

City of San Antonio Board of Adjustment

Regular Public Hearing Agenda

Monday, July 21, 2014

1:00 P.M.

Cliff Morton Development and Business Services Center

Anytime during the public hearing, the Board of Adjustment may meet in Executive Session to consult on attorney-client matters (real estate, litigation, personnel and security matters), as well as to discuss any of the agenda items. This notice was posted on the Development Services Department website (www.sanantonio.gov/dsd), and the City Hall kiosk, at least seventy-two (72) hours prior to this public hearing, in compliance with the Texas Open Meetings Act.

1. **1:00 PM** - Public Hearing – Call to Order
2. Roll Call
3. Pledges of Allegiance
4. **A-14-080 (WITHDRAWN):** The request of Jillian-Marie N. Garland for a 3-foot variance from the minimum 5-foot setback for an addition 2 feet from the west side property line, located at 8039 Misty Breeze. (Council District 6)
5. **A-14-078:** The request of Michael A. Perez for 1) a 5-foot variance from the 5-foot setback for a structure on the east side property line and 2) a 17-foot variance from the 20-foot setback from the sidewalk for a garage 3 feet from the sidewalk, located at 330 Mission Street. (Council District 1)
6. **A-14-079:** The request of Eduardo Pelayo for a 5-foot variance from the minimum 5-foot sideyard setback to allow an elevated deck on the property line, located at 4503 Mascota. (Council District 5)
7. Briefing on the Board of Adjustment's appointment to the Planning Commission's Technical Advisory Committee by Christopher J. Looney AICP, Policy Administrator for Development Services Department.
8. Approval of July 7, 2014 Board Meeting Minutes
9. Announcements and Adjournment

ACCESSIBILITY STATEMENT - This meeting site is accessible to persons with disabilities. Parking is available. Auxiliary aids and services, including Deaf interpreters, must be requested forty-eight [48] hours prior to the meeting. For assistance, call (210) 207-7268 or 711 (Texas Relay Service for the Deaf).

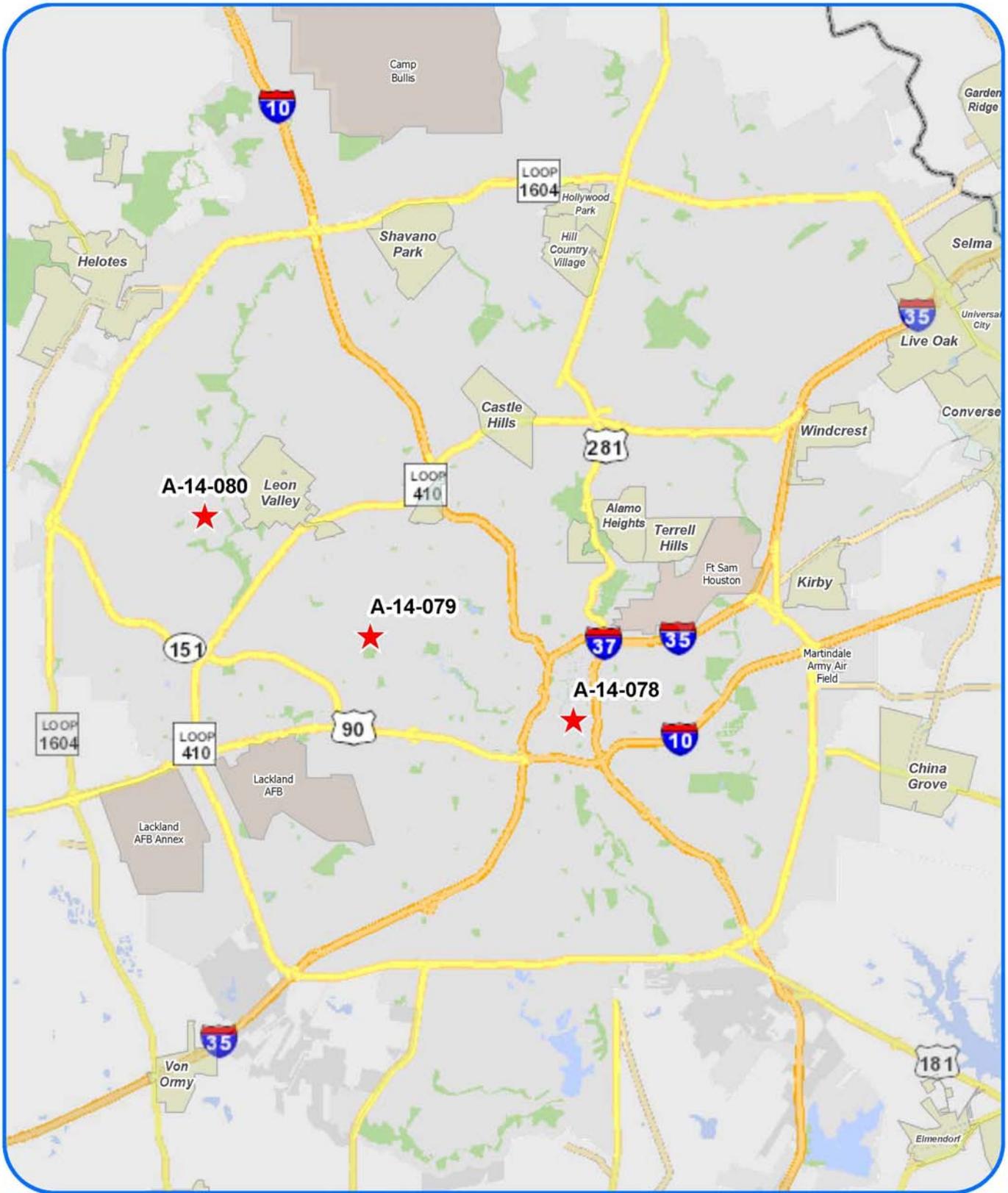
DECLARACIÓN DE ACCESIBILIDAD – Este lugar de la reunión es accesible a personas incapacitadas. Se hará disponible el estacionamiento. Ayudas auxiliares y servicios y interpretes para los sordos se deben pedir con cuarenta y ocho [48] horas de anticipación al la reunión. Para asistencia llamar a (210) 207-7268 o al 711 (servicio de transmitir para sordos).

Board of Adjustment Membership

Andrew Ozuna, District 8, Chair Mary Rogers, District 7, Vice Chair
Frank Quijano, District 1 • Alan Neff, District 2 • Gabriel Velasquez, District 3 • George Britton, District 4
Maria Cruz, District 5 • Jesse Zuniga, District 6 • John Kuderer, District 9 • Roger Martinez, District 10
Gene Camargo, Mayor

Alternate Members

Harold Atkinson • Paul E. Klein • Henry Rodriguez • Lydia Fehr • Jeffrey Finley • Christopher Garcia



Board of Adjustment

**Subject Property Locations
Cases for 21st July 2014**



Development Services Dept.
City of San Antonio



City of San Antonio Development Services Department Staff Report

To: Board of Adjustment
Case No.: A-14-078
Date: July 21, 2014
Applicant: Michael A. Perez
Owner: Michael A. Perez
Location: 330 Mission Street
Legal Description: 0.12 acre out of Lot 35, NCB 944
Zoning: "RM-4 H HS AHOD" Residential Mixed King William Historic Historic Significant Airport Hazard Overlay District
Prepared By: Tony Felts, Planner

Request

A request from Table 310-1 for 1) a 5-foot variance from the 5-foot setback for a structure on the east side property line and 2) a request from Section 35-516(g) for a 17-foot variance from the 20-foot setback from the sidewalk for a garage 3 feet from the sidewalk.

Procedural Requirements

A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 of the Unified Development Code ("UDC"). Notices were sent to property owners and registered neighborhood associations within two hundred (200) feet of the subject property on or before July 2, 2014. The application was published in The Daily Commercial Recorder, an official newspaper of general circulation, on July 3, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before July 18, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

Executive Summary

The subject property is located at the northeast corner of Mission Street and Stieren Street.

The site is currently developed with an historic single-family residence which was constructed in 1920. The applicant wishes to construct a detached garage to the rear of the single-family residence with access to Stieren Street. The garage is proposed to measure 18 feet, 2 inches wide and 22 feet deep, and will encroach into the required side yard area, as well as the required 20-foot area between the sidewalk and the front of the garage.

The existing single-family residence is a non-conforming structure that currently sits on the property line, in-line with the proposed garage. The Historic and Design Review Commission reviewed and approved the proposed garage on May 7, 2014.

The proposed garage does not affect clear vision area of the adjacent residential property at 403 Stieren Street, and the proposed structure also does not encroach into the required rear yard setback.

If the variance were to be approved, the Plan Review section has indicated that the applicant would not be required to provide a fire-rated wall because the garage abuts Stieren Street.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“RM-4 H HS AHOD” Residential Mixed King William Historic Historic Significant Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 H HS AHOD” Residential Mixed King William Historic Historic Significant Airport Hazard Overlay District	Single-Family Residence
South	“RM-4 H HS CD AHOD” Residential Mixed King William Historic Historic Significant Airport Hazard Overlay District with a Conditional Use for a five-unit apartment building	Apartments
East	“RM-4 H HS AHOD” Residential Mixed King William Historic Historic Significant Airport Hazard Overlay District	Single-Family Residence
West	“RM-4 H HS S AHOD” Residential Mixed King William Historic Historic Significant Airport Hazard Overlay District with a Specific Use Authorization for a Bed and Breakfast	Single Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is located within the Downtown Neighborhood Plan (designated as Residential). The subject property is located within the boundaries of King William

Neighborhood Association, a registered neighborhood association; as such, they were notified and asked to comment.

Criteria for Review

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:*

Building setbacks are designed to preserve adequate access, access to light and air, and preserve public safety by ensuring proper separation of buildings. The 20-foot setback for garages is designed to keep sidewalks clear of vehicles parked in front of the garage. **The proposed garage is located in an historic area, the development of which pre-dates any of the development codes which are currently in place today. The garage will be in line with the existing home, and no structures are impacted due to this being a corner lot. As such, the variance is not contrary to the public interest.**

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

The yard on the subject property is not very deep, and the width of the property is approximately 50 feet. **Given the depth of the proposed garage and the requirement that it be 20 feet back from the sidewalk, most of the applicant's back yard would be occupied with either a garage or a driveway, leaving little, if any, open green space. Additionally, given the fact the single-family residence is already on the side property line, the addition of the garage would not affect the character of the lot as viewed from Stieren Street.** As such, special conditions exist on the property to warrant the granting of the requested variances.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The spirit of the ordinance will be observed by granting the variance as the garage will not adversely affect other adjacent properties and will preserve open space in the rear yard.

4. *Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "RM-4" Residential Mixed base zoning district.

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 proposed garage will maintain the minimum 5-foot setback along the rear of the property. Additionally, given that this property is a corner lot, and the fact that the existing single-family residence is already non-conforming (and that the variance will not increase the non-conformity), there should be no adverse impact to adjacent conforming properties.

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.*

There are unique circumstances readily apparent to warrant the granting of the requested variances, and these circumstances are the result of the size and orientation of the property, and were not created by the owner.

Alternatives to Applicant's Request

The alternative to the applicant's request is to construct the carport to meet the side yard setback and the 20-foot garage setback, however, this would leave little to no open green space in the rear yard.

Staff Recommendation

Staff recommends **approval of A-14-078** because of the following reasons:

- The proposed garage will be in line with the existing non-conforming single-family residence on the property.
- Movement of the garage to meet the 20-foot setback from the sidewalk would take up the entire rear yard of the property with buildings and driveways.

Attachments

Attachment 1 – Notification Plan (Location Map)

Attachment 2 – Plot Plan

Attachment 3 – Applicant's Site Plan

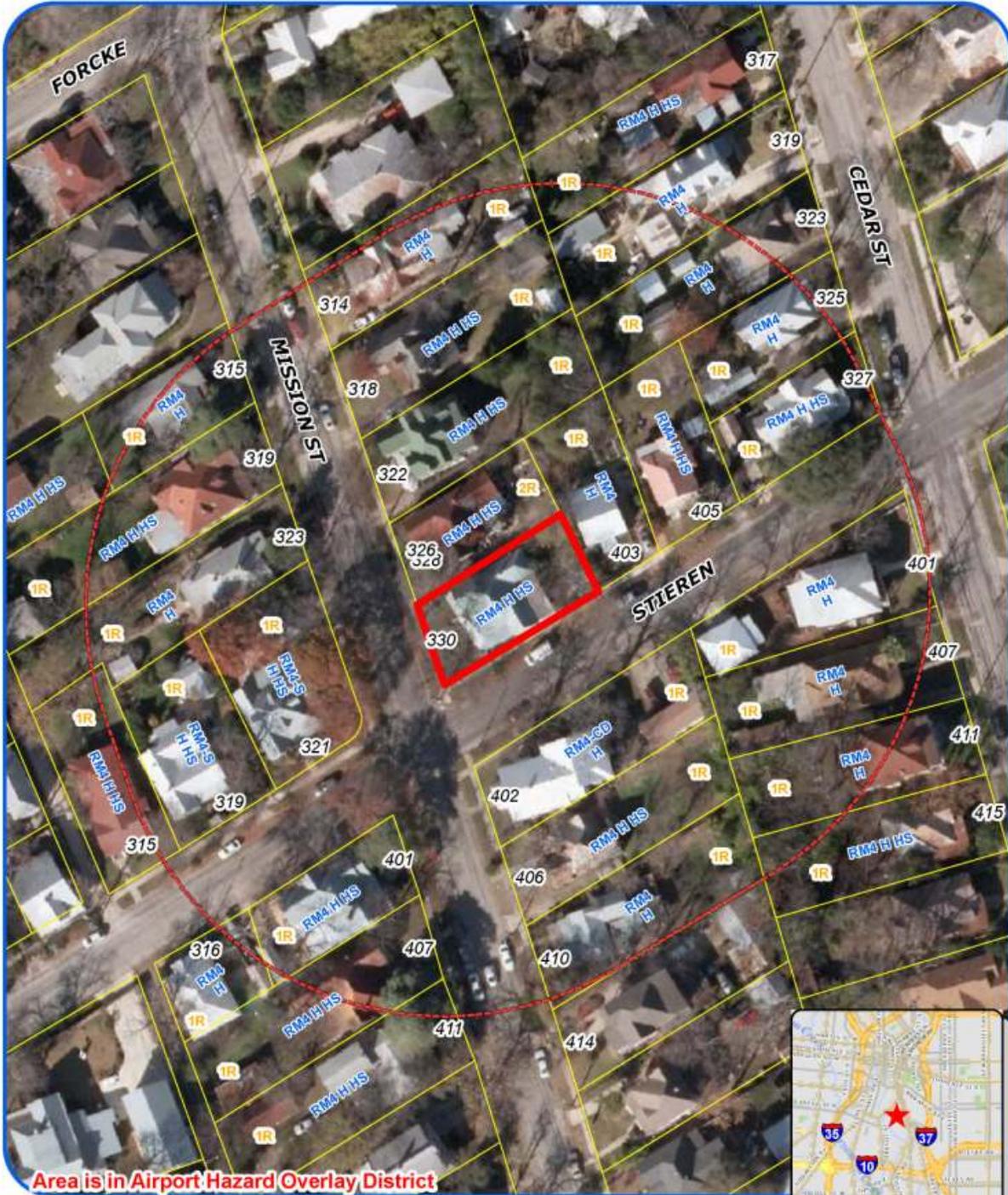
Attachment 4 – Applicant's Proposed Elevation

Attachment 5 – Site Photos

Attachment 1 Notification Plan



**Attachment 1 (Continued)
Notification Plan**



Area is in Airport Hazard Overlay District

**Board of Adjustment
Notification Plan for
Case No A-14-078**



- San Antonio City Limits
- Subject Property
- 200' Notification Boundary
- Council District 1



*NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY*

Development Services Department
City of San Antonio

**Attachment 2
Plot Plan**



Variance Request:

- 1) A 5-foot variance from the 5-foot setback for a structure on the east property line and
- 2) a 17-foot variance from the 20-foot setback from the sidewalk for a garage 3 feet from the sidewalk.

Board of Adjustment
Plot Plan for
Case No A-14-078



"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 1

330 Mission Street

Development Services Department
City of San Antonio

Attachment 2 (Continued)
Plot Plan



Variance Request:

- 1) A 5-foot variance from the 5-foot setback for a structure on the east property line and
- 2) a 17-foot variance from the 20-foot setback from the sidewalk for a garage 3 feet from the sidewalk.

Board of Adjustment
Plot Plan for
Case No A-14-078

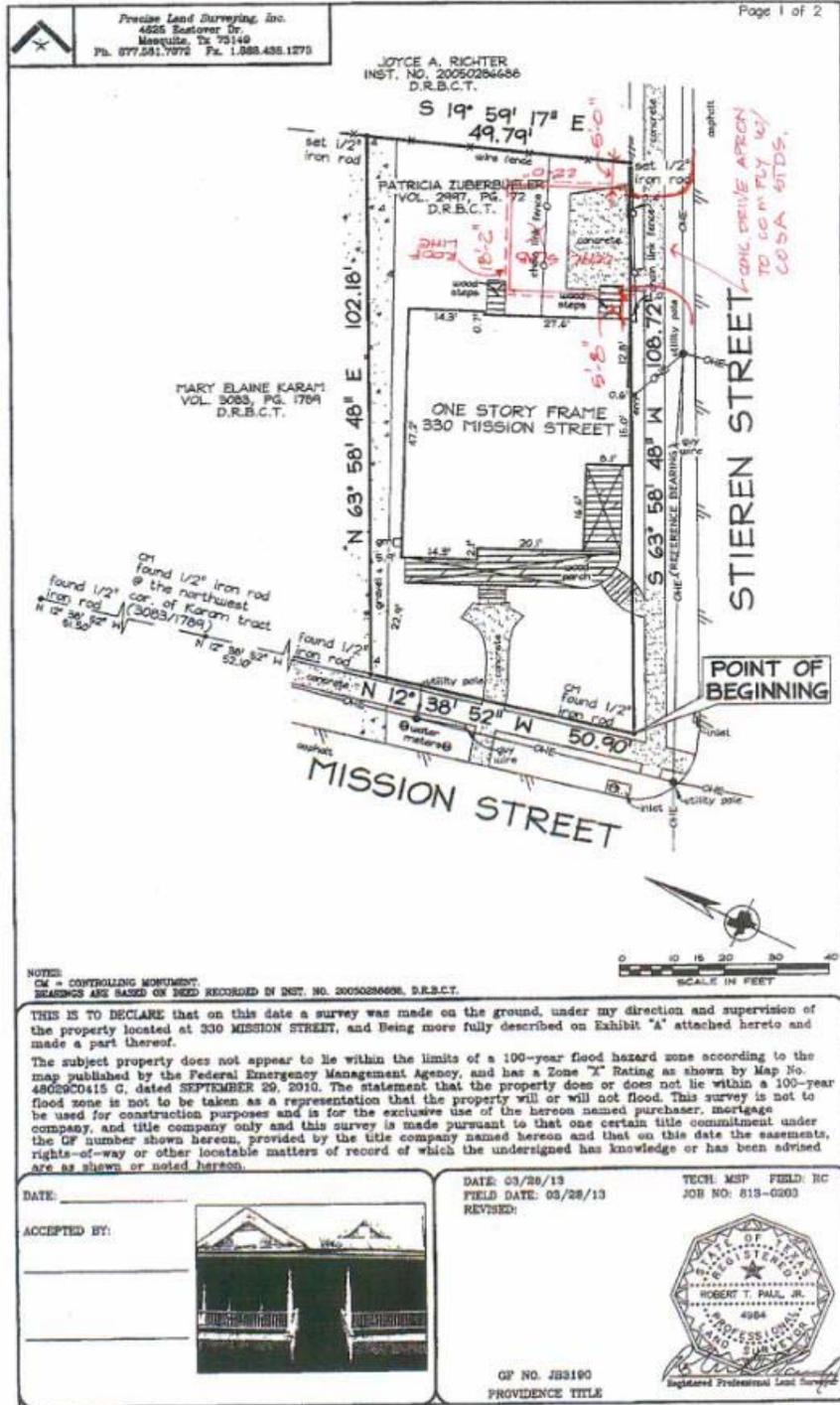


"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 1

330 Mission Street

Development Services Department
City of San Antonio

Attachment 3 Applicant's Site Plan



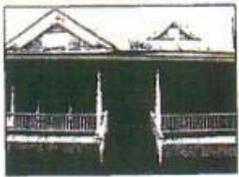
NOTES:
CM = CONTROLLING MONUMENT.
READINGS ARE BASED ON DEED RECORDED IN INST. NO. 20050286686, D.R.B.C.T.

THIS IS TO DECLARE that on this date a survey was made on the ground, under my direction and supervision of the property located at 330 MISSION STREET, and Being more fully described on Exhibit "A" attached hereto and made a part thereof.

The subject property does not appear to lie within the limits of a 100-year flood hazard zone according to the map published by the Federal Emergency Management Agency, and has a Zone "X" Rating as shown by Map No. 48069CD415 G, dated SEPTEMBER 29, 2010. The statement that the property does or does not lie within a 100-year flood zone is not to be taken as a representation that the property will or will not flood. This survey is not to be used for construction purposes and is for the exclusive use of the hereon named purchaser, mortgage company, and title company only and this survey is made pursuant to that one certain title commitment under the GF number shown hereon, provided by the title company named hereon and that on this date the easements, rights-of-way or other locatable matters of record of which the undersigned has knowledge or has been advised are as shown or noted hereon.

DATE: _____

ACCEPTED BY: _____



DATE: 03/28/13
FIELD DATE: 03/28/13
REVISED: _____

TECH: MSP
FIELD: HC
JOB NO: 813-0203



GF NO. J83190
PROVIDENCE TITLE

Attachment 4
Applicant's Proposed Elevation



330 Mission St
VIEW FROM STIEREN ST.

LEBAN IDENTIFICATION
NCD 944 B/LK
108.72 sq 33
LOT 5W
110640
ZONED R174 H HS

ARCHITECT'S COPY



Exp. 01, 22, 84

BACKYARD PAVILION
330 MISSION, SAN ANTONIO

**Attachment 5
Site Photos**





City of San Antonio Development Services Department Staff Report

To: Board of Adjustment
Case No.: A-14-079
Date: July 21, 2014
Applicant: Eduardo Pelayo
Owner: Eduardo Pelayo
Location: 4503 Mascota
Legal Description: Lots 1 & 2, Block 7, NCB 8317
Zoning: "R-5 AHOD", Residential Single-Family Airport Hazard Overlay District
Prepared By: Margaret Pahl, AICP Senior Planner

Request

A request for a 5-foot variance from the minimum 5-foot side yard setback, as detailed in Table 35-310-1 to allow an elevated deck structure on the property line.

Procedural Requirements

A variance from the requirements of the zoning ordinance is a decision vested with the Board of Adjustment. State law prescribes specific factors that must be satisfied when deciding to grant a variance. The request was publicly noticed in accordance with Section 35-403 of the Unified Development Code ("UDC"). Notices were sent to property owners within two hundred (200) feet of the subject property on July 3, 2014. The application details were published in The Daily Commercial Recorder, an official newspaper of general circulation, on July 3, 2014. Additionally, notice of this meeting was posted at City Hall and on the City's internet website on or before July 18, 2014, in accordance with Section 551.043(a) of the Texas Government Code.

Executive Summary

The subject property is located on the corner of SW 38th Street and Mascota and is approximately 7,200 square feet in area. To the rear, the property abuts a 60-foot wide power corridor. The home was originally constructed in 2005 and the current owner purchased the home in 2010.

Earlier this spring, the applicant installed an above ground pool and constructed an elevated deck structure surrounding it. The walls of the pool are approximately 4 feet tall so the deck was constructed directly above that. Lattice panels, 4 feet in width, were added around the base and around the top of the deck, along with an added shade structure above the decking. Unfortunately, the work was done without a building permit and within the side yard setback. The applicant is requesting a variance to allow the decking to remain on the property line. The

Plan review section has indicated that it will be very difficult to fire rate the construction in accordance with the International Fire Code.

Subject Property Zoning/Land Use

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

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residential
South	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residential
East	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residential
West	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residential

Comprehensive Plan Consistency/Neighborhood Association

The subject property is located within the area of the West/Southwest Sector Plan, adopted by the City Council in April of 2011. The property was designated for General Urban Tier land uses. The subject property is not located within the boundary of a registered neighborhood association.

Criteria for Review

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 described as the general health, safety and welfare of the community at large. Building setback lines are adopted by building codes and zoning ordinances as a way to ensure space for fire separation and on-going maintenance without trespass. Therefore in this situation without any space to provide maintenance, the variance would be contrary to the public interest.

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

Literal enforcement of the ordinance would result in the owner having to dismantle the decking and potentially relocate it to the center of the lot. The Board will have to determine if denying this request results in an unnecessary hardship.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

For each requested variance, the Board must determine the “spirit” of the ordinance as contrasted with the “strict letter” of the requirement. In this case, the applicant is requesting approval to allow the pool and deck to remain on the shared property line with their neighbor. This does not observe or respect the spirit of the ordinance.

4. *Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-5 AHOD” zoning district.

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 variance would allow an elevated deck constructed around a pool to remain. The floor of the deck is located higher than 4 feet above the ground, providing unfettered views into the neighbor’s rear yard and ground floor windows. It would seem that this would negatively impact 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.*

The applicant describes his property as having unique physical characteristics, however it is a rectangular lot with over 7,000 square feet. Had the applicant installed the pool in the center of the rear yard with the decking located 5 feet from the property line, a variance would not be necessary.

Alternatives to Applicant’s Request

The applicant can dismantle the deck and the pool and relocate it to the center of the yard, consistent with the minimum 5 foot side yard setback.

Staff Recommendation

Staff recommends **denial** based on the following findings:

1. The proposed variance would allow a wooden structure on the property line, creating a potential fire hazard.
2. The elevated deck on the property line has eliminated the quiet enjoyment and privacy of the neighbor’s rear yard.

Attachments

- Attachment 1 – Notification Plan (Location Map)
- Attachment 2 – Plot Plan
- Attachment 3 – Applicant’s Site Plan
- Attachment 4 – Site Photos

Attachment 1 Notification Plan



Area is in Airport Hazard Overlay District

Board of Adjustment Notification Plan for Case No A-14-079



- San Antonio City Limits
- Subject Property
- 200' Notification Boundary
- Council District 5

"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"

Development Services Department
City of San Antonio

**Attachment 1
Notification Plan (continued)**



<p>Board of Adjustment Notification Plan for Case No A-14-079</p>		San Antonio City Limits	
		Subject Property	
		200' Notification Boundary	
		Council District 5	
		<p>"NOT TO SCALE, FOR ILLUSTRATIVE PURPOSES ONLY"</p> <p>Development Services Department City of San Antonio</p>	

**Attachment 2
Plot Plan**



Variance Request:
A request for a 5-foot variance from the minimum 5-foot side yard setback to allow a deck structure on the property line.

Board of Adjustment
Plot Plan for
Case No A-14-079



"NOT TO SCALE,
FOR ILLUSTRATIVE PURPOSES ONLY"
Council District 5

4503 Mascota

Development Services Department
City of San Antonio

Attachment 2
Plot Plan (continued)



Variance Request:
A request for a 5-foot variance from the minimum 5-foot side yard setback to allow a deck structure on the property line.

Board of Adjustment
Plot Plan for
Case No A-14-079



"NOT TO SCALE,
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Council District 5

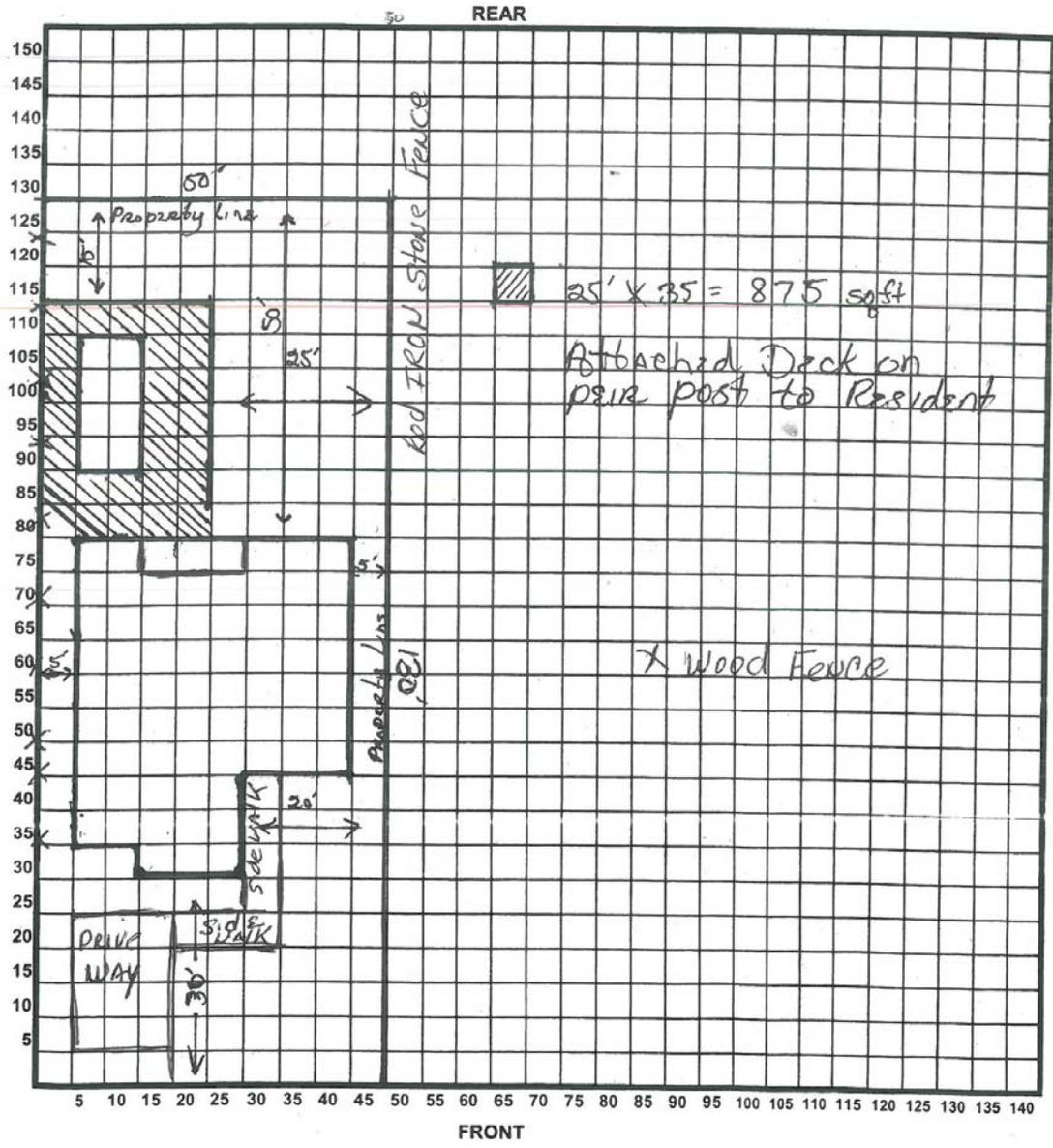
4503 Mascota ^{1:210}

Development Services Department
City of San Antonio

Attachment 3 Applicant's Site Plan

NORTH
↑
PLOT PLAN
FOR
BLDG PERMITS

Address 4503 MASCOFA Lot _____ Block _____ NCB _____



Attachment 4
Site Photos

