case, aims to protect adjacent property owners. The current layout of the site does not increase water runoff on the adjacent properties. Also, there is enough room for maintenance without trespass. Lastly, the adjacent properties have a required minimum rear setback of 20 feet, per the Mahncke Park NCD requirements, which lessens fire risk.

The intent of buffering is to provide landscaped separation between residential and nonresidential use. There are currently several large trees along the perimeter of the outdoor area and provides a minimum five foot buffer area that is sufficient in creating additional landscape screening for the adjacent properties.

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

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “C-3 UC-2 RIO-1 AHOD” General Commercial Broadway Urban Corridor River Improvement Overlay 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 existing bar has been in place since 1973 and is also six feet from the rear property line. The new addition is in line with the existing bar and services the outside patio area. The new addition does not disrupt the character of the existing building or surrounding neighborhood. Further, the Board previously approved the construction of 10 foot tall commercial fencing along the rear and side property lines to protect the surrounding property owners from unwanted noise and visual nuisances. The accessory structure is built at a distance that will not increase fire risk or produce water runoff on to the adjacent property.

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 unique circumstance in this case is the limited developable space after the large setback and

bufferyard requirements. These are not the fault of the owner and are not merely financial in nature. The elimination of the bufferyard and the reduced setback would allow the business to operate and provide safe, adequate room to service customers.

Alternative to Applicant's Request

The applicant would have to redesign the site plan to meet the bufferyard and setback requirements, as described in Sections 35-310.01 and 35-570.

Staff Recommendation

Staff recommends **APPROVAL of variance request in A-16-168** based on the following findings of fact:

<p>1. Enforcement of the 30 foot side and rear setbacks and 15 foot bufferyard will largely reduce the usable space on the property; 2. The six foot rear and five foot side setbacks provide adequate room for maintenance without trespass, reduce fire hazard, and will not create water runoff onto adjacent properties; 3. The Board has previously approved a variance for a 10 foot tall commercial fence along the rear and side to further protect the surrounding properties.</p>
