



City of San Antonio

Agenda Memorandum

File Number:18-2424

Agenda Item Number: 9.

Agenda Date: 3/19/2018

In Control: Board of Adjustment

Case Number: A-18-054
Applicant: Angela Menchaca
Owner: Joseph Daniel Hernandez
Council District: 5
Location: 338 Simon Street
Legal: Lot 8, Block 2, NCB 2826
Description:
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard
Overlay District
Case Manager: Dominic Silva, Planner

Request

A request for a two and a half foot variance from the five foot side setback requirement, as described in Section 35-310.01, to allow an attached two-story room addition to be built two and a half feet from the side property line.

Executive Summary

The subject property is located at 338 Simon Street, 381 feet west of Probandt Street. The applicant is requesting a side setback variance in order to build an attached room addition that will consist of an elevated second floor living space and first floor carport on the east side of the primary structure. If approved by the Board of Adjustment, the structure will need to be fire-rated.

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
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North	“MF-25 IDZ AHOD” Low Density Multi-Family Infill Development Zoning Airport Hazard Overlay District	Apartments
South	“I-2 AHOD” Heavy Industrial Airport Hazard Overlay District	Retail Store
East	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Multi-Family Dwelling
West	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Multi-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the Lone Star Plan and designated as Low Density Residential in the future land use component of the plan. The subject property is located within the boundaries of the Lone Star 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, given the lot size on the subject property, the variance is not needed. The applicant has ample space to construct the addition with reasonable setbacks. Any distance less than three feet requires additional fire rating.

Staff recommends a three foot variance from the side setback. Granting the variance still provides adequate space for maintenance and accessibility to light and open space.

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

Staff cannot find any special conditions that would warrant a two and a half foot variance given the space of the east side property. Setbacks are justified regulations meant to eliminate trespass, provide access for maintenance, and avoid fire spread. A literal enforcement of this ordinance would not result in any hardship.

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. The intent of the setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. A two and a half foot variance does not follow these conditions.

Given the space available for development on the east side, a three foot variance will allow the spirit of the ordinance to be followed; all intents of this law will be observed if approved.

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 requested variance will not permit a use not authorized within 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.*

Although the structure itself would not substantially alter the character of the district, granting the original variance would substantially alter the adjacent conforming property by allowing development within the side setback and fail to adhere to proper mitigations to protect adjacent properties.

The recommended alternative would not place the structure out of character within the community and would allow for the 2-story addition with first floor carport to be built with more reasonable 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.*

Staff cannot find any unique circumstances existing on the property and are not due to or the result of the general conditions in the district.

Because the structure is not yet built, staff recommends a three foot variance to allow adequate space for maintenance of the property, prevent fire spread, and allow proper rain water runoff.

Alternatives to Applicant's Request

The alternative to the applicant's request is to conform to side setbacks set forth in the Unified Development Code.

Staff Recommendation

Staff recommends **DENIAL of A-18-054 with alternate recommendations** based on the following reasons:

1. The recommended variance will not detract from the essential character of the district as an additional half foot will be negligible, and;
2. With a recommended three foot variance, adequate space will be utilized to prevent storm water runoff, maintenance of property, and maintenance of the structure without trespass, moreover, prevention of fire spread will be adhered to.