

Case Number:	BOA-23-10300144
Applicant:	MP2 Urban Development, LLC
Owner:	MP2 Urban Development, LLC
Council District:	5
Location:	119 – 131 East Fest Street
Legal Description:	Lots 12, 13, 14 and 15, Block 1, NCB 2573
Zoning:	“IDZ AHOD” Infill Development Zone Airport Hazard Overlay District with uses permitted for four (4) residential dwelling units
Case Manager:	Joseph Leos, Planner

Request

A request for a 4' variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow 1' side setbacks.

Executive Summary

The subject properties are located along East Fest Street near South Flores Street. It recently underwent a rezoning (Ordinance 2018-09-06-0701) to “IDZ” Infill Development Zone District with uses permitted for four (4) residential dwelling units. An “IDZ” zoned district provides for flexible standards in development and the reuse of underutilized parcels. In this case, the applicant constructed four residential dwelling units on four separate parcels. Each of these structures contain an attached carport, which are currently 1’ from the side property line. Structures are required to maintain a minimum 5’ and must obtain a variance to deviate from this requirement.

Code Enforcement History

Building Investigation (INV-BLD-INC23-23200941)- April 2023

Permit History

The issuance of a building permit is pending the outcome of the Board of Adjustment Residential New Building Permit (RES-RBP-PMT21-36601804)- April 2021

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “L” First Manufacturing District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “L” Light Manufacturing District converted to “I-2” Heavy Industrial District. The property was rezoned under Ordinance 2006-12-14-1441, dated December 12, 2006, from “I-2” Heavy Industrial District to “R-6” Residential Single-Family District. The property rezoned under Ordinance 2018-09-06-0701, dated September 6, 2018, from “R-6” Residential Single-Family District to the current “IDZ” Infill Development Zone District with uses permitted for four (4) residential dwelling units.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“IDZ AHOD” Infill Development Zone Airport Hazard Overlay District with uses permitted for four (4) residential dwelling units	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District and “I-2 AHOD” Heavy Industrial Airport Hazard Overlay District	Single-Family Residence and Vacant Lot
South	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
East	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
West	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Downtown Area Regional Center Plan and is designated as “Neighborhood Mixed Use” in the future land use component of the plan. The subject property is located within the boundary of the Lone Star Neighborhood Association, and they have been notified of the request.

Street Classification

East Fest 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. In this case, the public interest is represented by restricted setbacks to provide spacing between property line and structures. Staff finds the anticipated setback distances are not suitable, as it imposes on the public interest of the adjacent neighbors 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 structure to have the anticipated setbacks. The requests provide no room for side yard maintenance without trespass, nor allows for storm water mitigation or fire spread prevention. A literal enforcement of ordinance would not result in an unnecessary hardship in this case.

- 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 structures and property lines. The structures in their current form do 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. Staff finds

the spirit of the ordinance will not be observed, as lot dimension requirements are enforced to provide consistency within an assigned base zoning district and surrounding areas.

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 stay at their current distances, which are likely to injure the appropriate use of the adjacent conforming properties. Nonconforming structures in the area will not calibrate the essential character of the neighborhood for new construction as they were constructed prior to current setback regulations. Staff cannot recommend approval for the anticipated distances, as it will be too close to neighboring structures.

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 does not find the plight of the owner of the property for which the variance is sought is not due to unique circumstances existing on the property, as the property is zoned “IDZ” and already allows for relaxed building requirements. 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 Setbacks of the UDC Section 35-310.01.

Staff Recommendation – Side Setback Variance

Staff recommends Denial in BOA-23-10300144 based on the following findings of fact:

1. The structures impose on the public interest of the adjacent neighbors by being too close to the shared property line, water runoff may impose, and risk of fire spread is greater; and
2. Building requirements are enforced to provide consistency within an assigned base zoning district and surrounding areas.