

Case Number:	BOA-23-10300216
Applicant:	Miguel A. Gomez
Owner:	Miguel A. & Cecilia S. Gomez
Council District:	1
Location:	715 Westmoreland Drive
Legal Description:	Lot 25, Block 16, NCB 10965
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for a 4’-11” variance from the minimum 5’ side setback requirement, as described in Section 35-370(b)(1), to allow a structure to be 1” from the side property line.

### **Executive Summary**

The subject property is located along Westmoreland Drive, near Dresden Drive. Cited by Code Enforcement, the applicant is requesting the allowance of an accessory structure to be 1” from the side property line, in the rear yard. Accessory structures in San Antonio are required to maintain a minimum distance of 5’ and must obtain a variance to deviate from this.

### **Code Enforcement History**

Permit Investigation (INV-PBP-23-3100001997)- July 2023

### **Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment.  
Covered Patio or Porch Permit (RES-COV-PMT21-32302185)- October 2021

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 16300, dated October 17, 1951, and originally zoned “B” Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B” Residence District converted to the current “R-4” Residential Single-Family District.

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

Existing Zoning	Existing Use
“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

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

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

West	UZROW	Railroad ROW
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### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Greater Dellview 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 North Central Neighborhood Association and they have been notified of the request.

### **Street Classification**

Westmoreland Drive and Dresden Drive are classified as local roads.

### **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 the adjacent neighbor for safety. The applicant is requesting a variance to the side setback to allow an accessory structure to be 1” from the side property line. Staff finds that this is not an allowable distance, as it will directly affect the adjacent neighbor by being too close to the shared property line and risk of fire spread is greater.

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

Staff observed no special conditions on the subject property to warrant the need for a reduced side setback. A literal enforcement of the ordinance would result in the applicant altering the accessory structure to adhere by the rear setback requirements. This would not result in an unnecessary hardship, as it appears the structure can be altered.

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. While staff does recognize that a railroad ROW abuts the subject property, which allows property owners to have a reduced rear setback, however, staff cannot support the reduction for the side.

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 accessory structure will maintain a 1” side setback. This would injure the appropriate use of adjacent conforming properties, as no other structures in the immediate appeared to be within the setback.

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. Had the applicant consulted with Development Services, the minimum side setback could have been thoroughly communicated.

### **Alternative to Applicant’s Request**

The alternative to the applicant’s request is to conform to the Accessory Structures Setbacks of the UDC Section 35-370(b)(1).

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

Staff recommends Denial in BOA-23-10300216 based on the following findings of fact:

1. The proposed distance and coverage will directly affect the adjacent neighbor by being too close to the shared property line and risk of fire spread is greater.