



City of San Antonio

Agenda Memorandum

File Number:19-3327

Agenda Item Number: 9.

Agenda Date: 4/15/2019

In Control: Board of Adjustment

Case Number: BOA 19-10300037
Applicant: Jose Gallegos
Owner: Juan R. Barrera
Council District: 1
Location: 916 North San Jacinto
Legal: The North 42.45 feet and the South 84.9 feet of Lot 1 and Lot
Description: 2, Block 4, NCB 2179
Zoning: "MF-33 AHOD" Multi-Family Airport Hazard Overlay
District
Case Manager: Mercedes Rivas, Planner

Request

A request for 1) an 3' variance from the 5' side setback requirement, as described in Section 35-371(a), to allow an attached dwelling unit to be 2' away from the side property line, and 2) an 8' variance from the 10' rear setback requirement, as described in Section 35-371(a), to allow an attached dwelling unit to be 2' away from the rear property line.

Executive Summary

The subject property is located at 916 North San Jacinto. The applicant is requesting a decrease of the front and side building setback lines for an attached dwelling unit that was added to the home. The attached dwelling unit was built without permits. Had the applicant applied for a permit, we would have informed the owner that you cannot build within the front and side building setback lines.

Code Enforcement History

On March 14, 2018 the applicant received a code violation for building within the rear and side building setback lines without a permit. The case is currently open.

Permit History

There is no permit history related to the attached dwelling unit on the property. The property owner is seeking a variance to allow for permit to be issued.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“MF-33 AHOD” Multi-Family Airport Hazard Overlay District	Multi-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“MF-33 AHOD” Multi-Family Airport Hazard Overlay District	Multi -Family Dwelling
South	“MF-33 AHOD” Multi-Family Airport Hazard Overlay District	Multi -Family Dwelling
East	“MF-33 AHOD” Multi-Family Airport Hazard Overlay District	Multi -Family Dwelling
West	“MF-33 AHOD” Multi-Family Airport Hazard Overlay District	Church

Comprehensive Plan Consistency/Neighborhood Association

The property is within the Westside Community Plan. The subject property is within the West End Hope in Action Neighborhood Association. As such, they were notified and asked to comment.

Street Classification

North San Jacinto is classified as a Local Street.

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 served by setbacks, which help to provide consistent development within the City of San Antonio. The applicant is seeking a variance to allow an attached dwelling unit to remain 2’ from the side and rear property lines. Allowing the attached dwelling unit to be 2’ from the side and rear property lines interferes with the character of the neighborhood. Staff finds that the attached dwelling unit, as proposed, is contrary to the public interest.

However, allowing the structure to be 3’ away from the side and rear property lines may not be contrary to the public interest.

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

Staff is unable to establish any special condition that warrants allowing an attached dwelling unit to remain 2’ from the side and rear property lines.

However, allowing the structure to be 3’ away from the side and rear property lines may not result in unnecessary 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. In this case, the intent is to provide enough of a setback to allow for long-term maintenance without trespass. A 2' setback does not provide such clearance and does not observe the spirit of the ordinance.

However, allowing the structure to be 3' away from the side and rear property lines may observe the spirit of the ordinance.

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 zoning 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 placement of an attached dwelling unit 2' from the side property line is contrary to the essential character of the district.

However, allowing the structure to be 3' away from the side and rear property lines may not substantially injure adjacent property.

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 circumstance existing on the site that warrants the requested variance of the side setback.

However, allowing the structure to be 3' away from the side and rear property lines may be warranted.

Alternative to Applicant's Request

Denial of the variance request would result in the owner having to meet the required five foot side setback.

Staff Recommendation

Staff recommends **DENIAL with an Alternate Recommendation of a 2' variance from the 5' side setback to allow a detached accessory dwelling unit to be 3' from the side property line and a 7' variance from the 10' rear setback to be 3' from the rear property line in 19-10300037**, based on the following findings of fact:

1. The detached accessory dwelling unit is contrary to the public interest in that it detracts from the essential character of the community.