

Case Number:	BOA-21-10300115
Applicant:	Christopher Coffey
Owner:	Christopher Coffey
Council District:	1
Location:	323 Devine
Legal Description:	Lot 11 & 12, Block 7, NCB 725
Zoning:	"RM-4 H AHOD" Residential Mixed Lavaca Historic Airport Hazard Overlay District
Case Manager:	Roland Arsate, Planner

### **Request**

A request for a 3' 3" variance from the minimum 5' side setback, as described in Section 35-370, to allow a detached structure to be 1' 9" away from the side property line.

### **Executive Summary**

The subject property is located on the corner of Devine Avenue and Labor Street. The subject property currently has a single-family residence constructed on the property and is zoned "RM-4" Residential Mixed District. There is an existing accessory structure in the rear of the property. The applicant is proposing to renovate and add onto the detached structure. Detached structures are required to be 5' from the side property line, and it is currently encroaching into the side setback. The existing structure is currently 1' 9" from the side property line and is proposing to maintain the setback with the addition to the structure. The applicant is requesting variances to the side setback in order to better accommodate the new construction.

The project as seen by the Board of Adjustments was reviewed and approved with stipulations by the Historic & Design Review Commission on October 6, 2021. All the stipulations from the approval of the HDRC continue to apply. If any modifications are proposed to the exterior of the property that deviate from the plans approved by the HDRC and OHP staff, an updated application for an amendment is required. Any deviations from the approved scope of work approved on October 6, 2021, including setbacks, without an updated Certificate of Appropriateness is subject to reversal or other compliance measures.

### **Code Enforcement History**

There are no relevant Code Enforcement violations pending.

### **Permit History**

July 2019 - New 309 sq ft porch  
December 2019 – Electrical permit pulled  
September 2021 – Foundation Permit  
September 2021 – Minor Repairs to House

### **Zoning History**

The subject property is located within the Original 1938 City Limits of San Antonio and was zoned "J" Commercial District. The property was rezoned from "J" Commercial District to "R-2" Two-Family Residence District by Ordinance 74924 dated December 9, 1991. Upon adoption of the 2001 Unified Development Code, the zoning converted from "R-2" 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 H AHOD" Residential Mixed Lavaca Historic Airport Hazard Overlay District	Single-Family Residence

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

Orientation	Existing Zoning District(s)	Existing Use
North	"C-2NA H AHOD" Commercial Nonalcoholic Sales Lavaca Historic Airport Hazard Overlay District	Professional Office
South	"R-6 H AHOD" Residential Single-Family Lavaca Historic Airport Hazard Overlay District	Single-Family Residence
East	"C-1 CD H AHOD" Light Commercial Historic Airport Hazard Overlay District	Vacant Commercial Building
West	"R-6 H AHOD" Residential Single-Family Historic Airport Hazard Overlay District	Single-Family Residence

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

The subject property is in the Downtown Area Regional Center Plan and is designated “Urban Low Density Residential” in the future land use component of the plan. The subject property is located within the Lavaca Neighborhood Association, and they were notified of the case.

### **Street Classification**

Devine Street is classified as a Local Road.

Labor Street is classified as a Collector Road.

### **Criteria for Review – Side Setback 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 side setback in order to allow an accessory structure on the property. The proposed structure is not 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 building five feet from the side property line. There is an existing structure and there are other detached accessory structures in the area which are similar in nature to the proposed structure.**

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. The applicant is proposing to maintain the current setback of 1' 9" from the side property line, 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.*

**If granted, the structure will maintain 1' 9" from the side property line. The structure is existing and the applicant wishes to extend the building along the same line. The weird configuration of the lot presents as an unusual circumstance and the proposed structure does not appear to injure adjacent properties or alter the essential character of the district.**

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. The rear yard of the lot is small and configured in a weirdly shaped lot. The variances will accommodate a larger accessory structure, which will remain a carport and storage area. The circumstances were not created by the owner and are not merely financial.**

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

The alternative to the applicant's request is to conform to the side setbacks for accessory structures per the UDC Sections 35-370.

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

Staff recommends **Approval** in **BOA-21-10300115** based on the following findings of fact:

1. The detached accessory structure will be 1' 9" feet from the side property line; and
2. There is ample room to the other side property line and the rear property line; and
3. The structure is not out of character with the surrounding area; and
4. The configuration of the lot is an unusual circumstance existing on the property.