

Case Number:	BOA-21-10300159
Applicant:	Rey Gutierrez
Owner:	Rey Gutierrez
Council District:	2
Location:	1118 South Mesquite Street
Legal Description:	Lot W 51 FT OF 5 OR A1, Block 19, NCB 666
Zoning:	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District
Case Manager:	Roland Arsate, Planner

### **Request**

A request for 1) a 4' 11" variance from the 5 foot minimum rear and side setback requirement, as described in Section 35-370, to allow an accessory detached dwelling unit to be 1" from the side and rear property line and 2) a 2,164 square foot variance from the 4,000 square foot minimum lot size requirement, as described in Section 35-310, to allow a 1,836 square foot lot size.

### **Executive Summary**

The subject property is located on the corner of South Mesquite Street and Florida Street. The applicant demolished the previous structure and rebuilt a two-story detached dwelling unit without any permits while slightly expanding the existing footprint of the old structure. The new two-story structure is currently 1" away from the side and rear property line, where the required setback should be 5' away from property line. The applicant is in the process of obtaining a new survey that clearly displays the structure and the property lines. Other similar structures were observed in the surrounding area, but not many were observed as close to the lot lines as the current structure. There are also similar size lots on the immediate area of the subject property.

### **Code Enforcement History**

A Permit Investigation was created on August 20, 2021 for Building Without a Permit.

### **Permit History**

There are no relevant permits pulled for the subject property. The permit for the accessory structure is pending the outcome of the BOA Meeting.

### **Zoning History**

The subject property was located within the Original City Limits of San Antonio and was zoned "D" Apartment District. The subject property was rezoned by Ordinance 79329, dated December 16, 1993, to "R-2" Two Family Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted from "R-2" Two Family Residence District to the current "RM-4" Residential Mixed District, established by Ordinance 93881, dated May 3, 2001.

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

Existing Zoning	Existing Use
"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District	Single-Family Residence

### **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 Plan and is designated “Medium Density Residential” in the future land use component of the plan. The subject property is located within the Denver Heights Neighborhood Association and were notified of the case.

### **Street Classification**

South Mesquite Street 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 variance to the rear and side setback for an accessory detached dwelling unit. The ADDU is currently 1” away from the side and rear property line, which is contrary to the public interest.

**Staff finds a 3’ side and rear setback to be more appropriate given the small size of the lot. The applicant is also requesting a variance for the minimum lot size. The current lot size is 1,836 square feet where the required minimum is 4,000 square feet.**

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 structure to 5’ away from side and rear property lines. This would result in the accessory detached dwelling unit being 5’ from side and rear property line, which would not leave adequate space for the construction of an ADDU.

**The alternate recommendation of a 3’ setback will allow for some more space for the construction of the ADDU as well as provide more space from adjacent properties. The lot size variance is necessary as a hardship would be the inability to build or having to rezone the property.**

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 and rear setback will not observe the spirit of the ordinance, as it may pose a fire/safety hazard.

**The spirit of the ordinance appears to be maintained if the accessory dwelling were to be setback 3' from the side and rear property lines. The current configuration of the lot was not due to the owner of the property and there are other similar small lots in the immediate area.**

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 4' 11" variance is proposed too close to the property line and is likely to affect the adjacent neighboring property.

**Staff finds that the alternate setback recommendation and minimum lot size are not out of character for neighboring properties as they are similar in size.**

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 and limited amount of lot size available in the local area.**

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

The alternative to the applicant's request is to conform to the Lot and Building Dimensions of the UDC Section 35-310 and the Accessory Structure Regulations of 35-370.

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

Staff recommends Denial **with an Alternate Recommendation of a 2' variance to allow an Accessory Detached Dwelling Unit to be 3' from the side and rear property lines in BOA-21-10300159** based on the following findings of fact:

1. The accessory detached dwelling unit sits 1" from the side and rear property lines; and
2. The structure appears to alter the essential character of the district; and
3. A 3' setback will observe the spirit of the ordinance and provide adequate spacing from adjacent structures.

**Staff Recommendation – Minimum Lot Size Variance**

Staff recommends **Approval** in **BOA-21-10300159** based on the following findings of fact:

1. There are similar lots in the immediate area; and
2. The minimum lot size will not adversely affect neighboring properties.