



# City of San Antonio

## Agenda Memorandum

**File Number:**17-3631

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**Agenda Item Number:** 5.

**Agenda Date:** 6/5/2017

**In Control:** Board of Adjustment

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Case Number: A-17-108  
Applicant: Arturo Vargas  
Owner: Arturo and Ernestina Vargas  
Council District: 6  
Location: 5446 Ergill Lane  
Legal: Lot 16, Block 6, NCB 13957  
Description:  
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard  
Overlay District  
Case Manager: Margaret Pahl, AICP, Senior Planner

### **Request**

A request for a 3.5 foot variance, as described in Table 35-310, to allow a building addition 1.5 feet from the side property line.

### **Executive Summary**

The subject property is located in the Linda Vista Subdivision, recorded in 1946. The lot measures 50 feet in width and 125 feet in depth. According to Bexar County Appraisal District, a carport was built in 1949, with 720 square feet. Recently, the owner began construction to enclose the carport for use as living space. The applicant was cited by Code Enforcement for work without a building permit. The owner could not obtain a building permit because of the encroachment into the five foot side setback. Even if the variance were granted, construction cannot continue as planned since the exterior wall must be fire rated and include no openings. There are currently windows installed along this side elevation, which will not be permitted to remain under any circumstances. The building code however, requires a certain percentage of wall area to be dedicated to window openings, which these rooms may not be able to satisfy with windows on only the yard side.

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

Existing Zoning	Existing Use
"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

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

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Church
East	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

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

The property is within the boundaries of the West Sector Plan area and designated as Suburban Tier in the future land use component of the plan. The subject property is not located within the boundaries of 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 minimum setbacks and fire separation. The requested variance is extreme and will prohibit window openings.

**An alternate variance to require a three foot side setback would allow windows in the wall, while providing room for long-term maintenance without trespass. Therefore, a two foot variance would not be contrary to the public interest.**

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

Literal enforcement would require that the owner provide a 5 foot side setback, necessary to provide fire separation and allow maintenance without trespass. The owner is requesting approval to allow the wall to remain in place, with as little as an eighteen inch setback. The building code will require significant modification if the requested variance is granted.

**Granting approval for a three foot side setback could reflect the setback at the time of original construction, while allowing for windows and provide room for maintenance.**

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 exact letter of the law. The intent of the side setback is to provide open space for air and light, allow room for maintenance without trespass and reduce fire spread potential. The requested variance does not observe the spirit of the ordinance.

**A two foot variance to allow a three foot setback would observe the intent of the code for construction during the 1950's.**

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the*

*zoning district in which the variance is located.*

**The variance will not authorize the operation of a use other than those uses specifically authorized in the “R-6 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 applicant is requesting a variance from the minimum side setback, to allow enclosure of a carport into living space. The limitations of the adopted building code were not known or incorporated into the plan, making the structure potentially damaging to the adjacent property. Therefore, the requested variance could injure the adjacent home.

**An alternate variance of two feet to allow the building addition three feet from the property line would provide the family with the additional living space desired, while still providing room for maintenance and fire separation.**

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 plight of the owner is not unique; they did not seek a building permit to convert a carport into living space. The wall built under the carport roof is less than two feet from the side property line.

**The owner hopes to add over 700 square feet of living space to his home, which may be challenging in the current location. Relocating the exterior wall to provide the minimum three foot setback would allow the interior space to be used as three separate rooms, with adequate ventilation.**

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

Denial of the requested variance would result in the applicant having to relocate the wall to meet the 5 foot side setback.

#### **Staff Recommendation**

Staff recommends **DENIAL of the requested variance in A-17-108** based on the following findings of fact:

1. The applicant began enclosing a carport for living space without knowledge of building code requirements; and
2. The existing setback is less than two feet, and does not provide adequate separation for maintenance.

Staff recommends **APPROVAL of an alternate variance of two feet in A-17-108**, based on the findings of fact:

1. The property was developed in 1949, when a three foot side setback was applicable and
2. The three foot setback will allow windows.