

Case Number:	BOA-23-10300145
Applicant:	Alan Neff
Owner:	Violeta Martinez
Council District:	3
Location:	1672 Rigsby Avenue
Legal Description:	The south 157.3' of Lot 19, Block 1, NCB 7522
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:	Vincent Trevino, Senior Planner

Request

A request for a half story variance from the maximum two and a half story height, as described in Section 35-310.01, to allow a building with three stories.

Executive Summary

The subject property is located on Rigsby Avenue, just west of the intersection with Roland Road. The applicant is proposing to build a building to be three stories. The maximum height for an “RM-4” is three (3) stories, however since the property abuts a single-family residential use property, the height limitation is two and a half stories. The single-family zoned lot to the east appears to have a commercial use that and no record exists of a Nonconforming Use. City Code Compliance is currently investigating, however if a Nonconforming was approved, the limited height would remain unless the property was rezoned. Staff did not observe any abnormal physical features such as a slope on the property. Subject property was rezoned prior to the 2023 UDC amendment that required “RM-4” development under 1/3 of an acre to be under one structure and presented same site plan to the July 19, 2022 Zoning Commission.

Code Enforcement History

There is no code enforcement history.

Permit History

Permits are pending the outcome of the Board of Adjustment meeting.

Zoning History

The property was annexed into the City of San Antonio by Ordinance 1256, Dated August 2, 1944 and zoned "J" Commercial District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "J" Commercial District converted to the current "I-1" General Industrial District. The property was rezoned by Ordinance 2009-12-03-0993, dated December 3, 2009 to "R-6" Residential Single-Family District. The property was rezoned by Ordinance 2022-08-18-0619, dated August 18, 2022 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	Vacant Residential

Military Lighting Region 2 Airport Hazard Overlay District	
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Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“I-1 MLOD-3 MLR-2 AHOD” Light “Industrial Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
South	“C-2 MLOD-3 MLR-2 AHOD” Commercial Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Retail Store
East	“R-6 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“C-2 MLOD-3 MLR-2 AHOD” Commercial Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Retail Store

Comprehensive Plan Consistency/Neighborhood Association

The subject property is not under any Neighborhood Plan. The subject property is located in the Pasadena Heights Neighborhood Association. They were notified of the case.

Street Classification

Rigsby Avenue is classified as a Collector Street.

Criteria for Review – Building Height 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.*

Three-story building would allow for adequate space for occupation and so, it 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 unnecessary hardship as the applicant would have to build the structure only two and half stories to be in compliance with the ordinance, preventing enough space to provide parking.

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 additional half story would observe the spirit of the ordinance as the three-story building would allow for adequate space for occupation.

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.*

The additional half story will not substantially injure the appropriate use of conforming properties and will not alter the essential character of the district as it is abutting a commercially zoned property and located on an 80' Collector Street.

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 variances are sought is not 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 Height Regulations listed under Section 35-310.01 of the UDC.

Staff Recommendation – Building Story Variance

Staff recommends **Approval** in **BOA-23-10300045** based on the following findings of fact:

1. The additional half story would not alter the essential character of the district.
2. Residential property is located on an 80' Collector Street.