

Case Number:	BOA-23-10300142
Applicant:	James Wende
Owner:	James Wende
Council District:	10
Location:	306 East Nottingham Drive
Legal Description:	Lot 2, Block 2, NCB 9144
Zoning:	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for a 3’ variance from the minimum 5’ side setback requirement, as described in Section 35-370(b)(1), to allow a detached garage to be 2’ from the side property line.

### **Executive Summary**

The subject property is located along Nottingham Drive near Nacogdoches Road. Prior to construction, the applicant is seeking a variance for the reduction of the side setback. The applicant is anticipating replacing an existing non-conforming accessory structure, as the foundation is becoming in disrepair. The new detached garage will be located 2’ from the side property line. Accessory structures are required to be setback 5’ from the side property line. Upon site visits, staff observed other accessory structures in the immediate area.

### **Code Enforcement History**

There is no relevant code enforcement history for the subject property.

### **Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment.  
Sidewalk-Curb Permit- June 2021

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 2941, dated December 28, 1945, and originally zoned “A” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “A” Single-Family Residence District converted to “R-5” Residential Single-Family District. The property rezoned under Ordinance 2006-06-15-0728, dated June 15, 2006 from “R-5” Residential Single-Family District to the current “NP-8” Neighborhood Preservation District.

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

Existing Zoning	Existing Use
“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Residence

### **Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“NP-10 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Residence

South	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Residence
East	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Residence
West	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Residence

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

The subject property is in the Northeast Inner Loop Neighborhood 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 the Oak Park Northwood Neighborhood Association, and they have been notified of the request.

### **Street Classification**

East Nottingham Drive 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 properties. The applicant is requesting a variance to the side setback to allow a detached garage to be 2’ from the side property line. Staff finds this distance is suitable, as it will not impose on the public interest of the adjacent neighbor by being too close to the shared property line, water runoff will not impose, and risk of fire spread is mitigated. Additionally, the current detached garage is non-conforming and has not been contrary to the public interest.**

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

**The special condition found on the subject property is limited side yard space for egress and ingress. The applicant is replacing an existing detached garage, which was constructed in 1947, prior to the current setback regulations. If the literal enforcement of the ordinance was applied, the applicant would need to abide by the minimum 5’ side setback requirement. This would result in an unnecessary hardship, as building access will be limited and rear yard space would be reduced.**

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 detached garage will be 2’ from the side property line, which observes the spirit of the ordinance as the structure will be abiding by all other building requirements.**

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 detached garage will maintain 2' from the side property line, which is not likely to alter the essential character of the district. The replacement of the detached garage that currently is non-conforming and is closer to the side property line than the newly anticipated structure. The request will not injure adjacent properties or 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, such as limited side yard space for egress and ingress. 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 Detached Accessory Structure Setback Regulations of the UDC Section 35-370(b)(1).

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

Staff recommends **Approval** in **BOA-23-10300142** based on the following findings of fact:

1. The applicant is replacing an existing non-conforming structure, which will be further from the side property line than the current one; and
2. Water runoff will not impose, and risk of fire spread is mitigated.