

Case Number:	BOA-23-10300168
Applicant:	Brown & McDonald PLLC
Owner:	Green Axis LLC
Council District:	2
Location:	108 Vine Street
Legal Description:	Lot 54, Block 14, NCB 1600
Zoning:	“RM-4 MLOD-3 MLR-2 AHOD” Residential Mixed Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Mirko Maravi, Principal Planner

### **Request**

A request for a 2' variance from the minimum 5' side setback, as described in Sec 35-310.01, to allow a 3' side setback on the western property line.

### **Executive Summary**

The subject property is east of downtown, just north of IH-10 East. Although the structure appears closer than 5-feet, the first story measures exactly 5-feet and the 2<sup>nd</sup> story has an projecting architectural feature called a jetty or oversail that allows the 2<sup>nd</sup> story to overhang into the setback by 2-feet, leaving 3-feet from the property line in accordance with 35-516(j), Setback and Frontage Regulations – Projecting Architectural Features. A recent Board of Adjustment decision validated that projections as described previously are not in accordance with 35-516(j).

### **Code Enforcement History**

INV-BLD-INV23-23201596 - Building Investigation – Pending Resolution

### **Permit History**

RES-RBP-APP22-35503744 - 108 Vine New Residential Building – Additional Information Required

RES-RBP-PMT23-36600127 - Building No: 108; Unit No: 103 - Active

RES-RBP-PMT23-36600126 - Building No: 108; Unit No: 102 - Active

RES-RBP-PMT23-36600125 - Building No: 108; Unit No: 101 - Active

### **Zoning History**

The property was located within the original 36 square miles of San Antonio and zoned “B” Residence District. The properties were rezoned by Ordinance 79329, dated December 16, 1993, to “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property converted from “R-2” Two-Family Residence District to the current “RM-4” Residential-Mixed District.

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

Existing Zoning	Existing Use
“RM-4 MLOD-3 MLR-2 AHOD” Residential Mixed Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Dwelling

## **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“RM-4 MLOD-3 MLR-2 AHOD” Residential Mixed Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Dwelling
South	“RM-4 MLOD-3 MLR-2 AHOD” Residential Mixed Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Dwelling
East	“RM-4 MLOD-3 MLR-2 AHOD” Residential Mixed Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Dwelling
West	“RM-4 MLOD-3 MLR-2 AHOD” Residential Mixed Martindale Army Air Field 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 Arena District/ Eastside Community Plan and is designated as “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Denver Heights Neighborhood Association, and they have been notified of the request.

## **Street Classification**

Vine Street 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 variance to the side setbacks to allow a structure to be 3’ from the side property lines, which is not contrary to the public interest.**

- 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 building the structure 5’ from the side property lines, which would result in an unnecessary hardship as the structure would have to have reduce the square footage reduced to meet the setback requirements.**

- 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 structure would be 3' from the side property lines, which observes the spirit of the ordinance due to the size of the lot and the proposed square footage of the structure.**

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' from the side property lines due to the size of the lot and the proposed square footage of the structure and would not 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.**

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

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

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

Staff recommends **Approval** in **BOA-23-10300168** based on the following findings of fact:

1. Due to the size of the lot and the proposed square footage of the structure; and
2. It will not alter the essential character of the district.