



# City of San Antonio

## Agenda Memorandum

**File Number:**16-5856

**Agenda Item Number:** 8.

**Agenda Date:** 11/21/2016

**In Control:** Board of Adjustment

Case Number: A-17-002  
Applicant: Agustin de Leon  
Owner: Agustin & Maria de Leon  
Council District: 2  
Location: 1005 Burleson  
Legal: Lot 8, Block A, NCB 1006  
Description:  
Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard  
Overlay District  
Case Manager: Margaret Pahl, AICP, Senior Planner

### Request

A request for a five foot variance from the five foot side setback, as described in Table 35-310-1, to allow a carport to be on the side property line.

### Executive Summary

The subject property includes a nearly 12,000 square foot lot two lots away from the Dignowity Hill Historic District. The home was originally built in 1930. The applicant has recently built an extended roof and wall to the side up to the property line with no room for maintenance. The applicant was cited by Code Enforcement for construction without a building permit and is seeking the variance in order to allow the structure to remain as built. Proper permits and fire-rated construction will be required if the variance is granted and the structure is to remain.

### Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Home

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
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North	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Home
South	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Home
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Home
West	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Home

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

The property is within the boundaries of the Dignowity Hill Neighborhood Plan and currently designated as Low-Density Residential in the future land use component of the plan. The subject property is located within the boundaries of the Dignowity Hill Neighborhood Association. As such, they were 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, the public interest is represented by setbacks to allow for access to air and light, with windows on this elevation of the home now covered by the carport and wall. The variance would be contrary to the public interest.

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

Literal enforcement of the setback would not result in an unnecessary hardship. Instead, the applicant could construct an accessory structure in large rear yard, using the driveway for access.

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 the intent of the Code, rather than the strict letter of the law. In this case, the intent is to provide enough setback to allow for long-term maintenance without trespass and compliance with fire separation. Therefore, the spirit of the ordinance would not be observed by granting the variance.

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 variances 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.

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 carport was constructed without permits over time. Aerial photography shows it was originally begun in 2010 and has since gotten longer and wider, with the exterior wall a recent addition. Though this block of Burleson is not technically within the boundaries of the historic district, the entire neighborhood is of similar design characteristics, including the subject property. Therefore, the proposed structure could alter the character of the district.

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 could find no unique circumstance to warrant consideration of a variance in this situation. The lot is nearly one-quarter acre, larger than most inner city lots and has adequate room for storage in the rear with setbacks.

### **Alternative to Applicant's Request**

Without the requested variance, the owner would have to take down the carport as constructed and rebuild it on the parcel in the rear satisfying the setbacks.

### **Staff Recommendation**

Staff recommends **DENIAL of the requested five foot variance, detailed in A-17-002** based on the following findings of fact:

1. The intent of the setback is to provide room for maintenance without trespass and fire separation; and
2. The applicant has a large yard with adequate room for additional storage while satisfying setbacks.