



City of San Antonio

Agenda Memorandum

Agenda Date: March 18, 2024

In Control: Board of Adjustment Meeting

DEPARTMENT: Development Services Department

DEPARTMENT HEAD: Michael Shannon

CASE NUMBER: BOA-24-10300023

APPLICANT: Miguel Aguinaga

OWNER: Miguel and Athena Aguinaga

COUNCIL DISTRICT IMPACTED: District 7

LOCATION: 9947 Fall Harvest

LEGAL DESCRIPTION: Lot 43, Block 7, NCB 19065

ZONING: “R-5” Residential Single-Family District

CASE MANAGER: Alfonso Camacho, Senior Planner

A request for

1) A 4’-11” variance from the minimum 5’ side setback to allow a 1” side setback on both sides. (UDC Section 35-310.01)

Executive Summary

The subject property is located along Fall Harvest, located on the far west side of San Antonio. The applicant is requesting a 4’-11” variance from the minimum 5’ side setback to allow attached patio covers to be 1” away from both the western and eastern side of the property lines. There was a violation issued by code compliance for the eastern patio cover being constructed prior to the issuance of a permit. Upon staff site visits, it was observed that a similar patio cover was constructed on the western side of the property as well. The western addition appears to have been built after May 2019, but prior to November 2021. No other similar setbacks were observed in the area.

Code Enforcement History

INV-PBP-24-3100000061 - PMT-Building Without a Permit 1/5/2024

Permit History

The applicant has not yet applied for the building permit.

Zoning History

The property was annexed into the City of San Antonio by Ordinance 79038, dated December 30, 1993, and zoned Temporary “R-1” Single Family Residence District. Ordinance 80810 dated September 22, 1994, rezoned the property from “R-1” Single Family Residential District to the current “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 was converted to “R-5” Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning

“R-5” Residential Single-Family District

Existing Use

Single Family Dwelling

Surrounding Property Zoning/ Land Use

North

Existing Zoning

“R-5” Residential Single-Family District

Existing Use

Single Family Dwelling

South

Existing Zoning

“R-5” Residential Single-Family District

Existing Use

Single Family Dwelling

East

Existing Zoning

“R-5” Residential Single-Family District

Existing Use

Single Family Dwelling

West

Existing Zoning

“R-5” Residential Single-Family District

Existing Use

Single Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Northwest Community Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is not located within the boundary of a registered neighborhood association.

Street Classification

Fall Harvest is classified as a Local Road.

Criteria for Review –Side 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.*

The public interest is defined as the general health, safety, and welfare of the public. The attached patio covers would be 1” from the side property line and is contrary to the public interest as it does not provide space for maintenance and would cause rainwater would drain into abutting property.

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

A literal enforcement of the ordinance would not result in unnecessary hardship as the applicant could redesign the attached patio covers to comply with the ordinance.

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. Reducing the side setback requirement would injure neighboring properties, as the attached patio covers are too close to the adjacent property and would cause excess water runoff.

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 side setback would alter the essential character of the district by not adhering to the required setbacks. No similar setbacks were observed in the area.

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 side setback variance is not sought due to unique circumstances existing on the property as the construction of the attached patio covers were done without permits.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the setback requirements of the UDC Section 35-310.01.

Staff Recommendation – Side Setback Variance

Staff recommends Denial in BOA-24-10300023 based on the following findings of fact:

1. The attached patio covers will be too close to the side property line causing possible water runoff on the adjacent neighboring property; and
2. No other similar setbacks were observed in the area.