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| Case Number: | BOA-23-10300296 |
| Applicant: | CTNJ Construction LLC DBA Macaw Homes |
| Owner: | Alan M and April Chase |
| Council District: | 5 |
| Location: | 307 Simon Street |
| Legal Description: | Lot 15, Block 1, NCB 2825 |
| Zoning: | “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District |
| Case Manager: | Joseph Leos, Planner |

Request

A request for 1) a 3'-4" variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow a structure to be 1'-8" from the western property line, 2) a 4'-10" variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow a structure to be 2" from the eastern property line, and 3) a half-story variance from the maximum 2 and a half story height limit, as described in Section 35-310.01, to allow a structure with 3 stories.

Executive Summary

The subject property is located along Simon Street, west of Probandt Street and is currently a vacant lot. Upon review by zoning staff, it was communicated that the applicant would need to obtain a variance to allow a structure to be within both side setbacks. The proposed structure is anticipated on having two cantilevers on the second story, both within the side setback. The applicant is also requesting a variance to allow for an additional story. The intent is to accommodate a roof top deck, that would not be allowed with the current permissible half story.

Code Enforcement History

There is no relevant code history for the subject property.

Permit History

The issuance of a building permit is pending the outcome of the Board of Adjustment.

Zoning History

The property was part of the original thirty-six (36) square miles of San Antonio and was originally zoned “L” First Manufacturing District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “L” Light Manufacturing District converted to “I-2” Heavy Industrial District. The property was then rezoned by Ordinance 2006-12-14-1441, dated December 14, 2006, from “I-2” Heavy Industrial District to the current “R-6” Residential Single-Family District.

Subject Property Zoning/Land Use

| Existing Zoning | Existing Use |
|--|--------------|
| “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District | Vacant Lot |

Surrounding Zoning/Land Use

| Orientation | Existing Zoning District(s) | Existing Use |
|-------------|-----------------------------|--------------|
|-------------|-----------------------------|--------------|

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| | | |
| North | “MF-25 AHOD” Low Density Multi-Family Airport Hazard Overlay District | Condominiums |
| South | “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District | Single-Family Dwelling |
| East | “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District | Single-Family Dwelling |
| West | “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District | Single-Family Dwelling |

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Downtown Area Regional Center 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 Lone Star Neighborhood Association, and they have been notified of the request.

Street Classification

Simon Street is classified as a local road.

Criteria for Review – Side Setback & 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. In this case, the public interest is represented by the adjacent neighbor for safety and privacy. The applicant is requesting a variance to the side setbacks to allow a structure to be 1’-8” and 2” from the western and eastern property lines. The applicant is also requesting a half story variance to allow a structure to be 3 stories. Staff finds that this is not an allowable distance and height, as it will directly affect the adjacent neighbor by being too close to the shared property line, risk of fire spread is greater, and a towering building can impose onto the adjacent uses.

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

Staff observed no special conditions on the subject property to warrant the need for a reduced side setback and an increased height. A literal enforcement of the ordinance would result in the applicant altering the structure to adhere by the side setback and height requirements. This would not result in an unnecessary hardship, as the structure has not been constructed and plans appear to allow for alterations.

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 spirit of the ordinance will not be observed, and substantial justice will not be done, as the requested variances undermine the fundamental intent and purpose of the

regulations. Allowing the side setback variances to be granted leads to overcrowding on lots and the additional height may prevent others from equal access of view.

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 be at its deviated measurements. The granting of this variance will injure the appropriate use of adjacent conforming property and alter the essential character of the district in which the property is located. Upon site visits, staff did not see any structures imposing into the side setbacks, nor exceeding the maximum 2 ½ story height limitation.

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. Plans appear to allow for alterations.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Lot and Building Dimensions and Height of the UDC Section 35-310.01.

Staff Recommendation – Side Setback & Half Story Variances

Staff recommends Denial in BOA-23-10300296 based on the following findings of fact:

1. Staff finds that this is not an allowable side setback distance, as it will directly affect the adjacent neighbor by being too close to the shared property line and risk of fire spread is greater; and
2. No other 3 story single-family residential structures were found in the immediate area.