

Case Number:	BOA-23-10300122
Applicant:	Randolph Alston
Owner:	Randolph Alston
Council District:	2
Location:	1247 Essex Street
Legal Description:	Lots 47 and 48, Block 3, NCB 1638
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 4'-11" variance from the minimum 5' side setback, as described in Sec 35-370(b)(1), to allow an accessory structure with a 1" side setback.

### **Executive Summary**

The subject property is located just north of the intersection of IH-10 East and South Walters Street on a corner lot. Code Compliance issued a citation for a structure not observing the 5' side setback and encroaching past the property line. Dated photographs show the structure was in the current configuration since at least 2007. If approved, property owner is aware that they structure must be trimmed down to at least 1" from the property line, or an alternative approval by the board. Several structures were observed encroaching into side setbacks to include the abutting property's garage located within inches of the accessory structure at hand, however it appears these were constructed prior to the current building standards.

### **Code Enforcement History**

Building Without a Permit (INV-PTI-23-3090000149)- April 2023

Zoning UDC Investigation (INV-ZPS-23-3160000522)- May 2023

### **Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment.

### **Zoning History**

The subject property was part of the original 36 square miles of the City of San Antonio and originally zoned “B” Residence District. The property was rezoned by Ordinance 79329, dated December 16, 1993, to the “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-2” Two-Family Residence District converted 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 Residence

## **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 Residence
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 Residence
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	Vacant Lot
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 Residence

## **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 Denver Heights Neighborhood Association, and they have been notified of the request.

## **Street Classification**

Essex Street is classified as a local road.

South Walter Street is classified as a Secondary Arterial Type B.

## **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. In this case, the public interest is represented by restricted side setback to provide spacing between the property line and the accessory structure. The applicant is requesting a variance to the side setback to allow an accessory structure to be 1” from the side property line, after it is trimmed down. Staff finds this distance is not suitable, as it imposes on the public interest of the adjacent neighbor by being too close to the shared property line, water runoff may impose, and risk of fire spread is greater.

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

Staff found no special conditions on the subject property that warrant the need for the accessory structure to have a 1” side setback. No unnecessary hardship seems to be presented in this case, as the applicant could relocate the accessory structure.

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. In this case, the intention is for sufficient spacing between the accessory structure and the property line. The accessory structure will be 1" from the side property line, which does not observe the spirit of the ordinance or intent of the code as it will be too close to the shared property line.

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 have a 1" from the side property line which is likely to injure the appropriate use of the adjacent conforming property by having a structure inches from an abutting garage.

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 on the subject property that would warrant the need for a reduced side setback. The property has sufficient space in the rear yard to relocate the structure.

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

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

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

Staff recommends Denial in BOA-23-10300122 based on the following findings of fact:

1. This distance is not suitable, as it imposes on the public interest of the adjacent neighbor by being too close to the shared property line, water runoff may be imposed, and risk of fire spread is greater; and
2. The applicant could relocate the structure.