

Case Number:	BOA-22-10300250
Applicant:	Ana Costa
Owner:	Dadeland LLC
Council District:	1
Location:	330 West Hermosa Drive
Legal Description:	Lot 13, Block 6, NCB 9194
Zoning:	“R-5 AHOD” Residential Single-Family Airport Hazard Overlay District
Staff Representative:	Mirko Maravi, Principal Planner

Request

An appeal of the Principal Planner’s decision of Denial for a Nonconforming Use Registration for Dwelling – Two (2) Family, located at 330 West Hermosa Drive.

Applicable Code References

Article VII, Division 1 – Nonconforming Uses

Sec. 35-701. - Purpose

The purpose of this division is to protect the rights of property owners who have lawfully established, and continuously maintained in a lawful manner, a use prior to the adoption of this chapter or prior to any amendment to this chapter which would otherwise render such use unlawful. A nonconforming use or structure that was recognized prior to the adoption of this chapter shall continue to operate under the provision of law under which the nonconforming structure or use was recognized so long as the nonconforming use or structure is not in violation of such provision of law, the adoption of this chapter notwithstanding.

Sec. 35-702. - Continuing Lawful Use of Property and Structures

(a)(1) [Defined as] On the effective date of the ordinance from which this chapter is derived was lawfully operated as a nonconforming use in accordance with the provisions of any prior zoning ordinances.

(b)(1) [Limitations] Nonconforming Uses. The lawful use of land existing as of the effective date of this chapter, or a lawful use which becomes nonconforming because of an amendment to this chapter, may be continued as provided in this section.

Sec. 35-705. – Certificate of Nonconforming Use

(b)(c) Denial of Registration. The director of planning and development services may deny any registration if it appears that the documents relied thereon are not valid, or that the documents produced to not show the existence of a prior nonconforming use in accordance with the criteria set forth in subsection (1), above. The applicant may appeal this determination to the city in accordance with section 35-481 of this chapter.

Sec. 35-311 – Use Regulations

Table 311-1 – Residential Use Matrix

Unified Development Code, Chapter 35, Section 35-311, Table 311-1, “Residential Use Matrix”

Permitted Use	RP	RE	R-20	NP-15	NP-10	NP-8	R-6	RM-6	R-5	RM-5	R-4	RM-4	R-3, R-2, R-1	MF-18	MF-25	MF-33	MF-40	MF-50, MF-65	ERZD	LBCS
Dwelling – 2 Family								P		P		P		P	P	P	P	P	P	1000

Executive Summary

The subject property is located in a residential neighborhood a mile northwest of the intersection of San Pedro Avenue and West Hildebrand Avenue. The property contains a single-family residence and a detached structure. According to Bexar County Appraisal District, the single-family residence was built in 1950. At this time, the property had a zoning designation of “A” Single-Family Residence District under the 1938 local zoning code which permitted a maximum of one (1) dwelling unit. This confirms that the use of a single-family residence was legally established. The Unified Development Code (UDC) was adopted in 2001 under Ordinance 93881, dated May 3, 2001, which converted “A” Single-Family Residence District to the current “R-5” Residential Single-Family District. The maximum number of dwelling units permitted did not change subsequent to the conversion. Establishment of any additional units would require a rezoning.

An accessory detached dwelling unit (ADDU) pursuant to Section 35-371 of the UDC is permitted under the “R-5” base zoning district. There are several requirements to be considered an ADDU, including but not limited to owner occupancy and having the ADDU connected to the central electrical, water and sewer system of the principal structure. A CPS Energy letter confirmed that the meter for 332 W Hermosa was installed in October 2001. During this time, a meter to a ADDU was prohibited and may have been installed erroneously. A Special Warranty Deed obtained through the Bexar County Clerk’s Office lists the property has having a “home, carport, shop and garage apartment on the property”. A garage apartment is often a term to describe an ADDU. The deed did not contain information about a second unit. In addition, the Addressing Division at Development Services Department does not have record of the address/address assignment of 332 W. Hermosa.

The Nonconforming Use Registration application for two (2) family dwelling units was submitted in June 2022 following Code Investigation. The code case was initiated December of 2021 due to a violation of the residential zone district. On January 7, 2022, the code officer observed two egresses for the residential property with one being marked “330” W. Hermosa and the other being marked as “332” W. Hermosa. The code officer assigned to the case inspected the property on March 23, 2022 and noticed that the property remained in violation. Code

Enforcement continued to inspect the property during the following months and noted that it remained in violation.

Research conducted by staff determined that the use Dwelling – Two (2) Family was not eligible for nonconforming due as it was not legally established. Following the denial of the nonconforming use registration, the applicant submitted an appeal to be heard by the Board of Adjustment.

Code Enforcement History

December 31, 2021 - INV-ZRD-21-3170003993 - Initial Code complaint received by code enforcement for two units in an R-5 district. Case was closed due to change in Code Officer.

March 23, 2022 - INV-ZRD-22-3170000705 – Hand delivery of citation for residential zoning violation. Case remains open pending hearing.

March 23, 2022 – COD-ADH-REQ22-43900734 – Administrative hearing was continued to January 17, 2023, at 10am. Case remains open pending hearing.

Permit History

There are no permits on file for this property.

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 1941 dated May 31, 1940. The property was given a zoning designation of “A” Single-Family Residence District by Ordinance 3380 dated May 2, 1946. The property was converted by 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, to the current “R-5” Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-5” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence with detached structure

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-5” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
South	“R-5” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
East	“R-5” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

West	“R-5” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
------	---	-------------------------

Board of Adjustment

The Board of Adjustment is asked to determine whether the Denial of Nonconforming Use registration is warranted per Section 35-701 *Purpose*, Section 35-702 (a) *Nonconforming Use Defined*, (b) *Limitations on Nonconforming Uses* (1) *Nonconforming Uses*, Section 35-311 *Use Regulations*, and Table 311-1 *Residential Use Matrix*. The Board of Adjustment has the authority to review and consider the appeal, investigate facts, weigh evidence, and draw conclusions. The Board may reverse or affirm, in whole or in part, the administrative decision brought forward by the appellant and discussed in this report.

If the Board reverses Staff’s decision, and approves the appeal, the owner will be allowed to operate a “Dwelling – Two (2) Family” use on the property. Specifically, this means (2) two detached dwelling units would be permitted.

Staff Recommendation

Staff concludes that the Denial of a Nonconforming Use Registration is the correct course of action, based on the following findings of fact:

- 1) The use was not lawfully established; and
- 2) The district does not authorize the use of two-family dwellings.