



# City of San Antonio

## Legislation Details (With Text)

**File #:** 15-3433

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 6/1/2015

**Title:** A-15-094: A request by Juan Flores for 1) a 15 foot variance from the 20 foot rear building setback to allow a home to remain five feet from the rear property line and 2) a four foot variance from the five foot side setback to allow a home to remain one foot from the side property line, located at 1129 Elvira. (Council District 5)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A-15-094 attachments

Date	Ver.	Action By	Action	Result
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**Case Number:** A-15-094

**Applicant:** Juan Flores

**Owner:** Juan Flores

**Council District:** 5

**Location:** 1129 Elvira

**Legal Description:** Lot 40, Block 4, NCB 6493

**Zoning:** "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

**Case Manager:** Margaret Pahl AICP, Senior Planner

### Request

A request for 1) a 15 foot variance from the 20 foot rear building setback to allow a home to remain five feet from the rear property line and 2) a four foot variance from the five foot side setback to allow a home to remain one foot from the side property line, both as described in Table 35-310-1.

### Executive Summary

The subject property is located with the Zarzamora Heights Subdivision, a subdivision of small lots recorded in 1921. As with many home sites during this time frame, an owner would purchase two lots each measuring 25 by 84 feet. In this case, two adjoining lots have been a cohesive home site for a long time. The principal structure on the lot includes 760 square feet. In 2010, the father of the current owner built an accessory dwelling unit with 500 square feet on the neighboring lot without building permits. The father has since deceased and one of the sons is now the owner and trying to address the code violations. The property was cited for construction without a building permit, but a permit could not be issued for the property until a few issues were resolved. The owner could replat the property into a single lot and seek a 200 square foot variance from the size limitation of 40% the size of the main house. The engineering fees for the replat were too costly

so the owner could not pursue this option. In the alternative, the applicant decided to seek two setback variances to allow the structure to remain on the individual lot without replatting. If the variances are granted, the applicant will still have significant expense ahead to address the code issues related to a building permit.

### **Subject Property Zoning/Land Use**

<b>Existing Zoning</b>	<b>Existing Use</b>
"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

### **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

### **Comprehensive Plan Consistency/Neighborhood Association**

The property is within the boundaries of the Guadalupe/Westside Community Plan and designated as Low Density Residential Land Use. The subject property is located within the boundaries of Prospect Hill, a registered 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, these criteria are represented by setbacks designed to ensure equal access to air and light. The requested variances allow the two structures to remain, functioning as an accessory dwelling unit, similar to other structures on the block. Therefore, the variance is not contrary to the public interest.**

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

**Staff finds that the special condition present in this case is that the structure was built on the adjacent lot and though the properties have been used as a single home site, a plat amendment would be required to officially combine the adjacent lots. The applicant hopes to retain the building for use as a caretaker facility for his elderly mother.**

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

The ordinance allows an accessory dwelling unit 5 feet from both the side and rear property lines and without regard for the spacing between the structures. The requested variance addresses the conflicts created by this building located on a separate lot, triggering the need for a 20 foot rear setback, when only 5 feet is provided and a 5 foot side setback, when only 1 foot is provided.

*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 “R-4 AHOD” Residential Single-Family 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 character of this area is eclectic, with a variety of affordable homes. The variance will allow the family to remain in this location where they have lived for over 40 years and will not injure the adjacent 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.*

The applicant is requesting a variance to allow the small residential building, constructed without permits, to remain.

### **Alternative to Applicant’s Request**

The applicant needs to reconstruct the garage with the 5 foot setback to come into compliance with the Unified Development Code.

### **Staff Recommendation**

Staff recommends **APPROVAL** of **A-15-094** based on the following findings of fact:

1. The building is located on a lot adjacent to the family home and will function as an accessory dwelling unit;
2. The family has lived in this location for over 40 years.