

Case Number:	BOA-23-10300315
Applicant:	Mandujano Fencing and Roofing
Owner:	Tobias L Mandujano
Council District:	10
Location:	5501 Dashing Creek Street
Legal Description:	Lot 89, Block 24, NCB 17768
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Bronte Frere, Planner

### **Request**

A request for A 1’-9” variance from the minimum 5’ side setback as described in Section 35-310.01, to allow a 3’-3” side setbacks.

### **Executive Summary**

The subject property is located on the corner of Dashing Creek and Bitter Creek, in a neighborhood southwest of Judson Road. The future development does not meet the side setback requirements between the two proposed residential dwellings on the eastern side of one structure and the western side of one structure. The setback variance would allot the two separate structures to each have a 3’ 3” side setback, with a total of 6’ 6” between the two structures. Upon site visits, staff observed single-family residences in the surrounding neighborhood. The applicant is proposing splitting the lots into two “R-4” properties through the platting process.

### **Code Enforcement History**

CWO-INV-CWO-22-26101505 – Code Work Order – Vacant Lot – Closed – July 2023

### **Permit History**

INV-PBP-23-3100003052 – PMT- Building Without a Permit – No Violation – September 2023

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 61622, dated December 29, 1985, and zoned Temporary “R-1” Single-Family Residence District. The property was rezoned by Ordinance 66198, dated April 7, 1988, to “R-7” Small Lot Home District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-7” Small Lot Home District converted to the current “R-4” Residential Single-Family District.

### **Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Vacant

### **Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	UZROW	Unzoned Right-Of-Way

South	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwellings
East	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwellings
West	UZROW	Unzoned Right-Of-Way

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the North Sector Plan as is designated as “Suburban Tier” in the future land use component of the plan. The subject property is located within the High Country Homeowners Association boundaries, and they have been notified of this request.

### **Street Classification**

Dashing Creek Street is classified as a local road.

### **Criteria for Review – 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 public interest is represented by minimum side setback requirements between residential dwellings, as the space ensures that buildings, drives, and parking is positioned a safe and suitable distance from property lines. Staff finds the reduced setbacks between the proposed development provides a suitable distance between the two proposed residential dwellings.**

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

**Staff found a special condition existing on the property where a literal enforcement of the ordinance does not leave room to build two separate residential structures on the property.**

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 intent of the minimum side setback requirements is to ensure adequate property distance between residential property development. The reduced side setbacks will observe the spirit of the ordinance as development would be challenging to rearrange and leave sufficient room between the two residential dwellings.**

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 side setback variances will not substantially injure the appropriate use of the adjacent conforming property. Proposed development will leave sufficient room from the property and not alter the essential character of the district, as it would adhere to other setback requirements and single-family dwellings are characteristic to the neighborhood.**

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, as the lot size provides limited options to rearrange the proposed development and meet the required setback requirements.**

#### **Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the Lot and Building Regulations of Section 35-310.01 of the Unified Development Code.

#### **Staff Recommendation – Side Setback Variance**

Staff recommends **Approval** in **BOA-23-10300315** based on the following findings of fact:

1. **The lot size leaves minimal options for rearranging the proposed development of two separate residential dwelling units; and**
2. **The proposed development will not alter the essential character of the district.**