

Case Number:	BOA-23-10300297
Applicant:	Ashley Quinones
Owner:	Ashley Quinones
Council District:	5
Location:	735 Gladstone Street
Legal Description:	East 50 feet of Lot 24 and south 20 feet of east 50 feet of Lot 11, Block 7, NCB 3734
Zoning:	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

**Request**

A request for a 4’-2” variance from the minimum 5’ side setback, as described in Section 35-310.01, to allow an addition the be 10” from the side setback.

**Executive Summary**

The subject property is located is a single-family community, just west of the intersection of Gladstone Street and IH-35 South. The applicant is planning an addition to the rear of the home that will have an in-line addition of 10” side setback. The Unified Development Code requires a 5’ side setback and allow an in-line addition at a 3’ side setback. The proposed addition will leave well over the required 20’ rear setback and the abutting residential property has a driveway located on the shared property line.

**Code Enforcement History**

There is no code history for the subject property.

**Permit History**

The issuance of a building addition permit will depend on the outcome of the Board of Adjustment.

**Zoning History**

The subject property was part of the original 36 square miles of the City of San Antonio and zoned “C” Apartment District. The property was rezoned by Ordinance 76368, dated August 27, 1992, to the “R-5” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-5” Single-Family Residence District converted to the current “R-5” Residential Single-Family District.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
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North	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Nogalitos/ South Zarzamora Community Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is located within the Palm Heights Neighborhood Association boundaries, and they have been notified of this request.

**Street Classification**

Gladstone Street is classified as a local street.

**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 public interest is represented by minimum side setback requirements, as they ensure that buildings are positioned a safe and suitable distance from property lines. Staff finds a 4'-2" variance from the minimum 5' side setback to allow a structure to be 10" from the side property line is contrary to the public interest. The distance will create a safety issue if the abutting property decides to build on their 5' side setback.

**Staff finds that a 3' side setback on the addition will eliminate any contrary to the public interest as it will leave sufficient room between property lines.**

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

Staff has found no special condition that would result in an unnecessary hardship. There is sufficient room to the rear and side to abide by the required side setback.

**Staff found special condition existing on the property of the existing nonconforming structure having a similar setback. While not in line, the 3' side setback would not result in unnecessary hardship.**

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 intent of the 5' side setback or 3' in line addition is to leave sufficient space between structure and property line and take into consideration any nonconforming structure. The requested variance will not observe the spirit of the ordinance.

**The 3' side setback will observe the spirit of the ordinance as it will be comparable to the 3' in line addition.**

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 addition will maintain a 10" side setback. While there are structures in the area with a reduced setback, the 10" will injure the appropriate use of the adjacent conforming property shall they decide to build on their 5' side setback.

**If the alternate recommendation is granted, the structure will maintain a 3' side setback. This request will not substantially injure the appropriate use of adjacent conforming properties or alter the essential character of the district in which the property is located as other structures in the area have a reduced side setback.**

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 property provides room to expand to the opposite side and the rear.

**The plight of the owner for which the alternate recommendation is made is due to unique circumstances existing on the property such as the current location of the structure.**

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

The alternative to the applicant's request is to conform to the Setback Regulations of the UDC Section 35-310.01

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

Staff recommends Denial with an **Alternate Recommendation for a 3' side setback** in BOA-23-10300297 based on the following findings of fact:

1. The request will not observe the spirit of the ordinance as it will not leave suitable space in the side yard.
2. The property has sufficient room to meet setback standards as it can expand to the opposite side and rear.