



# City of San Antonio

## Legislation Details (With Text)

**File #:** 17-2232  
**Type:** Zoning Case  
**In control:** Board of Adjustment  
**On agenda:** 3/20/2017  
**Title:** A-17-068: A request by Tirso Zarate for a four foot variance from the five foot side setback to allow a home addition one foot from the side property line, located at 711 Winnipeg Avenue. Staff recommends Approval. (Council District 5)  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. A-17-068 Photos, 2. A-17-068 Site Plan, 3. BOA17-068NPA, 4. BOA17-068PP

Date	Ver.	Action By	Action	Result
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**Case Number:** A-17-068  
**Applicant:** Tirso Zarate  
**Owner:** Tirso Zarate  
**Council District:** 5  
**Location:** 711 Winnipeg Avenue  
**Legal:** Lot 10 and East 16.66 feet of Lot 9, Block 8, NCB 7062  
**Description:**  
**Zoning:** "RM-4 AHOD" Residential-Mixed Airport Hazard Overlay District  
**Case Manager:** Shepard Beamon, Senior Planner

### Request

A request for a four (4) foot variance from the minimum five (5) foot side setback, as described in Section 35-310, to allow an addition to the primary dwelling to be built one (1) foot from the side property line.

### Executive Summary

The applicant is requesting a variance to construct an addition to the existing single family dwelling unit. The subject property was originally a duplex constructed in 1944 and was constructed with an attached garage, according to BCAD. According to available imagery, the attached garage was constructed on the side property line. The home suffered from fire damage and the owner has since constructed a single-family home to comply with the currently zoning and has built a home addition in place of the attached garage. The new home addition is now one foot away from the property, providing more of a setback than the original garage. As a result of the newly constructed addition within the side setback, the owner was cited by Code Enforcement, unaware that he could not rebuild in the same location.

### Subject Property Zoning/Land Use

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

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwellings
South	"RM-4 AHOD" Residential-Mixed Airport Hazard Overlay District	Single-Family Dwellings
East	"RM-4 AHOD" Residential-Mixed Airport Hazard Overlay District; "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwellings
West	"RM-4 AHOD" Residential- 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 Low Density Residential in the future land use component of the plan. The subject property is not located within a registered neighborhood association.

### 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 side setbacks to protect property owners and to contribute to a sense of community. The variance request will allow for building maintenance without trespass and the owner could install a gutter to divert water runoff away from the adjacent property. The addition is being constructed in the same location of the previous garage built over 70 years ago.**

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

**The literal enforcement will result in the removal of major portion of the addition, making it too small for livable space. The addition is in place of the previous garage that was beyond repair.**

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. Side setbacks were created to provide some separation between homes to prevent the spread of fire. If approved the applicant will have to ensure the structure meets fire standards and that water runoff does**

**not occur on the adjacent property. Granting the requested variance will result in substantial justice.**

*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 “RM-4 AHOD” Residential-Mixed 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 addition does not conflict with the character of the district as many homes have carports, garages, or home additions that encroach into a setback. The original structure was a part of the home for several years and provided no room for maintenance. The new addition allows for maintenance without trespass, and with a gutter, will deflect water runoff on the adjacent property only.**

*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 presented in this case is the original location of the previous garage. The original garage was located on the side property line for several decades and did not have any negative impact on the adjacent property.**

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

The applicant would have to remove the addition and meet the five foot side setback.

#### **Staff Recommendation**

Staff recommends **APPROVAL of variance request in A-17-068** based on the following findings of fact:

1. The addition is in the same location as the original garage, and does not detract from the character of the neighborhood; 2. The addition allows for room for maintenance without trespass.