



# City of San Antonio

## Agenda Memorandum

**File Number:**15-3430

**Agenda Item Number:** 11.

**Agenda Date:** 6/15/2015

**In Control:** Board of Adjustment

**Case Number:** A-15-101  
**Applicant:** Raymundo Martinez  
**Owner:** Raymundo Martinez  
**Council District:** 4  
**Location:** 712 Whitman Avenue  
**Legal Description:** Lots 7 & 8, Block 75, NCB 8046  
**Zoning:** "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District  
**Prepared By:** Logan Sparrow, Senior Planner

### Request

A request for a four foot variance from the required five foot accessory unit side yard setback, as described in Section 35-370(b)(1), to allow an existing accessory unit with an eave overhang to remain one foot from the side property line and 2) a two foot variance from the five foot rear setback, also described in Section 35-370(b)

(1), to allow the same accessory unit to remain three feet from the rear property line.

### Executive Summary

The subject property is located at 712 Whitman Avenue approximately 108 feet west of Kyle Street. The applicant constructed a large, two-story accessory unit in the rear of the property. In the applicant's site plan, the room is listed as a "play room". Because the structure is occupied, it must be at least five feet from the side and rear property lines. Currently, the two-story structure's eave overhang is within one foot of the side property line and three feet from the rear property line. There is another structure in the rear yard of the property in violation of the current setback requirements, however this structure was built years prior and, therefore, not the subject of this variance request. If approved, the applicant would still need to submit plans for a residential inspection to determine how best to fire rate the structure.

### 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 Nogalitos/South Zarzamora Plan and currently designated Low-Density Residential in the future land use component of the plan. The subject property is located within the boundaries of the Tierra Linda 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, these criteria are represented by setback requirements to reduce the threat of fire and to provide equal access to air and light for adjacent properties. Staff finds that having a wooden structure one foot from the side property line does create conditions by which fire could more rapidly spread to adjacent structures, especially considering the structures on the property to the west of the subject property.

**Staff finds that the request to reduce the rear setback to three feet is not contrary to the public interest as the three foot setback provides adequate distance for fire prevention, especially considering that the two-story structure is nearly 70 feet from the nearest residence.**

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

Staff is unable to determine any special conditions present on the subject property to grant a four foot variance to the side setback requirement. Had the applicant applied for a building permit, the setback issued could have been addressed prior to the construction of the structure.

**Because the rear setback is at least three feet from the rear property line, and because the nearest structure to the rear of the subject property is 70 feet away, staff finds that this is a condition which may warrant the relaxation of the rear setback requirement.**

*3. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Granting the requested side setback variance would not result in substantial justice. As a result of its wood construction, the structure poses an increased risk of fire to adjacent properties. Because it is a two-story structure, staff further finds that being located so near the side property line compromises the enjoyment of adjacent properties, especially the neighbor to the west as the structure towers over their pool.

**Substantial justice will be served by relaxing the rear setback as the structure poses no conceivable fire risk to properties behind the structure.**

*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-6 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 structure, as it exists, detracts from the essential character of the district in which it is located. Staff did not locate any other two-story accessory units within the community. The design is out of character within the community.

*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 present on the subject property to warrant the elimination of four feet of the side yard setback. The variances are requested because the structure was built without a building permit. As such, the plight of the owner was caused by the owner of the property.

#### **Alternative to Applicant’s Request**

The applicant could reduce the accessory structure to respect a three foot side yard setback on the side as they have for the rear.

#### **Staff Recommendation**

Staff recommends **DENIAL of the first variance in A-15-101 for a four foot variance from the required five foot accessory unit side yard setback**, based on the following findings of fact:

1. The existing structure compromises fair and equal access to air and light and poses an increased fire risk to adjacent property.
2. The carport is the only one in the neighborhood in violation of the setbacks and is out of character within the community

Staff recommends **APPROVAL of the second variance in A-15-101 for a two foot variance from the five foot rear setback**, based on the following findings of fact:

1. The accessory structure is 70 feet away from the nearest structure to the rear.

#### **Attachments**

Attachment 1 - Notification Plan (Aerial Map)

Attachment 2 - Plot Plan (Aerial Map)

Attachment 3 - Site Plan

Attachment 4 - Site Photos

