



City of San Antonio

Agenda Memorandum

File Number:19-8518

Agenda Item Number: 5.

Agenda Date: 11/18/2019

In Control: Board of Adjustment

Case Number: BOA-19-10300136

Applicant: Cyprian Juma

Owner: Virahisi Solutions, LLC

Council District: 2

Location: 156 Day Road

Legal: Lot 4, Block 1, NCB 10750

Description:

Zoning: "R-4 MLOD-3 MLR 2" Residential Single Family
Martindale Army Air Field Military Lighting Overlay District

Case Manager: Rachel Smith, Planner

Request

A request for 1) a 4' variance from 20' rear setback requirement, as described in Section 35-310.01, to allow a home to be 16' from the rear property line and 2) a 4' variance from the 5' side setback requirement, as described in Section 35-310.01, to allow a home to be 1' from the side property line.

Executive Summary

The property is located at 156 Day Road near Drexel Avenue. The property was annexed after the original one-story home was constructed. The one-story home was originally constructed in 1940 as part of the T.E. Barnes Subdivision, Unit 3. In 2009, a complaint was filed on the property for work done on a two-story addition to the back of the original structure without a permit and a stop work order was issued. The unpermitted work continued through 2010 when another stop work order was placed. Between September 2018 and March 2019, the original structure was demolished by a previous owner and only the two-story remains.

The property was recently acquired by the current property owner with the intent to continue the remodeling project. The applicant would like to continue redeveloping the property but will need this variance to continue with the project so a permit can be issued since the addition was placed within the building setback lines. Upon a visit to the site, staff noted that a portion of the building, an enclosed water heater closet, is one foot away from the fence to the north. Staff also noted that several properties in this area are similarly situated near property lines.

The applicant has indicated his intent to remedy the side setback by removing the water heater closet when the building permit is issued and has furnished a site plan showing his intent.

Code Enforcement History

3/23/09 (#81825): Complaint for working with no permit

6/16/09 (#1549977): Two-story addition to rear of existing home

5/16/19 (#169203): Working with no permit

Permit History

10/3/2019 (#2538077): General repairs permit for interior demolition and stop work order issued due to code enforcement history.

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance #18115 dated September 25, 1952 as “B” Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B” Residence District converted to the current “R-4” Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-4 MLOD-3 MLR 2” Residential Single Family Martindale Army Air Field Military Lighting Overlay District	Single Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 MLOD-3 MLR 2” Residential Single Family Martindale Army Air Field Military Lighting Overlay District	Single Family Residence
South	“R-4 MLOD-3 MLR 2” Residential Single Family Martindale Army Air Field Military Lighting Overlay District	Single Family Residence
East	“R-4 MLOD-3 MLR 2” Residential Single Family Martindale Army Air Field Military Lighting Overlay District	Single Family Residence
West	“R-4 MLOD-3 MLR 2” Residential Single Family Martindale Army Air Field Military Lighting Overlay District	Single Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The property is in the Eastern Triangle Area Plan and designated as “Low-Density Residential” within the future land use element of that plan. The subject property is not within the boundaries of a Neighborhood Association.

Street Classification

Day Road 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 defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by setbacks that maintain neighborhood character. The four (4) foot rear and side setback variances are not contrary to the public interest.

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

The special condition is that the home was constructed this way prior to the applicant acquiring the home. The home was originally constructed as an addition and was constructed without permits not centrally in the lot. Had the original owner obtained a building permit this would have been addressed at the time prior to construction.

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 code is to establish cohesive development that preserves the public interest. The request to reduce the side setback observes the intent of the code as the property complies with other requirements and similar placements are found within the neighborhood.

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.*

No uses other than those authorized by the “R-4” Residential Single Family district will be granted with this request.

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 request will not injure adjacent properties as there is still adequate distance between structures and the home will not create fire safety or stormwater management issues. There will be at least 10 feet between this structure and existing adjacent homes and the neighboring lot is vacant.

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 circumstance existing here is not the fault of the owner of the property, nor is it due to, or the result of, general conditions in the community in which it is located.

Alternative to Applicant’s Request

Denial of the requested special exception will result in the property owner not being able to operate the short

term rental unit.

Staff Recommendation

Staff recommends **APPROVAL** of the special exception in **BOA-19-10300136** based on the following findings of fact:

1. The request does not injure adjacent properties.
2. There is adequate space to prevent fire spread, maintain the structure without trespassing, and manage stormwater runoff.