



City of San Antonio

Agenda Memorandum

File Number:16-3285

Agenda Item Number: 11.

Agenda Date: 5/23/2016

In Control: Board of Adjustment

Case Number: A-16-082
Applicant: Cheryl R. Mijangos
Owner: Alberto and Cheryl Mijangos
Council District: 1
Location: 138 W. Mariposa Drive
Legal Description: Lots 15 & 16, Block 10, NCB 9014
Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Logan Sparrow, Senior Planner

Request

A request for 1) a two foot variance from the required five foot rear setback, as described in Section 35-371(b)(7), to allow an accessory dwelling unit to be built three feet from the rear property line and 2) a two foot variance from the required five foot side setback, also described in Section 35-371(b)(7), to allow an accessory dwelling unit to be built three feet from the side property line.

Executive Summary

The subject property is located at 138 W. Mariposa Drive, approximately 466 feet west of Oran Drive. The property owner tore down an old garage that was built in 1941, per Bexar County records. They wish to replace the old garage with a new accessory dwelling unit and wish to place it in the location of the former garage. The proposal would place the accessory structure three feet from the rear and side property lines. The Unified Development Code requires that accessory dwelling units must be located at least five feet from the side and rear property lines. A two foot variance is required for each setback to allow for the proposed project.

During field visits, staff noted that accessory dwelling units and detached garages are common within the neighborhood. Several homes, including those immediately across the street, benefit from similar designs. As a result, the property owner will not benefit from a reduction not similarly enjoyed by others in the neighborhood.

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	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
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 Neighborhood Plan and currently designated as Low-Density Residential in the future land use component of the plan. The subject property is within the Olmos Park Terrace Neighborhood Association. As such, the neighborhood association was notified and asked to comment.

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 minimum setbacks to ensure safe development within the City of San Antonio. Homes in this community were built in the 1940's and are built to different setback standards than what our current Unified Development Code requires. A survey of other properties in the neighborhood shows that many of the homes and accessory structures are built three feet from the side and rear property lines. A garage was formerly located in the same location as the proposed accessory dwelling unit and because reduced setbacks are common in this older neighborhood, staff finds that the request is not contrary to the public interest. Also, the structure will have to meet all applicable fire codes prior to passing its final inspection.

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

Staff finds that the special condition present in this case is the consistency in design within the neighborhood, where nearly all accessory structures are built with three foot setbacks. Staff finds that making the applicant build a structure that meets the five foot side and rear setbacks would result in an unnecessary hardship.

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

Granting the requested variances will result in substantial justice in that the applicant would not benefit from a privilege not enjoyed by similarly situated property owners.

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-4 AHOD” Residential Single-Family Airport Hazard Overlay District.

1. 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.

Because three foot setbacks are so common in the neighborhood, staff finds that this request is unlikely to alter the essential character of the district. To the contrary, should the applicant build the structure five feet from the side and rear property lines it would be the only accessory structure on the block built with five foot setbacks.

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 present in this case is that three foot setbacks are the dominant development standards within this older community. The problem is not merely financial in nature, and development standards from the 1940’s are not the fault of the owner of the property.

Alternative to Applicant’s Request

The applicant would have to build the structure to meet the five foot side and rear setbacks.

Staff Recommendation

Staff recommends **APPROVAL of variance request in A-16-082** based on the following findings of fact:

1. Three foot setbacks are common for accessory structures within this neighborhood. 2. The property owner will not benefit from a privilege not enjoyed by other similarly situated property owners.