

Case Number:	BOA-22-10300033
Applicant:	Maria Garcia
Owner:	Alfonso and Maria C Garcia
Council District:	1
Location:	1635 Arbor Place
Legal Description:	Lot 16, NCB 2167
Zoning:	“R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazzard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

### **Request**

A request for a 2’ 10” variance from the minimum 5’ side setback requirement, as described in Section 35-310, to allow a structure with 1’ overhang to be 2’ 2” from the side property line.

### **Executive Summary**

The subject property is located on 1635 Arbor Place near the intersection of North Hamilton. A Stop Work Order was issued by Code Enforcement for the work being performed without permits in April 2021. In September 2021, the Strike Team opened an investigation for a follow up. A minor repair permit was issued on July 6, 2021; however, the work being performed exceeded the scope of the minor repair permit. The original structure was demolished and built without a permit. There is currently a building permit application on file but cannot be issued due to the side setback issue.

### **Code Enforcement History**

April 2021- Stop Work Order issued.

### **Permit History**

September 2021- Strike Team consultation for work without permits.

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and 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 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazzard Overlay District	Single-Family Residence

## **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“R-4 MLOD-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazzard Overlay District	Single-Family Residence
South	“R-4 MLOD-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazzard Overlay District	Single-Family Residence
East	“R-4 MLOD-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazzard Overlay District	Single-Family Residence
West	“R-4 MLOD-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazzard Overlay District	Single-Family Residence

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

The subject property is not located within a Neighborhood, Community, or Sector Plan therefore a finding of consistency is based on existing and surrounding zoning and uses.

The subject property is located within the Prospect Hill Neighborhood Association and West End Hope in Action and they were notified of the case.

## **Street Classification**

Arbor Place 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 2’ 10” variance from the minimum 5’ side setback requirement to allow a structure with 1’ overhang to be 2’ 2” from the side property line. The structure in its current location is too close to the side property line and appears 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 structure 5’ away from side property line. This would result in the structure being 5’ from side property line, avoiding any life/safety risk that might arise being too close to neighboring structures since structure was built without permits.

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 2' 10" variance from the minimum 5' side setback requirement to allow a structure with 1' overhang to be 2' 2" from the side property line will not observe the spirit of the ordinance, as it may pose a life/safety risk as it is too close to the side property line and neighboring structures.

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 requested variance is proposing the building too close to the property line and is likely to affect the adjacent neighboring property as well as pose a life/safety risk. Staff finds that there is adequate space on the property to comply with the required setback requirements.

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 is not due to unique circumstances existing on the property and were created by the owner. Had permits been pulled the side setback issue would have been addressed prior to construction.

### **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 35-310.01.

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

Staff recommends Denial in BOA-22-10300033 based on the following findings of fact:

1. The original structure was demolished and built without a permit; and
2. The new structure sits 2' 10" from side property line and has 1' overhang; and
3. There is adequate space to comply with the 5' side setback requirement.