



# City of San Antonio

## Legislation Details (With Text)

**File #:** 15-3987

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 7/6/2015

**Title:** A-15-112: A request by Miguel Leons for 1) a 4 foot variance from the minimum 5 foot side yard setback to allow an attached patio cover 1 foot from the property line; 2) a 2 foot variance from the maximum 4 foot front yard fence height to allow a 6 foot fence and 3) a 5 foot variance from the maximum 4 foot front yard fence height to allow a 9 foot gate, located at 154 Kinder Drive. (Council District 1)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibits

Date	Ver.	Action By	Action	Result
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**Case Number:** A-15-112

**Applicant:** Miguel Leons

**Owner:** Miguel Leons

**Council District:** 1

**Location:** 154 Kinder Drive

**Legal Description:** Lot 17, Block 2, NCB 9793

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

**Prepared By:** Kristin Flores, Planner

### Request

A request for 1) a 4 foot variance from the minimum 5 foot side yard setback, as described in Section 35-310.01, to allow an attached patio cover 1 foot from the property line; 2) a 2 foot variance from the maximum 4 foot front yard fence height, as described in Section 35-514 (d), to allow a 6 foot fence and 3) a 5 foot variance from the maximum 4 foot front yard fence height, as described in Section 35-514 (d), to allow a 9 foot gate.

### Executive Summary

The subject property is located at 154 Kinder Drive approximately 80 feet east of Milo Drive. The applicant built an attached patio cover made largely of wood, and did so without building permits. The patio cover is built 1 foot from the property line and is wired with electricity. Additionally, the applicant built a 6 foot fence in the front yard largely made of stone, concrete, and wrought iron. Additionally, the front fence also contains a 9 foot gate made of wrought iron and framed with stone and concrete. The applicant was cited by code enforcement. Staff finds that this results in an increased fire risk for adjacent, conforming properties, and does not conform to the overall character of the community.

**Subject Property Zoning/Land Use**

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

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	"O-1 AHOD" Residential Single-Family Airport Hazard Overlay District	Home Improvement Store
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 North Central Plan and is designated as Low Density Residential in the future land use component of the plan. The subject property is located within the boundaries of the Shearer Hills - Ridgeview registered 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 criteria are represented by setback requirements to reduce the threat of fire and to provide equal access to air and light. Staff finds that having a largely wooden structure with electric wiring 1 foot from the side property line does create conditions by which fire could more rapidly spread to adjacent structures. Because the request only provides a one foot side yard setback and because the patio cover is largely of wooden construction, staff finds that the request to reduce the side setback is contrary to the public interest due to the increased risk of fire. If the requested variance is approved the applicant will have to submit plans to plan review to ensure compliance with building standards. The gate and fence, as they exist, detract from the character of the community because the gate design, while permitted within the neighborhood, is rare.

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

Staff is unable to determine any special conditions present on the subject property to grant variances to the side setback and front fence and gate requirements. Had the applicant applied for a building permit, the setback and front fence issues could have been addressed prior to the construction.

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

done.

Granting the requested side setback, fence, and gate variance would not result in substantial justice. The patio cover's wood construction poses an increased risk of fire to adjacent properties. Permitting conditions that place adjacent property owners at a heightened risk of fire threat does not result in substantial justice. Additionally, the gate and fence extend well beyond the permitted height detracting from the overall character of the community.

*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 variances 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 patio cover poses an increased fire risk and detracts from equal air and light to adjacent properties. The front fence and gate, as they exist, detract from the essential character of the district in which it is located. The stone design, although permitted within the district, is rare within this community. The expansion of the large stone fence beyond the allowed height amplifies a design that is in conflict with the essential character of the district.

*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 is unable to determine any unique circumstance present on the subject property to warrant the reduction of the side yard setback and increase the fence and gate height beyond what is permitted by the Unified Development Code. The variances are requested because the patio cover, fence, and gate were built without a building permit. As such, the plight of the owner was caused by the owner of the property.

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

The applicant could remove three feet from the side of the carport to come into compliance with the 5 foot setback requirement stated in the Unified Development Code. This would help to protect adjacent property owners from fire risk. The applicant could reduce fence 2 feet and reduce the gate 5 feet in height to come in to compliance with the Unified Development Code.

### **Staff Recommendation**

Staff recommends **DENIAL of A-15-112** based on the following findings of fact:

1. The existing patio cover compromises fair and equal access to air and light and poses an increased fire risk;
2. The front fence and gate are egregiously beyond the permitted fence height and, in the current location, are out of character within the community.