

Case Number:	BOA-23-10300175
Applicant:	MiCaza Design Architecture
Owner:	Jose A Ortiz & Luis Miguel Ortiz Carrillo
Council District:	2
Location:	818 Virginia Boulevard
Legal Description:	Lot 5, Block 1, NCB 6087
Zoning:	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) an 826 square feet variance from the minimum 4,000 square feet lot, as described in Section 35-310.01, to allow a 3,174 square feet lot, 2) a 4’-7” variance from the minimum 10’ rear setback requirement, as described in Section 35-310.01, to allow a structure to be 5’-5” from the rear property line, 3) a variance from the maximum 50% impervious cover requirement, as described in Section 35-515(d), to allow the front yard to exceed the maximum 50% impervious cover, and 4) a half story variance from the maximum 2.5 stories, as described in Section 35-517, to allow a structure with 3 stories.

Executive Summary

The subject property is located along Virginia Boulevard near South Pine Street. The lot is currently vacant, with the applicant anticipating on constructing a duplex. A Certificate of Determination was issued for Single-Family Residential in November of 2022. The applicant will need to reapply for a new Certificate of Determination for the multi-family use. The applicant is seeking a variance from the minimum lot size to allow the lot to be 3,174 square feet. Upon review by staff, it was noted that the applicant would also need a variance for the rear setback to be 5’, to exceed maximum 50% impervious coverage in the front yard, and half story variance to allow a structure with 3 stories. The half story variance is required as there is a single-family dwelling within 50 feet.

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. There are no relevant permits pulled for the subject property.

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “C” Apartment District. The property rezoned under Ordinance 79239, dated December 16, 1993, from “C” Apartment District to “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 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
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“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Vacant Lot
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Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
South	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
East	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
West	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Arena District/Eastside Community Plan and is designated as “Medium Density Residential” 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

Virginia Boulevard is classified as a local road.

Criteria for Review – Minimum Lot Size, Rear Setback, Impervious Coverage, and Height Variances

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 minimum lot sizes to prevent development from jamming into smaller lots, setback distances for adequate spacing, and impervious coverage requirements to allow for water penetration. Staff finds these requests are not contrary, as deviating from the minimum lot size will not increase density for the assigned zoning district and the anticipated rear setback distance provides an allowable amount of spacing. Both requests will not infringe on surrounding property owners and the structure will provide a suitable distance from neighboring properties. Additionally, the exceeding of the 50% maximum impervious coverage will not be contrary, as it will not alter the appearance of the community and allows for water penetration into the ground.

The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by height requirements for the protection of view for adjacent uses. Staff finds this request is contrary to the public interest as it will be significantly higher than the other dwelling units in the surrounding area.

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 that it is a non-conforming lot of record, which predates to 1927. At the time of its creation, no minimum lot size requirements were in existence. A literal enforcement of the ordinance would result in the applicant abiding the building regulations set by the Unified Development Code, which would result in an unnecessary hardship for the applicant. Since the lot does not meet the minimum lot size, the enforcement of the minimum rear setback of 20' and maximum 50% impervious coverage requirements would be challenging, as it is smaller in size, and the building square footage would be drastically reduced.

A literal enforcement of the ordinance would not result in an unnecessary hardship as the developer can redraw plans to fit with the surrounding area.

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 lot will not meet the minimum lot size in the assigned zoning district, structure will be 5'-5" from the rear property line, and the front yard will exceed the maximum 50% impervious coverage requirement. Staff finds the spirit of the ordinance will be observed, as the applicant is abiding by all other building requirements and the current zoning district allows for more density.

Staff finds that the additional half story variance will not observe the spirit of the ordinance as the building height limit is intended to prevent towering structures around single-family dwellings.

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.*

Staff finds the requests will not injure the appropriate use of adjacent conforming properties and alter the essential character of the district, as other lots in the area appeared to not abide by the minimum lot size, rear setback requirement, and impervious coverage requirements.

Staff finds the half story request will alter the essential character of the district as no other structures have additional height.

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 the size of the lot. The circumstances do not appear to be merely financial.

Staff finds the plight of the owner of the property for which the half story variance is sought is not due to unique circumstances existing on the property as building plans can be adjusted to meet UDC requirements.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Lot Dimensions of the UDC Section 35-310.01, Impervious Cover standards in UDC Section 35-515(d), and Height Standards of the UDC Section 35-517.

Staff Recommendation – Minimum Lot Size, Rear Setback, and Impervious Cover

Staff recommends **Approval** in **BOA-23-10300175** based on the following findings of fact:

1. Staff finds these requests are not contrary, as deviating from the minimum lot size will not increase density for the assigned zoning district; and
2. The anticipated rear setback distance provides an allowable amount of spacing; and
3. Water will still be allowed to penetrate the surface as the planned front yard impervious cover is for the required parking driveways.

Staff Recommendation – Height Variance

Staff recommends **Denial** in **BOA-23-10300175** based on the following findings of fact:

1. Staff finds additional height will alter the essential character of the district.
2. The structure will tower over surrounding single-family dwellings.