



# City of San Antonio

## Agenda Memorandum

**File Number:**15-5686

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**Agenda Item Number:** 2.

**Agenda Date:** 11/2/2015

**In Control:** Board of Adjustment

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**Case Number:** A-15-142  
**Applicant:** David Moreno  
**Owner:** David Moreno Construction, LLC  
**Council District:** 2  
**Location:** 1819 North Hackberry Street  
**Legal Description:** Lot 12, Block 10, NCB 481  
**Zoning:** "RM-6 AHOD" Residential Mixed Airport Hazard Overlay District  
**Case Manager:** Kristin Flores, Planner

### Request

A request for a 14 foot variance from the 20 foot minimum rear setback requirement, as described in Table 35-310-1, to allow a home to be constructed 6 feet from the rear property line.

### Executive Summary

The subject property is located at 1819 North Hackberry Street 180 feet east of Austin Street and connected by an alley to Austin Street. The subject property is currently a vacant lot on which the applicant plans to build a duplex with garages in the front of the homes and second story porches in the rear of the homes.

The subject property, in the current configuration, was part of San Antonio's original 36 square miles as shown on a map, dated January 1, 1924. In addition, the 1952 Sanborn Maps show the subject property, in the same configuration, to contain a single family dwelling and a detached garage located at the back of the home. As such, the subject property is considered a non-conforming lot of record and would qualify for a Certificate of Determination. Such a certification would allow the owner of the subject property to build any permitted use within the current "RM-6" zoning category, respecting standard setbacks, even though the lot does not meet the minimum six thousand (6,000) square feet requirement.

The subject property was part of a large area rezone in 2010 which changed the zoning from the previous "MF-33" Multi-Family District to the current "RM-6" Residential Mixed District. This zoning change was a response to the adopted land use plan and future planned uses. The subject property was designated Mixed Use in the future land use component of the plan.

This neighborhood largely consists of modest homes with front porches and garages in the rear built to respect current setback standards. The applicant is proposing to build a duplex with attached garages in the front and a second story porch in the rear. As described in Section 35-370 (b), a garage must be built twenty (20) feet from the property line. The applicant wishes to reduce the rear setback requirements by over fifty percent (50%) to

accommodate the proposed design which places a garage in the front of a duplex and a second story porch at the rear of the property.

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

Existing Zoning	Existing Use
“RM-6 AHOD” Residential Mixed Airport Hazard Overlay District	Vacant Lot

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

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-6 AHOD” Residential Mixed Airport Hazard Overlay District	Vacant Lot
South	“RM-6 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
East	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
West	“RM-6 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence

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

The property is located within the boundaries of the Government Hill Neighborhood Plan and is designated as Mixed Use in the future land use component of the plan. The subject property is located within the boundaries of the Government Hill Alliance 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 minimum rear setbacks to protect home owners, and also to provide for a sense of community. The applicant wishes to reduce the required setbacks by over 50% in order to accommodate two garages in the front of the proposed duplex.

According to the site and floor plan submitted by the applicant, approximately 1,970 square feet will be built at the ground level. This means approximately 58% of the entire lot will have impervious cover. It is likely that a duplex, covering so much of the available ground space, could cause drainage issues for the subject property and adjacent properties as water would be unable to percolate through the soil. If a home was developed similar to the historical use of the subject property the setbacks could easily be met. As such, staff finds that the variance request is contrary to the public interest.

**As the lot size is closer to “RM-4” square footage requirements than the current “RM-6” it is possible that a ten (10) foot setback, permitted in the “RM-4” base district, would be an alternative to the applicant’s request.**

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

Staff was unable to find a special condition that would result in unnecessary hardship. If the applicant built a duplex featuring a design more consistent with neighboring properties the variance would not be required.

**The applicant wishes to build a duplex on a lot with minimum square footage which could pose a hardship.**

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

Granting the requested rear setback variance will not result in substantial justice. The applicant is requesting to reduce the setback by over fifty percent (50%). This request will reduce the required forty (40) feet between structures to only twenty six (26) feet. While a space will remain between the proposed duplex and neighboring structures the majority of the burden to provide that space is placed on neighboring structures. In addition, if neighboring properties choose to build accessory structures, allowed to be three (3) feet from the property line, the space between adjacent structures could be reduced to just nine (9) feet in the rear. This not only increases fire risk, but this also decreases privacy available to adjacent properties.

**Permitting a setback of ten (10) feet could allow substantial justice to be done.**

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-6 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.*

Permitting the applicant to build a home six (6) feet from the rear setback where the development was meant to be 20 feet from the rear setback is not in keeping with the character of the community. The other homes on this block adhere to standard setbacks to ensure fire safety of the subject property and adjacent properties. Allowing the subject property to build a duplex six (6) feet from the property line places an undue burden on adjacent properties. In addition, allowing the applicant to build a second story porch six (6) feet from the property line reduces privacy of adjacent properties.

**Allowing a ten (10) foot setback may not injure the appropriate use of adjacent conforming 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.*

Staff was unable to find a unique circumstance that would permit such a variance. Staff finds the hardship experienced by the applicant is directly related to the applicants proposed design. The applicant could re-examine the design to find harmony between the applicant’s needs and development standards.

**A unique circumstance in this case could be the limited square footage of the subject property.**

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

A possible alternative to the applicants request would be a ten (10) foot variance to allow the home to be built ten (10) feet from the property line.

The applicant must build the home to respect the required setbacks, as described in Table 35-301-1.

### **Staff Recommendation**

Staff recommends **DENIAL of the 14 foot variance from the 20 foot minimum rear setback requirement to allow a home to be constructed six (6) feet from the rear property line in case A-15-142** based on the following findings of fact:

1. The request is likely to increase risk of fire to adjacent properties;
2. The request is likely to decrease privacy for the adjacent properties;
3. The large amount of lot coverage in this case is likely to increase or create water drainage issues for the subject property and adjacent properties;
4. The reduction of the setback is not in keeping with the character of the community.

### **Attachments**

Attachment 1 - Notification Plan (Aerial Map)

Attachment 2 - Plot Plan (Aerial Map)

Attachment 3 - Site Plan

Attachment 4 - Site Photos