

Case Number:	BOA-22-10300172
Applicant:	Naema Vides
Owner:	Sergio & Naema Kalifa Vides
Council District:	1
Location:	820 West French Place
Legal Description:	The west 53.9 feet of Lot 4, Block 6, NCB 1892
Zoning:	“RM-4 NCD-2 AHOD” Residential Mixed Alta Vista Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

Request

A request for a 4’11” variance from the minimum 5’ side setback, as described in Section 35-370(b)(1), to allow a detached accessory structure with overhang and gutters to be 1” from the side property line.

Executive Summary

The subject property is situated in the Alta Vista neighborhood in midtown San Antonio and contains a duplex. The applicant constructed a detached accessory structure without obtaining a building permit leading to a code investigation that was opened in August 2022. Measurements obtained during a site visit conducted by staff confirmed that the detached accessory structure is 1’ from the side property line. The structure has a 11” overhang, thus the variance being request is a 4’11” variance to allow the structure to maintain 1” from the side property line. Detached accessory structures are required to maintain a minimum side setback of 5’ and a minimum rear setback of 5’. The structure is 80 square feet and is being utilized as a storage shed and has an overhang and gutters. Due to the size of the detached structure, a permit is not required. However, the setback requirements are still enforced.

Code Enforcement History

An investigation was opened on August 5, 2022 for a Property Setback Violation and Building Without A Permit Violation.

Permit History

There are no relevant permits on file for the property. The structure is less than 300 square feet and does not require a permit however the setbacks are still enforced.

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “D” Apartment District. The property was rezoned by Ordinance 86704, dated September 25, 1997, to “R-2A” Three and Four-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-2A” Three and Four-Family Residence District converted to “RM-4” Residential Mixed District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
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“RM-4 NCD-2 AHOD” Residential Mixed Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Duplex
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Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 NCD-2 AHOD” Residential Mixed Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
South	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
East	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Duplex
West	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Midtown Neighborhoods Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Alta Vista Neighborhood Association, and they have been notified of the request.

Street Classification

West French Place 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 applicant is requesting a 4’11” variance to the side setback to allow a detached structure to be 1” from the side property line. This distance does not provide adequate spacing between the new structure and neighboring property thus appears to be contrary to the public interest.

The alternate would be to relocate the structure and maintain 3’ from the side property line. This would reduce potential adverse impacts such as water runoff along with fire and safety hazards to adjacent properties.

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 having to relocate the accessory structure to meet the minimum 5’ side setback requirement.

The alternate recommendation would allow for a side addition to be located 3' from the side property line which alleviates the unnecessary hardship presented due to the subject property having a duplex, with two separate small yards.

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 proposed setback of 1" does not appear to observe the spirit of the ordinance as this will cause the structure to be too close to the adjacent property.

Staff finds that the alternate recommendation will observe the spirit of the ordinance and substantial justice will be done. The alternate recommendation will provide sufficient spacing to the side property line. In addition, the structure has gutters which prevents water run off to the adjacent 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, the detached accessory structure will maintain 1" from the side property line. This will cause the structure to be too close to the side property line which may injure adjacent conforming properties.

The alternate of a 3' side setback does not appear to alter the essential character of the district. Other structures in the surrounding area appear to maintain a 3' side setback therefore the alternate recommendation appears to align closely with the existing character of the neighborhood.

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 due to unique circumstances existing on the property. While the rear yard is sizable, due to the primary structure being a duplex, the yard has been split leading to limited space in the rear yard. The request does not appear to be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Accessory Use and Structure Regulations requirements of the UDC Section 35-370(b)(1).

Staff Recommendation – Side Setback Variance

Staff recommends Denial **with an Alternate Recommendation of a 2' variance from the minimum 5' side setback requirement to allow a detached accessory structure to be 3' from the side property line** in **BOA-22-10300172** based on the following findings of fact:

1. The structure is currently 1' from the side property line; and
2. A side setback of 3' would provide adequate spacing between the subject property and the neighboring property; and
3. A side setback of 3' does not appear to alter the essential character of the neighborhood.