



# City of San Antonio

## Legislation Details (With Text)

**File #:** 15-5868

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 11/16/2015

**Title:** A-16-007: A request by Hilario Palacios for 1) a 2 foot variance from the minimum 5 foot side yard setback and 2) a 5 foot variance from the minimum 20 foot rear yard setback to allow a building addition 3 feet from the side property line and 15 feet from the rear property line, located at 351 Kate Schenck. (Council District 3)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:**

Date	Ver.	Action By	Action	Result
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**Case Number:** A-16-007

**Applicant:** Hilario Palacios

**Owner:** Hilario Palacios

**Council District:** 3

**Location:** 351 Kate Schenck

**Legal Description:** Lot 82, Block 19, NCB 10998

**Zoning:** "R-5" Residential Single-Family District

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

### Request

A request for 1) a 2 foot variance from the minimum 5 foot side yard setback and 2) a 5 foot variance from the minimum 20 foot rear yard setback, as shown in Table 35-310-1, to allow a building addition 3 feet from the side property line and 15 feet from the rear property line.

### Executive Summary

The subject property is located in Highland Hills Subdivision, recorded in 1957. The previous plat was vacated in order to widen each of the lots on the block by 10 feet from 62 feet in width to 72 feet wide. The house was built in 1958 according to Bexar County records with an attached garage. It is evident that this attached garage was assimilated into habitable square footage and replaced with a detached garage to the rear. Recently, the owner constructed a patio covering connecting the detached garage to the rear wall of the house. This connection changed the status of the detached garage and triggered a requirement to satisfy minimum setbacks established for primary structures. The only tool available to allow the owner to keep this patio cover is the requested variances.

### Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-5" Residential Single-Family District	Single-Family Residential

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-5" Residential Single-Family District	Single-Family Residential
South	"R-5" Residential Single-Family District	Single-Family Residential
East	"R-5" Residential Single-Family District	Single-Family Residential
West	"R-5" Residential Single-Family District	Single-Family Residential

### Comprehensive Plan Consistency/Neighborhood Association

The property is located within the boundaries of the Highlands Community Plan and currently designated as Low-Density Residential in the future land use component of the plan. The subject property is also located within the boundaries of Highland Hills, 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. Normally, **the public interest would be represented by the established setbacks; however in this case, the subject buildings have been in the same location for decades. Their connection by a roof changes the regulatory standards only. 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.*

**The special circumstance present on the subject property is the location of a permitted detached garage and the use of the garage to assist in support of a new patio cover. Attaching the garage to the house, even with only a roof, is enough to trigger compliance with rear setback standards. This unique circumstance makes literal enforcement an unnecessary hardship.**

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 letter of the law. The intent of the setback regulations is to preserve access to air and light and retain room for maintenance. According to the applicant, their garage is 3 feet from the side property line.**

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-5” Single-Family Residential 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 is not visible from the public way and does not alter the 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.*

**The unique circumstance on this property is that the buildings were built in this location decades ago. It was the addition of a patio cover between the existing house and the detached garage that changed the regulatory conditions for these buildings.**

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

The applicant could redesign the patio cover.

### **Staff Recommendation**

Staff recommends **APPROVAL of A-16-007** based on the following findings of fact:

1. The setback violation was triggered by the addition of a patio cover between existing buildings.