



City of San Antonio

Agenda Memorandum

File Number:15-2056

Agenda Item Number: 4.

Agenda Date: 3/16/2015

In Control: Board of Adjustment

Case Number: A-15-051

Applicant: John Ugarte
Owner: Andy Tay (AT Acquisitions LLC)
Council District: 1
Location: 226 Wayside Street
Legal Description: Lot 29, Block 13, NCB 10176
Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Logan Sparrow, Planner

Request

A request for 1) a three foot variance from the five foot minimum side yard setback requirement, as described in Section 35-310.01, to allow a home two feet from the west side property line and 2) a two foot variance from the minimum five foot side setback, also described in Section 35-310.01, to allow a home three feet from the west side property line.

Executive Summary

The subject property is located at 226 Wayside Street Road approximately 375 feet west of Saxon Drive. When the current owner of the property purchased the home he was not told that the side yard setbacks were in violation. Considering that having non-conforming setbacks could make the eventual sale of the property more challenging, the owner of the property is seeking a variance to make the structure legal.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Greater Dellview Neighborhood Plan and is designated as low-density residential. The subject property is located within the boundaries of the Dellview Area 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 minimum setback requirements to ensure that there is adequate distance between structures to reduce the threat of fire and to ensure equal access to air and light. Per Bexar County records the home was constructed in 1954 and has remained, without expanding the footprint of the structure, since. The survey provided by the applicant shows a two foot setback from the east property line to the structure, which necessitates the first variance request. The second variance request corresponds to the three foot setback from the west property line. The required side yard setback in an "R-4" Residential Single-Family District is five feet. However, as the structure was built 61 years ago and, to date, has not generated any concern among neighbors, staff finds that the requested variance is not 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 that the applicant remove portions of the home to make the structure conforming to the side setback standards established by the Unified Development Code. As the property was built in 1954, long before its current owner purchased the home; staff finds that requiring the owner to remove a total of five feet of the house would constitute 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 intends to provide distance between structures to prevent the spread of fire and to ensure equal access to air and light. After purchasing the home, the applicant was informed that the subject property did not meet the side setback requirements. In an attempt to make the property legal, he is pursuing the variance. As the structure has been in place for many years without incident

staff finds that by granting the variance the spirit of the ordinance will be observed and substantial justice will be served.

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 “R-4 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.

The requested variance is unlikely to harm adjacent, conforming properties. The existing home was built in 1954 and has not expanded since, per Bexar County records. Staff also noted that the property line does not follow the fence line between properties. Staff noted enough spacing between the subject property and adjacent homes to reduce the threat of fire and the fencing on the property gives the look of respected setbacks. As such, staff finds that the requested variance does not negatively alter the character of the district in which it is located.

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 present in this case are that, when the house was built in 1954, it was not built to a standard which respected the mandatory five foot side yard setbacks in place today. This is not the fault of the owner of the property who purchased the home in December of 2014, 60 years after the home was built.

Alternative to Applicant’s Request

The applicant needs to remove five feet of the existing home to come into compliance with the standards established by the Unified Development Code.

Staff Recommendation

Staff recommends **APPROVAL of A-15-051** based on the following findings of fact:

1. The existing home has been in violation of the setback requirements for more than 60 years without incident and;
2. The requested variance is intended only to make the property a legal structure, not for an addition to the home and;
3. The fence line between adjacent properties still offers the look of respected setbacks.