

Case Number:	BOA-23-10300114
Applicant:	Araceli Solis
Owner:	Araceli Solis
Council District:	4
Location:	6302 Birch Valley Drive
Legal Description:	Lot 5, Block 6, NCB 16001
Zoning:	“R-4 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

### **Request**

A request for 1) a 4'-11" variance from the minimum 5' side setback requirement, as described in Section 35-370(b)(1), to allow an accessory structure to be 1" from the side property line, 2) a 4'-6" variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow a 6" side setback, and 3) a 19'-11" variance from the minimum 20' rear setback, as described in Section 35-310.01, to allow a 1" rear setback.

### **Executive Summary**

The subject property is located on Birch Valley Drive, east of SW Loop 410. Resulting from a Zoning UDC Investigation (INV-ZPS-23-31600000652) for a property setback violation, the applicant is seeking a variance for the side setback. The applicant constructed an accessory structure measuring 1" from the side property line. Accessory structures constructed in San Antonio are required to maintain 5' from the side property line and must obtain a variance to deviate from this minimum requirement. Upon site visits, staff did not observe any accessory structures in the area towards the side and front of the properties. Additionally, the applicant constructed a patio cover on the side and rear up to the 6" side setback and 1" rear setback.

### **Code Enforcement History**

Building Without a Permit (INV-PBP-23-3100000931)- February 2023

Zoning UDC Investigation (INV-ZPS-23-31600000652)- February 2023

### **Permit History**

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

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 41420, 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 “R-1” Single-Family Residence District converted to the current “R-6” Residential Single-Family District. The property rezoned under Ordinance 96880, dated December 10, 2002, to “R-4” Residential Single-Family District.

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

Existing Zoning	Existing Use
“R-4 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 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	“R-4 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
South	“R-4 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
East	“R-4 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
West	“R-4 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Port San Antonio Area Regional Center Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is located within the boundary of Ridgestone Neighborhood Association, and they have been notified of the request.

### **Street Classification**

Birch Valley Drive is classified as a local road.

### **Criteria for Review – Side and 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 side and rear setbacks to provide spacing between the property line and the patio cover and accessory structure. The applicant is requesting a variance to the side setback to allow an accessory structure to be 1” from the side setback, a patio cover to be 6” from the side setback and 1” from the rear setback. 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” from the side property line, and structure to be 6” from the side setback, and 1” from the rear 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 patio cover from the property lines. The accessory structure will be 1” from the side property line, and the patio cover to be 6” from the side setback, and 1” from the rear setback, 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 and neighboring 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 maintain 1” from the side property line, and the patio cover will be 6” from the side setback, and 1” from the rear setback, which is likely to injure the appropriate use of the adjacent conforming property, as staff did not observe the adjacent neighbor with the shared property line violating setback violations.

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. Additionally, if the applicant had obtained permits for the accessory structure, the setback dialogue would have been communicated thoroughly.

### **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) and Setback Regulations of the UDC Section 35-310.01.

### **Staff Recommendation – Side and Rear Setback Variance**

Staff recommends Denial in BOA-23-10300114 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 impose, and risk of fire spread is greater; and
2. The applicant could relocate the structure and cut back the patio cover.