



# City of San Antonio

## Agenda Memorandum

**File Number:**18-3235

**Agenda Item Number:** 9.

**Agenda Date:** 5/7/2018

**In Control:** Board of Adjustment

**Case Number:** A-18-083  
**Applicant:** Francisco Morales  
**Owner:** Juan M. Aguilera  
**Council District:** 5  
**Location:** 521 North San Dario Street  
**Legal:** Lots 28 and 29, Block 10, NCB 8298  
**Description:**  
**Zoning:** "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District  
**Case Manager:** Debora Gonzalez, Senior Planner

### Request

A request for a 1'6" variance from the 5' side setback, as described in Section 35-310.01, to allow a new residential building and detached accessory dwelling unit to be 3'6" away from the side property line.

### Executive Summary

The subject property is located approximately 320 feet North from Rivas Street. The applicant is requesting a variance to maintain a 3'6" side property line to allow for an existing single story residence and a detached accessory dwelling unit to be rehabilitated. The owner made repairs and renovations to the subject property not realizing that building permits were required to remodel the structure. The owner received a stop work order from Code Enforcement in December of 2017. The applicant states that the owner wishes to comply with the code requirements and obtain a building permit to continue with renovations on the subject property.

### Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-5 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	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
East	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

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

The property is within the boundaries of West/ Southwest Sector Plan and currently designated as General Urban Tier in the future land use component of the plan. The subject property is within the Loma Vista 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 already existing structures are only been rehabilitated and the footprint is not expanding. Staff finds the request is not contrary to the public interest.**
2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*  
**Due to the structures existing as a primary residence and an accessory dwelling unit, a literal enforcement of the ordinance would result in unnecessary hardship by requiring the entire structures be moved to meet the setback.**
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. 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 district in which the request for a variance is located.*  
**The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-5 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.*  
**This variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district. Specifically, the variance would not place the structures out of character within 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.*

The unique circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature. The character of side yards within the district are predominantly compact, leaving little room for proper building setbacks. When homes in this community were built, only a three foot side setback was required.

**Alternative to Applicant's Request**

The alternative to the applicant's plan would be to comply with the side building setbacks as defined within Section 35-310.01.

**Staff Recommendation**

Staff recommends **APPROVAL in A-18-083**, based on the following findings of fact:

1. The requested variance will not detract from the character of the district, and;
2. Adequate space will be utilized to prevent storm water runoff, maintenance of property, and maintenance of the structure without trespass.