



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** October 21, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Amin Tohmaz, Interim Department Head

**CASE NUMBER:** BOA-24-10300130

**APPLICANT:** Aqua Verde Enterprises, Inc.

**OWNER:** Aqua Verde Enterprises, Inc.

**COUNCIL DISTRICT IMPACTED:** District 2

**LOCATION:** 419 South Hackberry Street

**LEGAL DESCRIPTION:** North 45 feet of Lot 27, Block 20, NCB 617

**ZONING:** "IDZ-2 HL AHOD" Medium Intensity Infill Development Zone Historic Landmark Airport Hazard Overlay District with uses permitted in "C-2" Commercial District and Bar and/or Tavern without cover charge 3 or more days per week.

**CASE MANAGER:** Melanie Clark, Planner

**A request for:**

1) A 4'-11" variance from the minimum 5' side setback requirement to allow a structure to have 1" side setbacks

Section 35-343.01(c)(2)(A)

2) A 4'-11" variance from the minimum 5' rear setback requirement to allow a structure to have a 1" rear setback.

Section 35-343.01(c)(2)(A)

**Executive Summary**

Subject property is located east of IH-37 and the Alamodome, on the corner intersection of Dashiell Street and South Hackberry Street. The applicant, on behalf of the property owner, is requesting

a 4'-11" side setback and a 4'-11" rear setback variance to allow a primary structure to be 1" from the side and rear property line. The property was rezoned to IDZ-2 in 2019 by Ordinance 2019-06-20-0575. An addition was added to the primary structure in 2024 without a site plan amendment that expanded the square footage of the building into the rear and side setbacks. A Major site plan amendment was approved by City Council on October 17, 2024, and Certificate of Appropriateness from the Office of Historic Preservation for exterior materials will be required upon approval of the Board of Adjustment.

### **Code Enforcement History**

No Code Enforcement history found.

### **Permit History**

The applicant has not yet applied for the building permit.

### **Zoning History**

Subject property was part of the original 36 square miles of the City of San Antonio and zoned "G" Local Retail District. The property was rezoned by Ordinance 79329 dated, December 16, 1993, from "G" Local Retail District to "R-2" Two-Family Residence District. With the adoption of the 2001 Unified Development Code (UDC), established by Ordinance 93881, on May 3, 2001, the zoning converted to "RM-4" Residential Mixed District. On April 18, 2019, the property was rezoned by Ordinance 2019-04-18-0338 from "RM-4" Residential Mixed District to the "IDZ-2" Medium Intensity Infill Development Zone with uses permitted in "C-2" Commercial District and Bar and/or Tavern without cover charge 3 or more days per week.

### **Subject Property Zoning/Land Use**

#### **Existing Zoning**

"IDZ-2 HL AHOD" Medium Intensity Infill Development Zone Historic Landmark Airport Hazard Overlay District with uses permitted in "C-2" Commercial District and Bar and/or Tavern without cover charge 3 or more days per week.

#### **Existing Use**

Bar/Tavern

### **Surrounding Property Zoning/ Land Use**

#### **North**

##### **Existing Zoning**

"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District.

##### **Existing Use**

Residential

#### **South**

##### **Existing Zoning**

"C-2 AHOD" Commercial Airport Hazard Overlay District

##### **Existing Use**

Bar

#### **East**

**Existing Zoning**

“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District

**Existing Use**

Residential

**West****Existing Zoning**

“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District

**Existing Use**

Residential

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Eastside Community Area Plan and is designated as “Neighborhood Mixed Use” in the future land use component of the plan. The subject property is located within the notification area of the Denver Heights Neighborhood Association, and they have been notified of the request.

**Street Classification**

South Hackberry is classified as a Secondary Arterial Type B.

Dashiell Street is classified as a local road.

**Criteria for Review – Side and Rear Setback Variance**

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.*

In this case, the public interest is represented by setback requirements to prevent interference with building fire codes. As a corner lot, the variance does not provide sufficient distance from neighboring lots and roadway.

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

Staff has not found special conditions existing on the subject property that would warrant the need for the side and rear setback variance as sufficient space exists for the proposed development.

*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 defined as the intent of the code, rather than the exact letter of the law. The granting of this variance will not observe the spirit of the ordinance as the required setbacks will prevent overdevelopment and maintain a safe distance from neighboring lots.

*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 allowed within the district will be allowed with this variance.

*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.*

If granted, a structure will be 1” from the side and rear property lines. This will injure the appropriate use of adjacent conforming properties, directly altering 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 finds the plight of the owner of the property for which the side and rear setback variances are not sought is due to unique circumstances existing on the property as a reasonably sized development can be established on the lot.

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

The alternative to the applicant's request is to conform to the IDZ-2 side and Setback Regulations of Section 35-343.01(c)(2)(A) of the Unified Development Code

#### **Staff Recommendation – Side and Rear Setback Variance**

Staff recommends Denial in BOA-24-10300130 based on the following findings of fact:

1. The variance does not provide sufficient distance from neighboring lots and roadway.
2. The variance will injure the appropriate use of adjacent conforming properties, directly altering the essential character of the district.