



# City of San Antonio

## Agenda Memorandum

**File Number:**18-2874

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**Agenda Item Number:** 9.

**Agenda Date:** 4/16/2018

**In Control:** Board of Adjustment

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Case Number: A-18-066  
Applicant: David Bogle  
Owner: Taimur Raza  
Council District: 2  
Location: 444 Pershing Ave.  
Legal: Lot 22-24, Block 1, NCB 6524  
Description:  
Zoning: "R-4 NCD-6 AHOD" Single-Family Residential Mahncke  
Park Neighborhood Conservation Airport Hazard Overlay  
District  
Case Manager: Debora Gonzalez, Senior Planner

### **Request**

A request for 1) a two foot variance from the five foot side setback, as described in Section 35-371, to allow an accessory dwelling unit to be three feet from the side property line, 2) a 387 square foot variance from the 800 square foot maximum accessory dwelling unit size, as described in Section 35-371, to allow an accessory dwelling unit to be 1,187 square feet, 3) a 1,680 square foot variance from the 2,500 square foot maximum accessory structure size, as described in Section 35-370, to allow a total of 4,180 square feet of accessory structures, 4) a 34 square foot variance from the 50% maximum paved front yard, as described in Section 35-515, to allow a total 1,010 square feet of paved surface in the front yard, 5) a two foot variance from the Mahncke Park Neighborhood Conservation District six foot maximum fence height to allow a fence to be eight feet tall on the east and west property line, and 6) a variance from the Mahncke Park Neighborhood Conservation Design requirement that a non-corner lot may have only one driveway to allow a second driveway on the west side of the property.

### **Executive Summary**

The subject property is located at 444 Pershing Avenue, approximately 580 feet east of North New Braunfels Avenue. The applicant is proposing to enlarge an existing accessory dwelling unit and build a detached garage behind the primary structure. The applicant is seeking a total of six variances. The first request is to reduce the required minimum side property line for an accessory dwelling unit. The second variance is to increase the square footage of an existing accessory dwelling unit. The third request seeks to increase the total of the maximum accessory structure size. The fourth variance is to increase the paved front yard. The fifth request is to increase the side fence height, and the last request is to allow for a second driveway on the street frontage of the property.

The Neighborhood Conservation District was created in 2008 to address neighborhood stability through compatible infill construction and rehabilitation within this unique neighborhood. Much of the neighborhood, especially the portion located on the western side of New Braunfels Avenue, consists of craftsman style homes.

Generally, staff is concerned that the requested variances will allow for an over-developed lot. The intent of the Neighborhood Conservation District is to maintain the essential character of the community. The request to allow a 67 percent increase in the permitted accessory structure size, as well as the fencing, impervious cover, and the additional driveway, will be noticeably out of character with the neighborhood and surrounding properties. Staff can support the requested side setback reduction as the proposal is to maintain the existing setback, as well as the request to increase the accessory dwelling unit size.

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

Existing Zoning	Existing Use
“R-4 NCD-6” Single-Family Residential Mahncke Park Neighborhood Conservation District	Single-Family Dwelling

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

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 NCD-6 AHOD” Residential Single-Family Mahncke Park Neighborhood Conservation Airport Hazard Overlay District	San Antonio Country Club
South	“R-4 NCD-6 AHOD” Residential Single-Family Mahncke Park Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling
East	“R-4 NCD-6 AHOD” Residential Single-Family Mahncke Park Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling
West	“R-4 NCD-6 AHOD” Residential Single-Family Mahncke Park Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling

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

The subject property is within the boundaries of the Mahncke Park Neighborhood Plan and currently designated Urban Single Family Residential in the future land use component of the plan. The subject property is located within the Mahncke Park 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. The public interest is represented by preserving the unique character of this community. The variances to allow the increase of the

total maximum accessory structure size, the increase in the paved front yard, increased fencing height, and the second driveway are contrary to the public interest.

**Staff supports reducing the side setbacks to three feet, which would provide adequate room for maintenance and would provide ample separation for fire spread and rainwater runoff. Further, the expansion of the accessory dwelling to 1,187 square feet will not injure the rights of the adjacent property owners.**

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

Literal enforcement would require that the owner design a project that mirrors the requirements of the NCD, or at least the intent of them. This would not result in an unnecessary hardship.

**Staff supports the requested setback reduction and the enlargement of the accessory dwelling unit as they will have little impact when accessed from the public ROW, and do not detract from the neighborhood.**

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 NCD is to protect the integrity of the neighborhood. Some of the variances, including the request to increase the total maximum accessory structure size, to increase the paved front yard, and adding a secondary driveway do not observe the spirit of the Code.

**Staff supports a setback reduction to three feet and the enlargement of the existing accessory dwelling unit. The current accessory dwelling unit has long enjoyed the requested setback, and adding additional room to the accessory dwelling unit is unlikely to detract from the character of the community.**

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 by the “R-4 NCD-6 AHOD” Single-Family Residential Mahncke Park Neighborhood Conservation 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.*

Staff cannot support the requests to increase the total of the maximum accessory structure size, the increased front yard pavement, the secondary driveway, or the eight foot tall fence. These requests are clearly at odds with the intent of the Neighborhood Conservation District, and would allow for the development of a lot that is immediately out of character with the surrounding community.

**The reduction of the side setback and the request to increase the size of the accessory dwelling unit are unlikely to detract from the essential character of the community.**

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 is unable to determine any unique circumstances existing on the site that warrant so many deviations from code and the Neighborhood Conservation District. The project should be designed in a manner that respects the intent of the code.

**The side setback and increased accessory structure square footage increase are not at odds with the Neighborhood Conservation District, and are unlikely to harm adjacent properties.**

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

The alternative to the applicant's request would be to adhere to the requirements of both the Unified Development Code and the Neighborhood Conservation District.

### **Staff Recommendation**

Staff recommends **APPROVAL** of 1) a two foot variance from the five foot side setback to allow an accessory dwelling unit to be three feet from the west property line, 2) a 387 square foot variance from the 800 square foot maximum accessory dwelling unit size to allow an accessory dwelling unit to be 1,187 square feet based on the following findings of fact:

1. The requested setback provides room for adequate light, air, and maintenance, and;
2. These variances are unlikely to detract from the character of the district.

Staff recommends **DENIAL** of 3) a 1,680 square foot variance from the 2,500 square foot maximum accessory structure size to allow a total of 4,180 square feet of accessory structures, 4) a 34 square foot variance from the 50% maximum paved front yard to allow a total 1,010 square feet of paved surface in the front yard, 5) a two foot variance from the six foot maximum to allow a fence to be eight feet on the east and west property line, and 6) a variance from the Mahncke Park Neighborhood Conservation Design requirement that a non-corner lot may have only one driveway to allow a second driveway on the west side of the property based on the following findings of fact:

1. The variances are contrary to the public interest in that they will allow for an over-developed lot, and;
2. The requested variances do not observe the spirit of the code or the NCD.