

Case Number:	BOA-23-10300167
Applicant:	Brown & McDonald PLLC
Owner:	Green Axis LLC
Council District:	2
Location:	107 Harding Place
Legal Description:	Lot 2, Block 1, NCB 3782
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

On April 10, 2023, after a concern was received regarding structures being constructed. Code Enforcement investigated the location at 107 Harding Place for an encroachment issue. Staff and Code found that there were three (3) permitted residential units being constructed in a “RM-4” Residential Mixed zoning district, which allows up to four (4) units.

It is staff's position that the permits issued were valid based on Section 35-516(j) 35-516(j), Setback and Frontage Regulations – Projecting Architectural Features. The units have a 2nd story projecting architectural feature called a jetty or oversail that allows the 2nd story to overhang into the setback by 2-feet, leaving 3-feet from the property line.

On June 5, 2023, the Board of Adjustment agreed with an appeal overturning an Administrative Official's decision related to the issuance of a building permit to 107 Harding Place. The property owner is now requesting a variance to allow a 3-foot side setback.

Code Enforcement History

INV-PTI-23-3090000198 - Building Without A Permit – No violation found
INV-ZPS-23-3160000119 - Zoning UDC Investigation – Pending Resolution

Permit History

RES-RBP-APP22-35503708 - 3 Residential Buildings Permit – Additional Information Required
RES-RBP-PMT22-36604465 - Building No: 107; Unit No: 102 - Active
RES-RBP-PMT22-36604464 - Building No: 107; Unit No: 101 - Active
RES-RBP-PMT22-36604466 - Building No: 107; Unit No: 103 - Active

Zoning History

The property was annexed into the City of San Antonio by Ordinance 4745, dated March 7, 1947, and was originally zoned “B” Residence District. The property was rezoned by Ordinance 79,329 dated December 16, 1993 to “R-2” Two-Family Residence District. With the adoption of the 2001 Unified Development Code (UDC), established by Ordinance 93881, on May 3, 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 Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
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	Church
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 “Neighborhood Commercial” 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

Harding 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 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-23-10300167** 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.