

Case Number:	BOA-23-10300045
Applicant:	Mario Esparza
Owner:	Mario A Esparza & Gabriel Gutierrez
Council District:	2
Location:	1509 Burnet Street
Legal Description:	East 33 feet of Lot 5, Block 34, NCB 1334
Zoning:	“MF-33 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for a 1'-10" variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow an addition to be 3'-2" from the side setback property line.

Executive Summary

The subject property is located on the east side of San Antonio, near the intersection of South New Braunfels and Burnet Street. The applicant was in the process of constructing an addition to their home but was halted by Code Enforcement. A Stop Work Order (INV-PBP-23-3100000328) was issued because the applicant had constructed the addition without permits and a variance for the side setback was required. Upon site visits, staff measured the addition being 3'-2" from the side property line. Any structure that is less than 5' from the side property line is required to obtain a variance through the Board of Adjustment.

Code Enforcement History

Permit Investigation (INV-PBP-23-3100000329)- January 2023
Permit Investigation (INV-PBP-23-3100000328) - January 2023
Overgrown Yard Investigation- May 2021

Permit History

The issuance of a building permit is pending the outcome of the Board of Adjustment
Residential Fence Permit – January 2023
Foundation Repair Permit- December 2022

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “C” Apartment District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “C” Apartment District converted to “MF-33” Multi-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“MF-33 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
South	“MF-33 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Church Parking Lot
East	“MF-33 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“MF-33 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Arena District Plan and is designated “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Harvard Place Eastlawn and they have been notified of the request.

Street Classification

Burnet Street is classified as a local road.

Criteria for Review – Rear 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. In this case, the public interest is represented by restricted setbacks to provide ample spacing between structures. The applicant is requesting a variance to the side setback to allow an addition to be 3’-2” from the side property line. Staff finds this distance is not suitable, as it is too close to the neighbors shared property line, storm water runoff imposes onto the neighboring property, and side yard maintenance has limited access.

- 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 rebuilding the structure five feet from the side property line, which would not result in an unnecessary hardship as construction has been halted and appears to allow for alterations to meet the setback requirements. Upon site visits, staff observed no special conditions on the subject property that

would warrant the need for this reduced setback, as the applicant could have met setback requirements because of the amount of space in the rear yard.

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 addition would be 3'-2" from the side property line. Allowing the variance to be granted allows for water drainage concerns and structures being close together, which does 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.*

If granted, the structure will be 3'-2" from the side property line, which is likely to alter the essential character of the district. No other structures in the immediate seemed to impose into the side setbacks. Additionally, the requested distance creates issues that can affect the adjacent property when developed.

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 found no unique circumstances to warrant the need for the addition to be 3'-2" from the side property line. Had the property owner obtained building permits prior to construction, the setback restrictions could have been communicated thoroughly. Additionally, staff found the rear yard had adequate spacing to build a sizeable addition, without imposing into the setback area.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the setback requirements of the UDC Section 35-310.01.

Staff Recommendation – Side Setback Variance

Staff recommends Denial in BOA-23-10300045 based on the following findings of fact:

1. The structure is currently 3'-2" from the side property line which does not observe the spirit of the ordinance by preventing space from the neighboring property; and
2. Staff found the applicant could have built a sizable addition without imposing into the side setback because of the size of the rear yard.