City of San Antonio

Legislation Details (With Text)

File #:	17-1257
Type:	Zoning Case
In control:	Board of Adjustment
On agenda:	2/6/2017
Title:	A-17-043: A request by Alfredo Nunez for a 10 foot variance from the minimum 10 foot side setback to allow a covered patio on the side property line, located at 3938 S. Zarzamora Street. Staff recommends Approval. (Council District 5)
Sponsors:	
Indexes:	
Code sections:	
Attachments:	1. A-17-043 Site Plan, 2. A-17-043 Photos, 3. BOA17-043NPA, 4. BOA17-043PP

Date	Ver.	Action By	Action	Result

Case Number:	A-17-043
Applicant:	Alfredo Nunez
Owner:	Alfredo Nunez
Council District:	5
Location:	3938 S. Zarzamora Street
Legal Description:	Lot 32, Block 12, NCB 15910
Zoning:	"C-1 AHOD" Light Commercial Airport Hazard Overlay District
Case Manager:	Shepard Beamon, Senior Planner

Request

A request for a 10 foot variance from the 10 foot side setback, as described in Section 35-510.01, to allow a covered patio to be on the side property line.

Executive Summary

The subject property is currently operating as a restaurant with alcohol sales. The subject was rezoned from "C-3R" General Commercial Restrictive Alcohol Sales District to "C-1" Light Commercial, which allows alcoholic sales and consumption, in September 2009. The owner has constructed a covered patio on the side of the primary structure for additional outdoor seating for the restaurant customers. The covered patio is directly adjacent to the brick siding of a carwash. The neighboring property is zoned "C-3R", which does not require a side yard setback when abutting other commercially zoned properties.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"C-1 AHOD" Light Commercial Airport Hazard Overlay District	Restaurant

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"C-3R AHOD" General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District	Carwash, Motel
South	"C-3R AHOD" General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District	Funeral Home, Restaurant
East	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwellings
West	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwellings

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Nogalitos/South Zarzamora Community Plan and currently designated Neighborhood Commercial in the future land use component of the plan. The subject property is located within 200 feet of the Quintana Community Association and they were 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, the public interest is represented by the front setback to ensure the safety for adjacent property owners. The patio covering includes a gutter to direct rainwater away from the adjacent property. Also, the patio was built to add additional covered space for the community enjoy and does not create any hindrances.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*
   In order to provide adequate parking and circulation for traffic, any building additions must be located along the side of the primary building. The lot layout does not permit locating the covered patio anywhere else on the site.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*
   The intent of a front setback is to create an open street view and establish uniform development standards. The covered addition respects the front setback and does create any visual obstructions or hazards to neighboring properties.

4. *4. The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.*
   The variance will not authorize the operation of a use other than those uses specifically authorized in the "C-1 AHOD" Light Commercial 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 covered patio does not detract from the character of the neighborhood as there are several other commercial properties along the corridor with similar lot layouts. Further, the adjacent property will not be injured as is it also built to the side property line.

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.*
With the exception of "C-1", all other Commercial zoning districts do not require a side setback, including the less intense "NC" Neighborhood Commercial. This is a unique circumstance that is no fault of the owner. Further, the business could not expand in the front due to the front setback, or the opposite side due to parking and circulation.

<u>**Alternative to Applicant's Request**</u>

The owner would need to remove the portions of the covering that are within the side setback.

<u>**Staff Recommendation**</u>

Staff recommends **APPROVAL of the requested variance in A-17-043** based on the following findings of fact:

1. Most commercial properties along the thoroughfare are not required to have a side setback when abutting other commercial zoning;
2. The covered patio is unlikely to injure the adjacent property;
3. The covered patio does not detract from the character of the neighborhood;
4. The covered patio includes a gutter to direct rainwater away from the adjacent property.