

Case Number:	BOA-22-10300039
Applicant:	Gabriel Gonzales
Owner:	Gabriel Gonzales
Council District:	1
Location:	612 Leigh Street
Legal Description:	Lot A10, NCB 2739
Zoning:	“R-5 H AHOD” Residential Single-Family Historic Lavaca Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

Request

A request for a 14' 7” variance from the minimum 20' rear setback requirement, as described in Section 35-310, to allow an addition to be 5' 3” from the rear property line.

Executive Summary

The subject property is located along Leigh Street in the Historic Lavaca District and has a single-family residence on the lot. The applicant is proposing to construct an addition to the existing single-family dwelling. The proposed addition has been heard by the Historic Design Review Commission and has received approval to construct a two (2) story room addition to the rear of the existing residence. Construction has not commenced for the proposed structure and the applicant has indicated the structure will have 5’ 3” to the rear property line. Since the addition will become part of the primary dwelling unit, it is required to maintain a setback of 20’ from the rear property line. Building plans for the construction have been submitted and reviewed, which prompted the variance application submittal.

Code Enforcement History

There are no code violations reported for the property.

Permit History

An application for an addition was submitted on October 5, 2021. The issuance of the permit is pending the outcome of the Board of Adjustment hearing due to a hold on the zoning and building reviews.

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “D” Apartment District. The property was rezoned by Ordinance 74924, dated December 9, 1991, 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 H AHOD” Residential Single-Family Historic Lavaca Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“IDZ AHOD” Infill Development Zone Airport Hazard Overlay District	Single-Family Residence
South	“R-5 H AHOD” Residential Single-Family Historic Lavaca Airport Hazard Overlay District	Single-Family Residence
East	“R-5 H AHOD” Residential Single-Family Historic Lavaca Airport Hazard Overlay District	Single-Family Residence
West	“R-5 H AHOD” Residential Single-Family Historic Lavaca Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Downtown Area Regional Center Plan and is designated “Urban Low Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Lavaca Neighborhood Association, and they have been notified of the request.

Street Classification

Leigh Street is classified as a local road.

Criteria for Review – 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.*

The public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance for the rear setback to allow an attached addition to be 5’ 3” from the rear property line. The request appears to be contrary to the public interest as the structure will be too close to the rear property line.

The alternate would be for the applicant to construct the structure to be 10’ from the rear property line. This would reduce water run off to adjacent properties along with the reduction of a fire hazard to those properties.

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 build the attached structure twenty feet from the rear property line, which results in unnecessary hardship as the property is small in size and shaped irregularly thus, the square footage of the proposed structure would be reduced significantly.

Staff finds the unnecessary hardship is significant enough to allow a 10’ setback to the rear property line. This will provide for adequate space and will accommodate the small and irregular size/shape of the lot.

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 proposed structure would be 5' 3" from the rear property line, which does not observe the spirit of the ordinance due to the inadequate spacing between the structure and the rear property line.

The spirit of the ordinance will be observed with a 10' rear setback since it will allow reasonable space between the new structure and the rear property line.

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, the addition will maintain 5' 3" from the rear property line, which is likely to alter the essential character of the district.

The alternate recommendation of a 10' rear setback does not appear to alter the essential character of the district, nor will it injure adjacent properties. The alternate recommendation appears to align more closely with the existing character of the district as there are other properties in the neighborhood that do not meet the rear setback requirements.

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 unique circumstances include the size and shape of the lot. 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 setback requirements of the UDC Section 35-310.

Staff Recommendation – Rear Setback Variance

Staff recommends Denial **with Alternate Recommendation of a 10' variance to allow an attached addition to be 10' from the rear property line in BOA-22-10300039** based on the following findings of fact:

1. The structure has not been constructed; and
2. The structure conforms to the side setback requirement; and
3. The structure being proposed 5' 3" from the rear property line appears to alter the essential character of the neighborhood; and
4. Adjusting the setback of the addition to be 10' from the rear property will allow for an addition while providing adequate space from adjacent properties and structures.