



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** September 9, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

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

**CASE NUMBER:** BOA-24-10300154

**APPLICANT:** Stephanie Kelly

**OWNER:** African Methodist Episcopal Church

**COUNCIL DISTRICT IMPACTED:** District 2

**LOCATION:** 111 Dunaff Street

**LEGAL DESCRIPTION:** Lot 5, 6, 7, P-100 and Portion of 3 and 4, Block 3, NCB 12630

**ZONING:** "R-5 MLOD-3 MLR-1" Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 1 District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

An appeal of the Administrator's decision for a Nonconforming Use Denial.  
Section 35-705

**Executive Summary**

The subject property is located just east of the intersection of IH-10 East and East Houston Street. The Non-Conforming application (ZONING-NCU-APP-2024-11200128) was denied on July 25, 2024. The applicant applied for the appeal on August 5, 2024, within 20 days, in accordance with State law. The Non-Conforming application was denied because a commercial daycare center was never lawfully established on the property. A Certificate of Occupancy for a church-affiliated day care center was issued in 1998, however this differs from the requested commercial child day care center. Additionally, the Certificate of Occupancy was granted to Lot 3, which was rezoned in 1997 to permit an Adult Day Care, which is also clearly annotated on the 1997 rezoning map. The

current day care building is located on Lot 4, and the outdoor play area is located on the 1997 rezoned property. The use of a Childcare Center currently requires an “S” Specific Use Authorization in residential zoning districts. The maximum number children permitted for childcare in a residential district is between 6 and 12 with a Specific Use Authorization.

**Unified Development Code**

Sec. 35-705. - Certificate of Nonconforming Use.

(b) Contents.

(1) Generally. Such registration may be made on behalf of the owner by any person, firm, corporation or other entity which has a legal or equitable interest in the nonconforming use or structure. Registration statements shall require a disclosure of the complete ownership of the land and/or structure and shall be in such form and require the furnishing of such information and representation as are needed to show the following:

**A. That the use was lawfully established prior to the effective date of the applicable regulations.**

B. That the use has been continuously maintained since it was established.

C. That the use has not been abandoned.

Sec. 35-481. - Appeals to Board of Adjustment.

(a) Applicability.

(1) Generally. Pursuant to Section 211.010 of the Texas Local Government Code, there are hereby established two (2) separate tiers of appeals to the Board of Adjustment.

(B) Tier Two Appeal. A Tier Two appeal is an appeal that is related to a specific application, address, or project. A Tier Two appeal may be filed by any of the following persons:

**1. A person who filed the application that is the subject of the decision;**

2. A person who is the owner or representative of the owner of the property that is the subject of the decision;

3. A person who is aggrieved by the decision and is the owner of real property within two hundred (200) feet of the property that is the subject of the decision; or

4. Any officer, department, board, or bureau of the City of San Antonio affected by the decision.

**UDC Use Tables**

TABLE 311-1 RESIDENTIAL USE MATRIX																							
PERMITTED USE	RP	RE	R-20	NP-1.5	NP-10	NP-8	R-6	RM-6	R-5	RM-5	R-4	RM-4	R-3, R-2, R-1	MF-18	MF-25	MF-33	MF-40	MF-50 & MF-65	ERZD				
Child Care Facility (1-6 Children)	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P				
Child Care Facility (7-12 Children)	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S				
TABLE 311-2 NONRESIDENTIAL USE MATRIX																							
PERMITTED USE											O-1 & O-1.5	O-2*	NC	C-1	C-2	C-3	D	L	I-1	I-2	ERZD		
Service	Day Care Center - Child And/Or Adult Care											S	P	P	P	P	P	S					P

**Code Enforcement History**

No Code Enforcement history found.

**Permit History**

Certificate of Occupancy - Daycare – Church Affiliated (Lot 3) – May 21, 1998  
COO-APP24-37601645 – Child Care Center – July 8, 2024 – pending results of BOA Appeal

**Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 18115, dated September 24, 1952, and zoned “A” Single-Family Residence District. A portion of the property was rezoned by Ordinance 86967, dated November 13, 1997, to “R-3 CC” Multiple-Family Residence District with City Council approval for an adult-day care facility. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property was converted to the current “R-5” Residential Single-Family District and “MF-33 S” Multi-Family District with a Specific Use Authorization for an Adult Day Care. Staff found the use was never lawfully established in the current location.

**Subject Property Zoning/Land Use**

**Existing Zoning**

“R-5 MLOD-3 MLR-1” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 1 District

**Existing Use**

Church/Day Care

**Surrounding Property Zoning/ Land Use**

**North**

**Existing Zoning**

“R-5 MLOD-3 MLR-1” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 1 District

**Existing Use**

Single-Family Residence

**South**

**Existing Zoning**

“R-5 MLOD-3 MLR-1” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 1 District

**Existing Use**

Single-Family Residence

**East**

**Existing Zoning**

“R-5 MLOD-3 MLR-1” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 1 District and “C-2 MLOD-3 MLR-1” Commercial Martindale Army Airfield Military Lighting Overlay Military Lighting Region 1 District

**Existing Use**

Single-Family Residence and Vacant Lot

**West**

**Existing Zoning**

“C-2 MLOD-3 MLR-1” Commercial Martindale Army Airfield Military Lighting Overlay  
Military Lighting Region 1 District

**Existing Use**

Vacant Lot/Billboard Sign

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Eastern Triangle 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 boundary of the Eastwood Village Neighborhood Association, and they have been notified of the appeal.

**Street Classification**

Dunaff Street is classified as a Local Road.

East Houston Street is classified as a Secondary Arterial Type B.

**Board of Adjustment**

The Board of Adjustment is asked to determine whether to uphold Staff’s interpretation of Section 35-705(b)(1), Certificate of Nonconforming Use, as it relates to 111 Dunaff Street.

**Conclusion**

Staff concludes the use of Child Care Center will require a Change of Zoning approval based on Section 35-705(b)(1) based on the following findings of the fact:

The use was never lawfully established on the location of the childcare building.