

Case Number:	BOA-23-10300208
Applicant:	Hacam Properties, LLC
Owner:	Olly Wolly Investments, LLC
Council District:	2
Location:	1823 Burnet Street
Legal Description:	Lot 13, Block 5, NCB 1331
Zoning:	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Facility Parking/Traffic Control Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for 1) a 3’-7” variance from the minimum 20’ driveway throat requirement, as described in Section 35-506, to allow a 16’-5” driveway throat OR a 3’-7” variance from the minimum 10’ rear setback requirement, as described in Section 35-310.01, to allow a structure to be 6’-5” from the rear property line, 2) a variance, as described in Section 35-310.07(a), to allow three separate structures on an “MF-33” zoned lot that is less than one-third of an acre, 3) a variance, as described in Section 35-310.01, from the front entry oriented to the primary street to allow a side door, 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 Burnet Street, east of North Gevers Street. Upon review by Development Services Streets department, it was noted that the applicant would need to obtain a variance from the minimum driveway throat requirement of 20’. "Throat length" is the length extending from the entry into the site at the property line, to the first conflict or intersection with a parking aisle. The applicant is proposing to have a 16’-7” driveway throat. As proposed by the applicant, the resolution of this in either one of the two following ways: Obtain the mentioned driveway throat variance of 3’-7” or a rear setback variance to allow the structure to be 6’-5” from the rear property line to successfully accommodate the minimum 20’ driveway throat. A 20’ reduction of driveway throat, from the minimum 40’, through an AEVR has already been approved by the City of San Antonio engineering division.

Upon review, it was noted the applicant would need to obtain additional variances for the front entry orientation, separate structures on an MF development, and to exceed to maximum 2 ½ stories when abutting a single-family residential use. Construction of two (2) to four (4) units on lots one-third (⅓) of an acre in size or smaller, shall have a front entry oriented to the primary street in which the lot is addressed on. A front walkway from the door shall also be provided. These provisions shall only apply to the primary structure that abuts the primary street. Furthermore, multi-unit construction on lots one-third (⅓) of an acre in size or smaller, shall be within a single structure and the maximum height of any portion of a multi-family zoning district located within fifty (50) linear feet of the property line of an established single-family residential use shall be limited to the maximum height of the single-family district.

### **Code Enforcement History**

Permit Investigation- August, 2022  
Code Work Order- June 2022

### **Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment  
Demolition Permit- September 2022

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “C” Apartment District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “C” Apartment District converted to the current “MF-33” Multi-Family District.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Facility Parking/Traffic Control 1 Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Vacant Lot

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

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Facility Parking/Traffic Control 1 Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
South	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Facility Parking/Traffic Control 1 Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
East	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Facility Parking/Traffic Control 1 Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Facility Parking/Traffic Control 1 Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Multi-Family

### **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 Harvard Place Eastlawn Neighborhood Association, and they have been notified of the request.

### **Street Classification**

Burnet Street is classified as a local road.

### **Criteria for Review – Driveway Throat or Rear Setback, Three Separate Structures, Front Entry Orientation, and Half Story 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 minimum rear setback requirements. The anticipated rear setback distance provides an allowable amount of spacing, which will not infringe on surrounding property owners and will provide a suitable distance from neighboring properties.**

In this case, the public interest is represented by minimum driveway throat lengths, as it is a part of the overall design and functioning of a driveway for the accommodation of effective turning radiuses for vehicles. Additionally, the public interest is represented by density allowances to prevent overcrowding of lots less than 1/3 of an acre, front entry orientation to allow for pedestrian circulation, and height restrictions to prevent towering structures imposing onto single-family residential uses. Staff finds that these requests are contrary to the public interest for the following reasons; first, minimum driveway throat lengths are enforced to be free of conflicts for vehicles entering or leaving a driveway; second, maintaining density of three units contained in a single structure can prevent overcrowding on smaller lots, provides open spaces, and contributes to a more comfortable and aesthetically pleasing environment in an established single structure neighborhood; third, front entry orientation is integral to the relationship of pedestrian and built environment design for “MF” properties that are less than 1/3 of an acre for building scale purposes; and four, exceeding the height requirement will significantly be higher than the established single-family and mixed residential development in the 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 the size of the property. Abiding by the minimum rear setback requirement of 20’ would result in an unnecessary hardship, as reduction in livable space and parking areas would be drastically reduced.**

Staff was unable to establish any special conditions to allow for the reduced driveway throat to 16’-5”, three separate structures on an “MF-33” zoned lot that is less than one-third of an acre, front entry oriented to the primary street to allow a side door, and to allow a structure with 3 stories adjacent to single-family uses. No unnecessary hardship would be present, as plans appear to allow for alterations to abide by the requirements.

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 structure will be 6’-5” from the rear property line, which observes**

**the spirit of the ordinance as the structure will be abiding by all other building requirements. Additionally, with the pending of approval of the rear setback request, the spirit of the ordinance will adhere to the safety of accommodating the minimum 20' driveway throat for vehicles.**

The spirit of the ordinance will not be observed, as they are set standards for construction and design of buildings to ensure safety, as well as the wellbeing of the surrounding area. The intention of minimum driveway throat requirements ensures safe and efficient traffic flow within a property, as well as prevent accidents from occurring. The objective of providing front entry orientation to the street the property is addressed allows for proper pedestrian circulation in and out of the property, the containment of units within a single structure allows for smaller properties from becoming overcrowded, and height restrictions to provide access to light and air. The requested variances will not observe these 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.*

**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 rear setback requirement.**

If granted, the driveway throat length would be reduced, which may interfere with the flow of traffic on the local street which may cause congestion, the "MF-33" zoned lot will be allowed to contain three separate structures on a lot that is less than one-third of an acre, which interferes with the development pattern of the neighborhood, front entry will be on side, which impacts the community feel of the neighborhood, and three stories can infringe on the abutting neighbor. All of which will injure 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 not due to unique circumstances existing on the property, as the applicant can alter plans. 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 Lot and Building Requirements of Section 35-310.01, Transportation and Street Design of Section 35-506, Lot and Building Specifications of Section 35-310.07(a), and Height Standard of the UDC Section 35-517.

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

Staff recommends **Approval** in **BOA-23-10300208** based on the following findings of fact:

1. The anticipated rear setback distance provides an allowable amount of spacing, which will not infringe on surrounding property owners and will provide a suitable distance from neighboring properties; and
2. The pending of approval of the rear setback request, the spirit of the ordinance will adhere to the safety of accommodating the minimum 20' driveway throat for vehicles.

**Staff Recommendation – Driveway Throat, Three Separate Structures, Front Entry Orientation, and Half Story Variance**

Staff recommends Denial in BOA-23-10300208 based on the following findings of fact:

1. The intention of minimum driveway throat requirements ensures safe and efficient traffic flow within a property, as well as preventing accidents from occurring; and
2. The objective of providing front entry orientation to the street the property is addressed allows for proper pedestrian circulation in and out of the property; and
3. The containment of units within a single structure allows for smaller properties from becoming overcrowded; and
4. Height restrictions to prevents structures from impeding onto adjacent single-family residential uses.