



# City of San Antonio

## Agenda Memorandum

**File Number:**19-4388

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**Agenda Item Number:** 8.

**Agenda Date:** 6/3/2019

**In Control:** Board of Adjustment

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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) a 1' variance from the 5' south side setback requirement, as described in Section 35-371(a), to allow an attached dwelling unit to be 4' away from the south side property line, 2) an 8' variance from the 10' rear setback requirement, as described in Section 35-371(a), to allow an attached dwelling unit and carport to be 2' away from the rear property line, 3) a 2' variance from the 5' side setback requirement, as described in Section 35-371(a), to allow an attached carport to be 3' from the side property line.

### **Executive Summary**

The subject property is located at 916 North San Jacinto. The applicant is requesting a decrease of the front, rear, and side building setback lines to allow for an attached dwelling unit and an attached carport that was added to the home. Both the attached dwelling unit and attached carport were 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 not within any adopted Neighborhood, Community, Perimeter or Sector Plan. However, the property is within the proposed Westside Community Plan, which is in Phase 1 of the SA Tomorrow process. 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 and carport to remain 2’ from the rear property line. Allowing the structures to be 2’ from the rear property line interferes with the character of the neighborhood.

**However, a 5 foot variance from the 10 foot rear setback to allow the attached dwelling unit and carport to be 5 feet from the rear may not be contrary to the public interest. Similarly, allowing an attached carport to remain 3’ from the side property line and the attached dwelling unit to remain 4’ from the side property line may not interfere with the character of the neighborhood.**

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 allows the structures to remain 2' from the rear property line.

**However, a 5 foot variance from the 10 foot rear setback to allow the attached dwelling unit and carport to be 5 feet from the rear may not be contrary to the public interest. Similarly, allowing an attached carport to remain 3' from the side property line and the attached dwelling unit to remain 4' from the side property line may not result in an 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. The near elimination does not provide such clearance and does not observe the spirit of the ordinance.

**However, a 5 foot variance from the 10 foot rear setback to allow the attached dwelling unit and carport to be 5 feet from the rear may not be contrary to the public interest. Similarly, allowing an attached carport to remain 3' from the side property line and the attached dwelling unit to remain 4' from the side property line 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 the structures 2' from the rear property line is contrary to the essential character of the district.

**However, a 5 foot variance from the 10 foot rear setback to allow the attached dwelling unit and carport to be 5 feet from the rear may not be contrary to the public interest. Similarly, allowing an attached carport to remain 3' from the side property line and the attached dwelling unit to remain 4' from the side property line may not alter the essential character of the district.**

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 near elimination of the front, rear, and side setbacks.

**However, a 5 foot variance from the 10 foot rear setback to allow the attached dwelling unit and carport to be 5 feet from the rear may not be contrary to the public interest. Similarly, allowing an attached carport to remain 3' from the side property line and the attached dwelling unit to remain 4' from the side property line may observe the intent of the code.**

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

Denial of the variance request would result in the owner having to meet the required setbacks.

### **Staff Recommendation**

Staff recommends **APPROVAL** of the following:

- 1) a 1' variance from the 5' south side setback requirement to allow an attached dwelling unit to be 4' away from the south side property line, and
- 3) a 2' variance from the 5' side setback requirement to allow an attached carport to be 3' from the side property line.

Staff recommends **DENIAL with an Alternate Recommendation for a 5' variance from the 10' rear setback requirement, to allow an attached dwelling unit and carport to be 5' away from the rear property line, in 19-10300037**, based on the following findings of fact:

1. The attached dwelling unit and carport are contrary to the public interest as requested in that it detracts from the essential character of the community.