



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** October 7, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

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

**CASE NUMBER:** BOA-24-10300184

**APPLICANT:** Ortiz McKnight, PLLC

**OWNER:** KEN 401 LLC

**COUNCIL DISTRICT IMPACTED:** District 1

**LOCATION:** 401 Kendall Street

**LEGAL DESCRIPTION:** South 50 feet of Lot 5 and Lot 6 ARB A-7, Block 12, NCB 1744

**ZONING:** “MF-33 H AHOD” Multi-Family Historic Tobin Hill Airport Hazard Overlay District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

A 4’-11’ variance from the minimum 5’ side setback for primary structure to be 1” from the side setback.

Table 310-1

**Executive Summary**

Subject property is located west of North St Mary’s Street on the corner of east Myrtle Street and Kendall Street. The applicant, on behalf of the property owner, is requesting a 4’-11” side setback variance for a proposed addition to align with an existing residential structure. According to Bexar County records, the existing structure was built in 1940 and does not align within current setback requirements. The existing building could qualify as a Non-conforming Structure however, the applicant is requesting the side setback variance to allow the proposed addition to align with the

existing structure. Renovations for the property have been approved by HDHC and applicant is pending the outcome of the Board of Adjustment to proceed with development.

**Code Enforcement History**

No Code Enforcement history found.

**Permit History**

The applicant has not yet applied for the building permit.

**Zoning History**

Subject property is a part of the original 36 square miles of the City of San Antonio and was zoned “D” Apartment District. The property was rezoned by Ordinance 83331 dated, December 14, 1995, from “D” to “R-3” Multiple-Family Residence District. With the adoption of the Unified Development Code, established by Ordinance 93881, on May 3, 2001, the zoning converted to “MF-33” Multi-Family District.

**Subject Property Zoning/Land Use**

**Existing Zoning**

MF-33 H AHOD” Multi-Family Historic Tobin Hill Airport Hazard Overlay District

**Existing Use**

Abandoned Residential Structure

**Surrounding Property Zoning/ Land Use**

**North**

**Existing Zoning**

“IDZ H AHOD” Infill Development Zone Historic Tobin Hill Airport Hazard Overlay District

**Existing Use**

Residential Townhome

**South**

**Existing Zoning**

“RM-4 H AHOD” Residential Mixed Historic Tobin Hill Airport Hazard Overlay District

**Existing Use**

Single-family Residence

**East**

**Existing Zoning**

“R-6 UC-4 H AHOD” Residential Single-Family North St. Mary’s Street Urban Corridor Historic Tobin Hill Airport Hazard Overlay District

**Existing Use**

Church

**West**

**Existing Zoning**

“R-6 H AHOD” Residential Single-Family Historic Tobin Hill Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Midtown Regional Center Area Plan and is designated as “Urban Low Density Residential” in the future land use component of the plan. The subject property is located within the notification area of the Tobin Hill Neighborhood Association and San Antonio Texas District One Resident Association, and they have been notified of the request.

**Street Classification**

Kendall Street is classified as a local road.

East Myrtle Street is classified as a local road.

**Criteria for Review – Side 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 requested side setback variance, which would permit an addition to a primary structure to be just 1 inch from the side property line, is contrary to this interest, as it fails to provide sufficient space from the property line.

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

Strict enforcement of the ordinance would not cause unnecessary hardship, as it is possible to construct an addition that complies with the minimum 5-foot setback requirement.

*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. While the variance to allow a proposed addition to be 1” from the side setback aligns with the current primary structure’s design, it is not an adequate distance from the neighboring property.

*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 side setback variance will substantially injure the appropriate use of adjacent conforming properties in the surrounding area, such as increasing the risk of fire spread and creating water runoff issues.

*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.*

No unique circumstances exist on the lot to justify the requested variance. The unique circumstances were created by the property owner as an addition can be built to meet the minimum setback requirement.

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

The alternative to the applicant's request is to reconfigure site plans to conform to the current setback regulations of the UDC Table 310-1.

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

Staff recommends Denial in BOA-24-10300184 based on the following findings of fact:

1. It is possible to construct an addition that complies with the minimum 5-foot setback requirement.
2. The variance will substantially injure the appropriate use of adjacent conforming properties in the surrounding area, such as increasing the risk of fire spread and creating water runoff issues.