



City of San Antonio

Agenda Memorandum

File Number:15-1757

Agenda Item Number: 6.

Agenda Date: 3/2/2015

In Control: Board of Adjustment

To: Board of Adjustment
Case Number: A-15-046
Date: March 02, 2015
Applicant: Reinaldo and Salma Barrientos
Owner: Reinaldo and Salma Barrientos
Council District: 5
Location: 714 Green Street
Legal Description: Lots 17 and 18, Block 12, NCB 2640
Zoning: "RM-6 AHOD" Residential-Mixed Airport Hazard Overlay District
Prepared By: Logan Sparrow, Planner

Request

A request for a ten foot variance from the 20 foot rear setback requirement, as described in Section 35-310.01, to allow a second home ten feet from the rear property line.

Executive Summary

The subject property is located at 714 Green Street approximately 122 feet east of Mauerman Street. The applicant is seeking a variance to allow a second home ten feet from the rear property line. The large second home is permitted as a result of the "RM-6" Residential-Mixed zoning classification. The site was the subject of a recent rezoning - case z2014274. Prior to the rezoning case the applicant started construction of the second dwelling without the benefit of permits and was cited by code.

City Council approved the rezoning request to allow for a second dwelling to be legally established on the property. Despite the rezoning the structure was constructed too close to the required rear setback and is only ten feet from the rear property line. Currently, the second dwelling is unfinished. Code enforcement issued a violation and the applicant's were told to cease construction pending a permit. The two-story dwelling, in conjunction with its close proximity to neighboring houses, is out of character and poses a significant fire risk to nearby properties in its current location.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"RM-6 AHOD" Residential-Mixed Airport Hazard Overlay District	Single-Family Dwelling, proposed two dwellings

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	UZROW	Green Street
South	“R-4 AHOD” Residential Single-Family Planned Unit Edwards Recharge Zone District	Single-Family Dwelling
East	“R-4 AHOD” Residential Single-Family Planned Unit Edwards Recharge Zone District	Single-Family Dwelling
West	“R-4 AHOD” Residential Single-Family Planned Unit Edwards Recharge Zone District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Nogalitos/South Zarzamora neighborhood plan and designated as High Density Residential land use. The subject property is located within the boundaries of the Palm heights registered neighborhood association. As such, the neighborhood association was 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 public interest is represented by basic setbacks to ensure safe separation between structures to prevent the spread of fire, and also to ensure equal access to air and light. The current two-story structure is only ten feet from the rear property line. By satisfying only one half of the required rear yard setback the threat of fire is increased. The two-story dwelling also blocks light and air to neighboring properties. As such, staff finds that the requested variance is contrary to the public interest.

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

A literal enforcement of the code would require the second dwelling unit be built 20 feet from the rear property line, the established setback for an “RM-6” Residential-Mixed District. Staff was unable to establish any property-related special conditions that would warrant the granting of the variance. Had the applicants have applied for a building permit then the setback violation could have been addressed 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 intends to provide fair distance between properties such that each are protected and so that each member of a community has a reasonable degree of privacy to enjoy their homes. The requested variance would result in a 50 percent reduction of the required bufferyard. The proposed dwelling is a two-story structure and, therefore, those who live in it would have a clear view into the neighbor’s yard from only ten feet away. As such, staff finds that in granting the variance that the spirit of the ordinance will not be observed, and substantial justice will not be done.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “RM-6 AHOD” Residential-Mixed 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.*

The requested variance could harm adjacent, conforming properties in that the requested variance seeks a 50 percent reduction in the required setback. This reduction poses an increased threat of fire and will also lead to a decreased enjoyment of abutting properties. The two-story home is noticeably out of character within this community and towers above adjacent homes, the effect of this is amplified by the proximity to the adjacent properties.

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 identify any unique property related conditions that would warrant the granting of the requested variance. Has the applicant applied for a building permit a residential plans examiner would have identified the setback violation prior to construction. Staff finds that the failure to secure a building permit does not qualify as a unique circumstance. Staff finds that it is very likely that the requested variance is highly motivated by financial factors. The applicant is seeking this variance so that they do not have to tear down the work completed to date.

Alternative to Applicant’s Request

The applicant needs to construct a the second dwelling 20 feet from the rear property line in accordance with the San Antonio Unified Development Code.

Staff Recommendation

Staff recommends **DENIAL of A-15-046** based on the following findings of fact:

1. In its current location the second dwelling poses an increased fire threat to adjacent, conforming properties;
2. The second dwelling unit compromises the privacy that neighboring property owners should expect to enjoy
3. There are no unique circumstances present in this case to warrant the granting of the variance.