

Case Number:	BOA-23-10300303
Applicant:	Jose Sepulveda
Owner:	Jose Sepulveda
Council District:	2
Location:	1722 North Olive Street
Legal Description:	South 33.9 feet of Lot 8 and north 5.3 feet of Lot 1, Block A, NCB 486
Zoning:	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Colton Unden, Planner

**Request**

A request for a half story variance from the maximum 2.5 stories, as described in Section 35-310.01, to allow a rooftop deck.

**Executive Summary**

The subject property is located along North Olive Street, east of Broadway Street and is currently a vacant lot. Prior to construction, the applicant is requesting a variance from “R-6” standards to have a structure at 3 stories to allow a deck on an otherwise 2.5 story building. Half stories are prohibited from open decks, or porches.

**Code Enforcement History**

There is no relevant code history for the subject property.

**Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment.

**Zoning History**

The property was part of the original thirty-six (36) square miles of the City of San Antonio and was originally zoned “D” Apartment District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “D” Apartment District converted to “MF-33” Multi-Family District. The property was rezoned by Ordinance 2010-11-04-0971, dated November 4, 2010 to “R-6” Residential Single-Family District.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-6 AHOD” Residential Mixed Airport Hazard Overlay District	Vacant Lot

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“IDZ AHOD” Infill Development Permitting (2) Residential Single-Family Units Airport Hazard Overlay District	Single-Family Dwellings

South	“RM-5 AHOD” Residential Mixed Airport Hazard Overlay District	Multi-Unit Development
East	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Government Hill Community Plan and is designated as “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Government Hill Alliance Neighborhood Association, and they have been notified of the request.

**Street Classification**

North Olive Street is classified as a local road.

**Criteria for Review – Half Story Variance for a Rooftop Deck**

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 the 2.5 story maximum requirement. The applicant is requesting a variance to allow a deck. An open deck or porch is otherwise prohibited on half stories. The variance does not appear to impose on the public interest of the adjacent neighbors, as the deck is mostly enclosed, and the property will still be conforming to height requirements and setbacks.**

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

**The special condition found is the deck being mostly closed on a structure that would otherwise be in conformity with the 2.5 stories requirement. A literal enforcement of the ordinance would result in an unnecessary hardship, as abiding by the story requirement would eliminate substantial space on the floor in question.**

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 structure will be observing the spirit of the ordinance, as it will be abiding by all other height and setback requirements as well as not imposing on the public interest of the adjacent neighbors.**

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.*

**The granting of the variance will not substantially injure the appropriate use of adjacent conforming properties or alter the essential character of the district in which the property is located. Upon site visits, staff observed numerous structures in the immediate vicinity that had similar height and story composition. The request is not out of character due to these observations.**

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 variance is sought is due to unique circumstances due to limited buildable area and the classification of the deck. The circumstances do not appear to be merely financial.**

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

The alternative to the applicant's request is to conform to the Lot and Building Dimensions and Height of the UDC Section 35-310.01.

### **Staff Recommendation – Half-Story Variance for a Deck**

Staff recommends **Approval** in **BOA-23-10300303** based on the following findings of fact:

1. The usage of a half-story variance to allow a deck does not appear to impose on the public interest of the adjacent neighbors, as the structure will follow all other height and setback requirements, and
2. The request will not alter the essential character of the district.