

Case Number:	BOA-22-10300006
Applicant:	Claburn Jones
Owner:	Claburn Jones
Council District:	10
Location:	606 East Nottingham Drive
Legal Description:	Lot 2, Block 22, NCB 10422
Zoning:	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

### **Request**

A request for a 1’ side setback variance from the minimum 5' side setback requirement, as described in Section 35-370, to allow a detached accessory structure with 1’ 5” overhang to be 4’ away from side property line.

### **Executive Summary**

The subject property is located along East Nottingham Drive. The applicant has partially constructed a detached structure that encroaches into the side setback. The applicant submitted a residential building permit application in early January, which is where the setback issue was observed and the applicant was given the option to apply for a variance. Upon the site visit, the structure was observed to have been partially constructed and measurements were taken from the structure to the rear and side property lines. Accessory structures are required to be setback 5’ from the rear and side property lines. There did not appear to be a rear setback issue due to the location of an alleyway behind the subject property. Half of the width of the alley can be applied to the rear setback. As for the side setback, the structure is located 4’ from the side property line and the overhang measured to be 1’ 5”. Additionally, although not required, the applicant has also stated that the structure will include the installation of gutters.

### **Code Enforcement History**

There is no Code Enforcement History on file.

### **Permit History**

A Residential Building Permit Application was submitted on January 10, 2022. The issuance of the 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 18115, dated September 24, 1952, and was zoned “A” Single Family Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted to “R-5” Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001. Ordinance 2006-06-15-0728, dated June 15, 2006, rezoned the property to the current “NP-8” Neighborhood Preservation District.

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

Existing Zoning	Existing Use
“NP-8 AHOD” Neighborhood Preservation 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	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling
South	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling
East	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling
West	“NP-8 AHOD” Neighborhood Preservation 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 “Urban Low Density Residential” in the future land use component of the plan. The subject property is located within the Oak Park Northwood Association and were notified of the case.

### **Street Classification**

East Nottingham 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 requesting a 1’ side setback variance from the minimum 5’ side setback requirement to allow a detached structure with 1’ 5” overhang to be 4’ away from side property line. The request 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 detached structure to build. The applicant has stated that an existing concrete slab is being used to construct the covered patio.**

- 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 1’ side setback variance from the minimum 5’ side setback requirement to allow a detached structure with 1’ 5” overhang to be 4’ away from side property line will observe the spirit of the ordinance. Since it is an accessory structure, the location would be permitted in its current location if there was no overhang. Due to the overhang, a variance is required to maintain the existing design and location.**

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 that the request for a 1' variance from the side setback requirement does not appear to negatively affect the adjacent neighboring 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 not merely financial and is due to unique circumstances existing on the property such as there being an existing concrete slab that was previously used for a deteriorating shed.**

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

The alternative to the applicant's request is to conform to the accessory structure regulations in the UDC Section 35-370.

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

Staff recommends **Approval** in **BOA-22-10300006** based on the following findings of fact:

1. The detached structure has 1' 5" of overhang and the post is 4' from the side property line; and
2. The structure is utilizing an existing concrete slab which was a previous shed that encroached into the side setback; and
3. Gutters will be installed which will mitigate any adverse effects of water runoff from the structure.