



City of San Antonio

Agenda Memorandum

File Number:16-3492

Agenda Item Number: 12.

Agenda Date: 6/6/2016

In Control: Board of Adjustment

Case Number: A-16-090
Applicant: Irma Talamantez
Owner: Irma and Robert Talamantez
Council District: 3
Location: 3331 Scarlet O'Hara
Legal Description: Lot 18, Block 1, NCB 14954
Zoning: "RM-5 MC-2 AHOD" Residential-Mixed South Presa Metropolitan
Corridor Overlay Airport Hazard Overlay District
Case Manager: Logan Sparrow, Senior Planner

Request

A request for 1) a 21.5 foot variance from the 30 foot platted rear setback, as described in Section 35-516(O), to allow a home addition to remain 8.5 feet from the rear property line and 2) the elimination of the side and rear setbacks, as described in Section 35-370(b)(1), to allow an accessory structure to be located on the side and rear property line and 3) a 1.5 foot variance from the 10 ft rear zoning setback, as described in Section 35-310.01, to allow a home addition to be 8.5 feet from the rear property line.

Executive Summary

The subject property is located at 3331 Scarlet O'Hara, approximately 124 feet northeast of Tarleton Place, and backs up to South Presa. The applicant is seeking a variance to allow for an addition, which was built without permits, to remain. Since 2008, the property owner has been issued many citations for work without permits. They are as follows:

- 09.02.2008: Building a two story addition without permits. Told by Code Compliance to obtain permits by 09.05.2008.
- 09.05.2008: Anonymous caller reported ongoing work without permits.
- 09.10.2008: Stop work order issued by Code Compliance.
- 09.22.2008: Permits still not applied for.
- 10.08.2008: Case submitted to Municipal Court, date set for 12.19.2008.
- 03.02.2009: New one story room addition being built without permits. Told not to issue a permit as the

two story addition still out of compliance. Order to hold utilities to additions.

- 03.03.2009: Still no permit applied for.
- 03.24.2009 - date for 2nd court hearing. Applicant called Code Compliance to discuss warning that utilities will be disconnected. Mr. Talamantez informed Code Compliance that he didn't want to get an engineer's letter certifying the structure because it would cost \$3,000.
- 07.24.2009: Cited for construction of a brick fence in front yard without permits.
- 08.03.2009: Cited for building a new rear fence without permits.
- 08.31.2009: Cited for construction of a deck in front yard built into the setbacks without permits.
- 09.08.2009: New two story addition being built without permits.
- 10.27.2009: Cited for construction of a new covered back porch without permits. Given five days to obtain permits.
- 11.09.2009: Mr. Talamantez given five more days to obtain engineer's letter. Warned that electric utilities will be disconnected for failure to comply.

In all, the applicant needs three variances to allow what has been built to remain. First, as the structure is located within a 30 foot platted rear setback, a 21.5 foot variance is required to allow the structure to be located 8.5 feet from the rear property line. Second, the structure also violates the zoning setback. The "RM-5" Residential-Mixed zoning district requires a ten foot rear setback - a variance of 1.5 feet is required from this provision. Lastly, the applicant has built a shed on the side and rear property line. To remain, those setbacks would have to be eliminated for that structure.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"RM-5 MC-2 AHOD" Residential-Mixed South Presa Metropolitan Corridor Overlay Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	UZROW	South Presa Street
South	"RM-5 MC-2 AHOD" Residential-Mixed South Presa Metropolitan Corridor Overlay Airport Hazard Overlay District	Single-Family Dwelling
East	"RM-5 MC-2 AHOD" Residential-Mixed South Presa Metropolitan Corridor Overlay Airport Hazard Overlay District	Single-Family Dwelling
West	"RM-5 MC-2 AHOD" Residential-Mixed South Presa Metropolitan Corridor Overlay Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Stinson Airport Vicinity Land Use Plan and currently designated as Low Density Residential in the future land use component of the plan. The subject property is not located within a registered neighborhood association.

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 setback requirements to ensure uniform, safe development within the City of San Antonio. The structure was built without permits. There is an established history of building on this lot without the required permits. Staff finds that the continuous construction of unpermitted, and potentially unsafe, construction at the subject property is contrary to the public interest.

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

Staff is unable to establish a special condition that warrants the granting of the requested variances. The property was platted with a 20 foot rear setback along South Presa Street and no other home that backs up to South Presa has large-scale construction that close to the property line. The structure was built without permits when the property owner knew that they were required. The willful disregard of city ordinances and building requirements is not a special condition that merits a variance.

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

Granting the requested variances will not result in substantial justice. Had the applicant applied for a permit, city staff could have helped to navigate the development standards for the proposed additions. Allowing the applicant to build 8.5 feet from the rear property line allows for development well beyond what other properties enjoy.

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-5 MC-2 AHOD” Residential-Mixed South Presa Metropolitan Corridor Overlay 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.*

As built, the additions are noticeably out of character with the design and the scale of the neighborhood. The series of additions is atypical within the community, and out of place along the South Presa Metropolitan Corridor.

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 warrants the granting of the requested variances. Further,

staff finds that the requested variances are the fault of the owner of the property, who willfully chose not to obtain permits for multiple projects.

Alternative to Applicant's Request

The applicant would have to meet the required setbacks.

Staff Recommendation

Staff recommends **DENIAL of variance request in A-16-090** based on the following findings of fact:

1. Willful disregard of city ordinances and development standards is not a special condition that warrants the granting of multiple variances.
2. Granting the variances will not result in substantial justice.