

Case Number:	BOA-23-10300282
Applicant:	Arnulfo Montalvo
Owner:	Arnulfo Montalvo
Council District:	2
Location:	516 Aransas Avenue
Legal Description:	Lots 20 and 21, Block 40, NCB 1608
Zoning:	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

**Request**

A request for 1) a variance, as described in Section 35-310.06 (a)(1), to allow two separate structures on an "RM-4" that is less than one-third of an acre, 2) a 4-parking space variance from the minimum 6, as described in Section 35-526, to allow 2 parking spaces, 3) a 10” variance from the minimum 5’ side setback requirement, as described in Section 35-310.01, to allow a structure to be 4’-2” from both side property lines, and 4) a variance from the maximum 50% impervious cover requirement, as described in Section 35-515(d), to allow the front yard to exceed the maximum 50% impervious cover.

**Executive Summary**

The subject property is located along Aransas Avenue within the Denver Heights neighborhood. Upon permit review by Development Services, it was communicated that the applicant would need to obtain a variance for multi-unit construction on lots one-third (1/3) of an acre in size or smaller shall be within a single structure. The applicant is proposing to construct a total of 4 units, two in each of the separated structures, both two stories. The lot current measures approximately .01424 acres or 6202.94 square feet. Upon review by zoning staff, the applicant needs additional variances. These include a: (1) a 4-parking space variance from the minimum 6 to allow 2 parking spaces; (2) a 10” variance from the minimum 5’ side setback requirement to allow a structure to be 4’-2” from both side property lines; and (3) a variance from the maximum 50% impervious cover requirement to allow the front yard to exceed the maximum 50% impervious cover.

**Code Enforcement History**

There is no code history for the subject property.

**Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment Partial Commercial Sitework Permit (COM-SIT-PMT23-40100317)- July 2023

**Zoning History**

The property was part of the original thirty-six (36) square miles of San Antonio and was originally zoned “B” Residence District. The property was then rezoned by Ordinance 79329, dated December 16, 1993, from “B” Residence District to the “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-2” Two-Family Residence District converted to the current “RM-4” Residential Mixed District.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
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“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Vacant Residential

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residential
South	“IDZ AHOD” Infill Development Zone Airport Hazard Overlay District with uses permitted in “MF-18” Limited Density Multi-Family District	Vacant
East	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residential
West	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residential

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Arena District/ Eastside Community Plan and is designated as “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Denver Heights Neighborhood Association, and they have been notified of the request.

**Street Classification**

Aransas Avenue is classified as a local road.

**Criteria for Review – “RM-4”, Parking, Side Setback, and Impervious Cover Variances**

According to Section 35-482(e) of the UDC, 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. These variances are contrary to the public interest, as separate structures within an “RM-4” District less than 1/3 of an acre is to prevent overcrowding on smaller lots, minimum parking requirements for traffic management, and impervious coverage limitations to allow for water to penetrate the ground.

**The side setback variance will not be contrary to the public interest as it will leave over 4’ on each side, which will not deter from the welfare of the public.**

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

Staff found no special conditions on the subject property to deviate from the requirements of the ordinance. A literal enforcement of the ordinance would result in the applicant to abide by the UDC regulations: (1) Contain the units with a single structure if under 1/3 of an acre; (2) accommodate the minimum 6 parking spaces; and (3) stay under the 50% maximum

impervious cover. Abiding by these requirements would not result in an unnecessary hardship, as the structure has not been constructed and plans appear to allow for alterations.

**A special condition, such as an uneven front yard, would result in unnecessary hardship as it limits the buildable area in 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. If granted, the structure will maintain the deviated building requirements. The spirit of the ordinance will not be observed in this case.

**If side setback is granted, the building will maintain a 4'-2" side setback which will observe the spirit of the ordinance by leaving sufficient space between structure and 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 structure will not be contained into a single structure, have two parking spaces, and exceed the maximum 50% impervious coverage. The granting of these variances will injure the appropriate use of adjacent conforming properties. Upon site visits, staff did not observe any other structures with deviated building requirements.

**If granted, the structure will maintain a setback of over 4', which would not injure the adjacent conforming properties. Both adjacent lots appear to have over a 5' side setback on the side shared with the subject 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.*

Staff finds the plight of the owner of the property for which the variance is sought is not due to unique circumstances existing on the property. The plans appear to allow for alterations and there is currently sufficient spacing on the property to adhere by the building requirements.

**The shape of which the property is located is uneven in the front, which leaves additional unbuildable room on the property.**

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

The alternative to the applicant's request is to conform to the "RM-4" Requirements of Section 35-310.06(a)(1), Setback Regulations of Section 35-310.01, Parking Requirements of Section 35-526, and Impervious Coverage Requirements of Section 35-515(d).

**Staff Recommendation – “RM-4”, Parking, and Impervious Cover Variances**

Staff recommends Denial in BOA-21-10300282 based on the following findings of fact:

1. The variances are contrary to the public interest; and
2. No other structures in the immediate area appear to deviate from the building requirements.

**Staff Recommendation –Side Setback Variance**

Staff recommends **Approval** in **BOA-21-10300282** based on the following findings of fact:

1. The irregular shaped lot reduces buildable area; and
2. Will not alter the essential character of the district.