

Case Number:	BOA-22-10300174
Applicant:	Hector Santiago
Owner:	Hector R. Santiago
Council District:	5
Location:	606 East Hart Avenue
Legal Description:	Lot 3, Block 21, NCB 7760
Zoning:	"R-5 AHOD" Residential Single Family Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

Request

A request for a 3' variance from the minimum 5' side setback requirement, as described in Section 35-371(b)(7), to allow an Detached Accessory Dwelling Unit with overhang and gutters to be 2' from the side property line.

Executive Summary

The subject property is located on East Hart Avenue in proximity to Mission Road and contains a single-family residence with a detached accessory structure. The applicant begun to convert the structure into an Accessory Detached Dwelling Unit (ADDU) without obtaining a permit, however there was no code investigation initiated. A permit application and building plans were submitted to Development Services Department in early 2022 for the conversion. During the review process, staff noticed that the structure is only 3' from the side property line with a 1' overhang. While the structure is existing, a variance is required due to the work being completed on the structure. Issuance of the permit is on hold pending the outcome of the hearing. The property owner resides on the property.

Code Enforcement History

There are no code enforcement investigations for the property.

Permit History

A building permit application for the conversion of a structure into an Accessory Detached Dwelling Unit (ADDU) was submitted on January 20, 2022. The issuance of the permit is pending the outcome of the Board of Adjustment hearing.

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 1391, dated September 23, 1944, and was zoned "D" Apartment District. The property was rezoned by Ordinance 61454 dated September 19, 1985 to "R-5" Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "R-5" Single-Family Residence District converted to the current "R-5" Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-5 AHOD" Residential Single Family Airport Hazard Overlay District	Single-Family Residence

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-5 AHOD" Residential Single Family Airport Hazard Overlay District	Single-Family Residence
East	"R-5 AHOD" Residential Single Family Airport Hazard Overlay District	Single-Family Residence
West	"R-5 AHOD" Residential Single Family Airport Hazard Overlay District	Vacant Lot

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the South Central Community Plan and is designated "Low Density Residential" in the future land use component of the plan. The subject property is located within the St. Leos Neighborhood Association and were notified of the case.

Street Classification

East Hart is classified as a local road.

Criteria for Review - Variances

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. The applicant is proposing to convert an existing detached accessory structure into an Accessory Detached Dwelling Unit (ADDU). It will maintain the existing side setback of 3' for the structure and 1' of overhang. All other ADDU requirements will be met include the rear setback therefore the request does not appear to be 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 ordinance would result in the applicant having to move the structure to maintain the 5' side setback or demolition of the structure to rebuild. There is limited space to move the structure away from the side property line which may present 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 is defined as the intent of the code, rather than the exact letter of the law. A 2' side setback appears to provide adequate space from the side property line and adjacent structures. In addition, the structure will meet the minimum rear setback requirement and all other ADDU regulations which observes the spirit of the ordinance.

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.*

Staff finds the request for a 3' variance from the side setback requirement allows the structure to maintain adequate spacing to the side property line. Additionally, the structure will have gutters installed therefore the request is not likely to negatively affect the adjacent property.

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 existing on the property. The detached structure has been in its current location for some time. The request does not appear merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Accessory Dwellings per the UDC Section 35-371(b)(7).

Staff Recommendation – Side Setback Variance

Staff recommends **Approval** in **BOA-22-10300174** based on the following findings of fact:

1. The detached structure is existing and is 2' away from the side property line; and
2. The structure currently meets the minimum rear setback requirement and requirements for Detached Accessory Dwelling Units; and
3. The structure does not appear to alter the essential character of the district.