

Case Number:	BOA-22-10300057
Applicant:	Susanne Escobar
Owner:	Susanne V Escobar & Oscar Escobar
Council District:	2
Location:	5826 Shadow Way
Legal Description:	Lot 9, Block 1, NCB 15877
Zoning:	“R-6 MLOD-3 MLR-2 AHOD” Residential Single-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 160 square foot variance from the maximum 800 square foot accessory dwelling, as described in Section 35-371 (a)(3), to allow a detached accessory dwelling unit to have 960 square foot accessory dwelling.

### **Executive Summary**

The subject property is located on the far east side of San Antonio, along Shadow Way near Rittiman Road. The applicant was halted by Code Enforcement (INV-PBP-23-3100000836) for constructing an accessory detached dwelling unit (ADDU) in their rear yard without obtaining proper building permits. According to the UDC update Sec 35-371 (a)(3), “The accessory dwelling shall not exceed eight hundred (800) square feet or 50% of the gross floor area of the primary structure up to a maximum of sixteen hundred (1,600) square feet, in any single-family residential zoning district.” Per BCAD, the principal structure is 1,196 square feet, meaning the maximum square footage allowable for an ADDU at this property is 800 square feet and the applicant constructed it at 960 square feet. Any structure that exceeds this requirement is required to obtain a variance through the Board of Adjustment.

### **Code Enforcement History**

An investigation was opened on February 17, 2023 for Building Without A Permit (INV-PBP-23-3100000836).

### **Permit History**

There are no relevant permits pulled for the subject property.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 41431, dated December 25, 1972 and originally zoned Temporary “R-1” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned Temporary “R-1” Single-Family Residence District converted to the current “R-6” Residential Single-Family District.

### **Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-6 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting	Single-Family Residence

Overlay Military Lighting Region 2 Airport Hazard Overlay District	
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### **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	ROW	Right Of Way
South	“R-6 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
East	“R-6 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“R-6 MLOD-3 MLR-2 AHOD” Residential Single-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 not located within a neighborhood community perimeter plan and has no future land use classification. The subject property is located within the boundary of the Woodglen Neighborhood Association, and they have been notified of the request.

### **Street Classification**

Shadow Way is classified as a local road.

### **Criteria for Review – Accessory Detached Dwelling Unit Square Footage 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 square footage limitations for ADDUs to preserve the integrity of a single-family zoned district and prevent density encroachment in established neighborhoods. Staff finds that the variance request to allow an ADDU to exceed the maximum square footage requirement will not be contrary to public interest, as the rear lot size of the subject property is large and current abiding setbacks for the structure can allow for the ADDU to exceed this requirement.**

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

**The special condition found on the subject property includes the rear lot size being larger in size, theoretically allowing for an ADDU to exceed the 800 square foot requirement by 160 square feet. A literal enforcement of the ordinance would result in the applicant**

**altering the structure to abide by the requirement, which would result in an unnecessary hardship as the applicant would need to alter plans to meet the ordinance.**

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 ADDU is currently located in the rear of property, abides by current setback restrictions, and height requirements. Additionally, it is not overwhelming in comparison to the principal structure and is situated within a lot of a larger size. All of which are observing 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.*

**The size of the ADDU is proportional with the size of the principal dwelling and the size of the lot. Upon site visits conducted by staff, other accessory structures were found in the immediate area, one of which was the property abutting the subject property and closest to the ADDU. The variance request will not substantially injure the appropriate use of adjacent conforming properties or alter the essential character of the district.**

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, such as the size of the lot. The circumstances do not appear to be merely financial.**

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

The alternative to the applicant's request is to conform to the Accessory Dwelling Regulations of the UDC Section 35-371 (a)(3).

### **Staff Recommendation – Accessory Detached Dwelling Unit Square Footage Variance**

Staff recommends **Approval** in **BOA-23-10300057** based on the following findings of fact:

1. The rear lot size of the subject property is large and is currently abiding by all other building regulations for the structure can allow for the ADDU to exceed this requirement; and
2. Other accessory structures were found in the immediate area, one of which was the property abutting the subject property and closest to the ADDU, which does not seem out of character with the neighborhood.