

Case Number:	BOA-22-10300005
Applicant:	Daryl W Appling
Owner:	Daryl and Jennifer Appling
Council District:	10
Location:	234 Irvington Drive
Legal Description:	Lot 26, Block 15, NCB 9055
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

### **Request**

A request for a 1’ 9" side setback variance from the minimum 5' side setback requirement, as described in Section 35-310, to allow a detached structure with 7” overhang to be 3’ 3" away from side property line.

### **Executive Summary**

The subject property is located at 234 Irvington Drive and there is currently a single-family residence and a detached garage on the property. The applicant is proposing to convert the detached garage into an Accessory Detached Dwelling Unit. The structure is currently encroaching into the side setback. As it stands the structure does not appear to impede or negatively impact any of the surrounding neighbors.

### **Code Enforcement History**

Multiple Overgrown Yard Investigations on file on 07/15/2019, 06/17/2021, and 06/23/2021.

### **Permit History**

No permits have been issued. A permit is pending the outcome of the BOA Meeting.

### **Zoning History**

The subject property was annexed into the City Limits of San Antonio by Ordinance 2942, dated December 28, 1945, and was zoned “B” Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted from “B” Residence District to the current “R-4” Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001.

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

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

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

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
East	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

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

The subject property is in the Northeast Inner Loop Neighborhood Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Terrill Heights Neighborhood Association and were notified of the case.

### **Street Classification**

Irvington is classified as a local road.

### **Criteria for Review - 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. The applicant is proposing to maintain the existing 3' 3" side setback to allow a detached structure with 7" overhang to remain in place. The applicant is proposing to convert the existing structure into an Accessory Detached Dwelling Unit and keep the current setback which does not appear to be contrary to the public interest.**

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

**A literal enforcement of the ordinance would result in the applicant having to move the post of the structure to 5' away from side property lines which would require a possible demolition of the structure to build. There is limited space to move the structure away from the side property line which may present an unnecessary hardship.**

- 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. A 3' 3" side setback appears to provide adequate space from the side property line and adjacent structures which observes the spirit of the ordinance.**

- 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 request for a 1' 9" variance from the side setback requirement allows the structure to maintain adequate space from the property line and is not likely to negatively affect the adjacent property.**

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 small amount of available space.**

#### **Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the Accessory Structure Regulations per the UDC Section 35-370.

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

Staff recommends **Approval** in **BOA-22-10300005** based on the following findings of fact:

1. The detached structure is currently existing and is 3' 3" away from the side property line; and
2. The structure currently meets the minimum rear setback requirement and requirements for Accessory Detached Dwelling Units; and
3. The structure does not appear to alter the essential character of the district.