



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** November 18, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

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

**CASE NUMBER:** BOA-24-10300201

**APPLICANT:** Ortiz McKnight PLLC

**OWNER:** AHV ALTURA BFR OWNER LLC

**COUNCIL DISTRICT IMPACTED:** District 10

**LOCATION:** 13003 Toepperwein Road

**LEGAL DESCRIPTION:** Lot 2, Block 13, NCB 14049

**ZONING:** “MF-33 IH-1 AHOD” Multi-Family North East Gateway Corridor Airport Hazard Overlay District

**CASE MANAGER:** Melanie Clark, Planner

**A request for:**

1) A request for a 55' variance from the “IH-1” Northeast Gateway Corridor District's 60' side setback requirement to allow a 5' side setback for residential development on the southern property line.

Section 35-339.03

**Executive Summary**

The subject property is located within the Northeast Gateway Corridor, east of Judson Road, along the corner of the Interstate 35 North access road and Toepperwein intersection. The applicant, on behalf of the property owner, is requesting a 55' variance from the “IH-1” Northeast Gateway Corridor District's 60' setback requirement to allow for development of approximately 18 additional dwelling units along the southern property line. Permits are pending the results of the Board of Adjustment.

**Code Enforcement History**

No Code Enforcement history found.

**Permit History**

RES-RBP-APP24-35504658-Residential Building Permit Application

RES-RBP-APP24-35504665-Residential Building Permit Application

RES-RBP-APP24-35504634-Residential Building Permit Application

**Zoning History**

Subject property was annexed into the City of San Antonio by Ordinance 79034 dated December 30, 1993, and zoned “R-1” Single-Family Residence District. The subject property was rezoned by Ordinance 80236 dated May 26, 1994, from “R-1” to “I-1” Light Industry District. With the adoption of the 2001 Unified Development Code (UDC), established by Ordinance 93881, on May 3, 2001, the zoning converted to “I-1” General Industrial District. The property was rezoned by Ordinance 2021-11-04-0849 dated November 4, 2021, from “I-1” General Industrial District to “MF-33” Multi-Family District.

**Subject Property Zoning/Land Use****Existing Zoning**

“MF-33 IH-1 AHOD” Multi-Family North East Gateway Corridor Airport Hazard Overlay District

**Existing Use**

Multi-Family Residence

**Surrounding Property Zoning/ Land Use****North****Existing Zoning**

“R-5 IH-1 AHOD” Residential Single-Family North East Gateway Corridor Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**South****Existing Zoning**

“UZROW” Unzoned Right of Way North East Gateway Corridor Airport Hazard Overlay District

**Existing Use**

Interstate 35 /Super Arterial Type B

OCL

**East****Existing Zoning**

“OCL” Outside City Limits

**Existing Use**

OCL

## **West**

### **Existing Zoning**

“MF-33 IH-1 AHOD” Multi-Family North East Gateway Corridor Airport Hazard Overlay District

“C-2 IH-1 AHOD” Commercial North East Gateway Corridor Airport Hazard Overlay District

“I-1 IH-1 AHOD” General Industrial North East Gateway Corridor Airport Hazard Overlay District

### **Existing Use**

Vacant Lot

Undeveloped Land

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

The subject property is in the Northeast Community Area Plan and is designated as “Community Commercial” in the future land use component of the plan. The subject property is not located within the boundary of a registered neighborhood association.

### **Street Classification**

Toepperwein Road is classified as a Secondary Arterial Type A.

Interstate 35 North is classified as an Expressway.

### **Criteria for Review – Gateway Corridor Side Setback Variance**

*1. 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 meeting the minimum distance requirements for Gateway Corridor setbacks. The requested side setback variance would enable a structure to adversely impact the right of way along the corridor and be substantially closer to the roadway.

- 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 the applicant constructing residential development to meet the minimum 60’ side setback. The subject property is large enough to develop the property within the required corridor setback.

- 3. By granting the variance, the spirit of the ordinance will be observed, and substantial justice will be done.*

The requested variance is to allow a reduced setback along an Interstate Highway and Interstate Highway access road. Due to the size of the property and the reduced distance from the corridor, this will not observe the spirit of the ordinance.

- 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.*

Staff finds that the structure was built too close to the side property line for and that the requested variance would set precedent and injure neighboring conforming properties within the corridor.

*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 applicant can redesign the projected development to meets their needs outside the 60' setback.

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

The alternative to the applicant's request is to conform to the Urban Corridor standards in Section 35-339.03 and Ordinance 99358.

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

Staff recommends Denial in BOA-24-10300201 based on the following findings of fact:

1. The structure being only 5' from the Gateway Corridor side setback negatively affects the right-of-way along the side property line placing residential structures closer to the highway.
2. The request appears out of character for the area and injures the neighboring properties and sets negative precedent for future developments in the Gateway Corridor.