



# City of San Antonio

## Agenda Memorandum

---

**Agenda Date:** October 21, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Amin Tohmaz, Interim Department Head

**CASE NUMBER:** BOA-24-10300158

**APPLICANT:** Elbert A Fuqua

**OWNER:** Elbert A Fuqua

**COUNCIL DISTRICT IMPACTED:** District 2

**LOCATION:** 203 and 205 Toledo Street

**LEGAL DESCRIPTION:** East 71 feet of Lot 32, NCB 1393

**ZONING:** "AE-2 MLOD-3 MLR-2 AHOD" Arts and Entertainment Martindale Army Airfield  
Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

1) A 2' variance from the minimum 5' side setback to allow residential development to be 3' from the southern side setback.

Sec 35-358(e)(3)(A)(2)

2) A 1' variance from the minimum 5' side setback to allow a 4' side setback.

Sec 35-358(e)(3)(A)(2)

3) A half story variance from the maximum 2.5 stories to allow two detached structures to be 3 stories.

Sec 35-358(e)(4)(B)

**Executive Summary**

The subject property is located just east of downtown and south of East Commerce Street on the corner of Montana Street and Toledo Street intersection. The applicant, also being the property owner, is proposing construction of (2) single-family dwelling units on an "AE-2" corner lot, which will be separated into individual lots though a plat. The requested variances will allow one structure to be 3' from the southern side setback, and the other structure to be 4' side setback. Building permits are pending the outcome of Board of Adjustment's decision.

### **Code Enforcement History**

No Code Enforcement history found.

### **Permit History**

The applicant has not yet applied for the building permit.

### **Zoning History**

The subject property was part of the original 36 square miles of the City of San Antonio and zoned "D" Apartment District. The property was rezoned by Ordinance 79329 dated, December 16, 1993, from "D" Apartment District to "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 "RM-4" Residential Mixed District. The subject property was rezoned by Ordinance 2008-12-04-1128 dated December 4, 2008, from "RM-4" Residential Mixed District to the current "AE-2" Arts and Entertainment District.

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

#### **Existing Zoning**

"AE-2 MLOD-3 MLR-2 AHOD" Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

#### **Existing Use**

Vacant Land

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

#### **North**

#### **Existing Zoning**

"RM-4 S HS MLOD-3 MLR-2 AHOD" Residential Mixed Historic Significant District Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District with Specific Use Authorization for Cemetery.

#### **Existing Use**

Cemetery

#### **South**

#### **Existing Zoning**

"RM-4 MLOD-3 MLR-2 AHOD" Residential Mixed Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay

#### **Existing Use**

Single-Family Residence

#### **East**

**Existing Zoning**

“AE-2 MLOD-3 MLR-2 AHOD” Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**West****Existing Zoning**

“AE-2 MLOD-3 MLR-2 AHOD” Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

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

**Street Classification**

Toledo Street is classified as a local road.

Montana Street is classified as a local road.

**Criteria for Review – Side Setback and Half Story 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 requested side setback variances to allow both 3’ and 4’ side setbacks on the side property lines will not be contrary to the public interest as they will provide sufficient distance from each dwelling unit and neighboring properties.

The half story variance is contrary to the public interest as other residential structures in the surrounding area conform to the two and a half story height limits.

*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 unnecessary hardship as the proposed structures would have to be reconfigured to abide by the “AE-2” setback regulations that restrict development on a limited size lot.

A literal enforcement of the half story regulation would not result in unnecessary hardship as the applicant could alter the floor plan to follow the ordinance.

*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 requested variances to allow for both a 3' and 4' side setback for two proposed dwellings provide a safe distance from the neighboring property and will observe the spirit of the ordinance.

Staff finds that the additional half story variance will not observe the spirit of the ordinance as the building height limit is intended to prevent towering structures around single-family 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, staff finds that the requested 3' and 4' side setback variances will not substantially injure the appropriate use of adjacent conforming properties as similar lot sizes can be seen within the surrounding area.

The increased height will injure the use of appropriate use of conforming properties and alter the essential character of the district as no other homes in the area exceed the building height limit.

*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 side setback variance is due to unique circumstances that were not created by the property owner such as the location of the lot and surrounding area.

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 property owner has the option adjust their proposed structure.

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

The alternative to the applicant's request is to conform to the "AE-2" Arts and Entertainment District guidance under Sec 35-358.

#### **Staff Recommendation – Side Setback Variances**

Staff recommends Approval in BOA-24-10300158 based on the following findings of fact:

1. The requested variances will not injure the neighboring property.
2. The side setbacks will not alter the essential character of the district.

**Staff Recommendation – Half Story Variance**

Staff recommends Denial in BOA-24-10300158 based on the following findings of fact:

1. Other homes in the area conform to the two and a half story building height maximums; and
2. The increased building height would alter the essential character of the district.