

Case Number:	BOA-23-10300218
Applicant:	Christensen P.C.
Owner:	Pine Avenue Partners LLC
Council District:	2
Location:	815 South Pine Street
Legal Description:	Lot 10, Block 1, NCB 654
Zoning:	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a 1'-7" variance from the minimum 5' side setback, as described in Section 35-310.01, to allow a structure to be 3'-5" from the side property line, 2) a variance, as described in Section 35-310.06 (a)(1), to allow three separate structures on an “RM-4” lot that is less than one-third of an acre, 3) a variance, as described in Section 35-515(d), 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 building with 3 stories.

Executive Summary

The subject property is located along South Pine Street, south of Virginia Boulevard. The lot is currently vacant, with the applicant anticipating on constructing a total of three dwelling units without shared walls. This lot is currently 5,610 square feet, with the units facing South Pine Street. This orientation and size resulted in the applicant requesting a 1'-7" variance to allow a structure to 3'-5" from the side property line to accommodate the units not having shared walls. Upon review by staff, it was noted the applicant would need to obtain additional variances. While three dwelling units are permitted by right in the “RM-4” Residential Mixed District, the applicant is requesting a variance to allow three separate structures on an “RM” lot that is less than 1/3 of an acre. Per Section 35-310.06 (a)(1), multi-unit construction on lots one-third ($\frac{1}{3}$) of an acre in size or smaller, shall be within a single structure and must obtain a variance to deviate from this requirement. The third variance requested is to exceed the maximum 50% impervious cover. Each unit has a two car driveway to accommodate for the minimum parking requirement of 1.5 per unit. The last variance requested is for the building height. The maximum height of any portion of a commercial, office or 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 and the applicant is proposing 3 stories.

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 was originally zoned “C” Apartment District. The property rezoned under Ordinance 79329, 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
“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Vacant Residential

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

South Pine Street and Douglas Way Street are classified as a local roads.

Criteria for Review –Side Setback, Three Separate Structures on an “RM-4” lot that is less than One-Third of an Acre, Impervious Cover, 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 restricted setbacks to provide spacing between properties. The applicant is requesting a variance to the side setback to allow a structure to be 3’-5” 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.

The applicant is also requesting a variance to allow three separate structures on an "RM-4" that is less than one-third of an acre, exceed the maximum 50% impervious coverage, and a half story variance. Staff finds these requests are contrary to the public interest for the following reasons: one, 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; two,

the exceeding of the 50% maximum impervious coverage will be contrary, as it will alter the appearance of the community and does not allow for water penetration into the ground; three, height requirements are enforced for the protection of view for adjacent residential uses.

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, which is reduced to abide by the other setback requirements. Staff finds a literal enforcement of the ordinance would result in an unnecessary hardship, as a reduction of livable area would be reduced.

Staff found no other special conditions on the subject property to warrant the need to allow for three structures to not be contained within a single structure, exceed the 50% impervious cover, and allow for the height requirement to be exceeded.

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 3'-5" from the side property line, which observes the spirit of the ordinance as the structure will be abiding by all other setback requirements.

Staff finds that the need to allow for three structures to not be contained within a single structure, exceed the 50% impervious cover, and allow for the height requirement to be exceeded will not observe the spirit of the ordinance. The intention of units being contained into a single structure is to ensure efficient land use and maintain the quality of life in an established neighborhood. Deviating from this requirement allows for density requirements to be loosened that protect smaller properties from becoming overcrowded. Impervious coverage regulations are enforced to allow for water penetration and building height limit to prevent towering structures around single-family dwellings. All of which will not allow for substantial justice to be done.

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 be 3'-5" from the side property line, which is not likely to alter the essential character of the district. Most of the properties in the immediate area appeared to be constructed within the minimum setbacks, primarily because they were established prior to current zoning regulations. The request does not appear to be out of character.

If granted, the "RM-4" zoned lot will be allowed to contain three separate structures on a lot that is less than one-third of an acre, exceeding the impervious coverage, and have three stories when abutting a single-family use. The granting of these variances will injure the appropriate

use of adjacent conforming properties, as these specific types of development is out of character with the development pattern of the neighborhood.

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 orientation of structures and size of the lot. 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 Lot and Building Dimensions of Section 35-310.01, Separate Structures of Section 35-310.06 (a)(1), Height Restrictions of Section 35-517, and Impervious Cover Requirements of Section 35-515(d) of the Universal Development Code.

Staff Recommendation – Side Setback Variance

Staff recommends **Approval** in **BOA-23-10300218** based on the following findings of fact:

1. 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.

Staff Recommendation- Three Separate Structures on an "RM-4" lot that is less than One-Third of an Acre, Impervious Cover, and Half Story Variance

Staff recommends **Denial** in **BOA-23-10300218** based on the following findings of fact:

1. 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 already established single structure neighborhood; and
2. The exceeding of the 50% maximum impervious coverage will be contrary, as it will alter the appearance of the community and does not allow for water penetration into the ground; and
3. Height requirements are enforced for the protection of view for adjacent residential uses.