

Case Number:	BOA-22-10300070
Applicant:	Cassandra Dearth
Owner:	Cassandra Dearth
Council District:	7
Location:	106 Vaughan Place
Legal Description:	Lot 13, Block 6, NCB 9820
Zoning:	“R-4 CD AHOD” Residential Single-Family Airport Hazard Overlay District with Conditional Use for Two (2) Dwelling Units
Case Manager:	Vincent Trevino, Senior Planner

### **Request**

A request for a 2’ 5” variance from the minimum 5’ side setback requirement, as described in 35-370, to allow a structure with 1’ 6" overhang and gutters to be 2’ 5” from the side property line.

### **Executive Summary**

The subject property is located near the intersection of Vaughan Place and Loma Linda Dr and currently has two dwelling units on the property. Code Enforcement issued a zoning violation for the side and rear setbacks for the accessory structure. The accessory structure is located within the minimum side and rear setback requirements of 5’. There is an alley located behind the rear yard of the property, and half of the alley will account for the rear setback requirement, therefore a variance for the rear is not required. The approval of the variance will allow code compliance to close out the zoning case associated with this property. The variance will also allow for any pending buildings permit to be issued.

### **Code Enforcement History**

There is a code enforcement investigation for property setback for the structure in the back of the property.

### **Permit History**

There is currently a residential fence permit on file. A residential building permit is pending the outcome of the Board of Adjustment Meeting.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 1595, dated November 29, 1944 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. The zoning changed from “R-4” to “R-4 CD” Residential Single-Family District with Conditional Use for Two Dwelling Units on May 5, 2022, established by Ordinance 2022-05-05-0326.

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

Existing Zoning	Existing Use
“R-4 CD AHOD” Residential Single-Family Airport Hazard Overlay District with Conditional Use for Two (2) Dwelling Units	Two residential dwelling units

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
South	"R-4 AHOD" Residential Single-Family Area Airport Hazard Overlay District	Single-Family Residence
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
West	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

### Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Near Northwest Community Plan and is designated "Low Density Residential" in the future land use component of the plan. The subject property is located within the Maverick Neighborhood Association, and they were notified of the case.

### Street Classification

Vaughan Place is classified as a local road.

### Criteria for Review – Side Setback Variance

According to Section 35-310.1 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' 5" variance from the minimum 5' side setback requirement to allow a structure with 1' 6" overhang and gutters to be 2' 5" from the side property line, which does not appear to be contrary to the public interest. The structure is existing and appears to provide adequate space along the side property line.**

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 structure having to be moved to meet the minimum 5' side setback requirement from the side property line. Staff finds an unnecessary hardship due to the limited size of the rear yard.**

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 requested variance is to allow a structure to be closer to the side property line. Due to the configuration of the property and the structure being existing, this will observe 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 does not find evidence that the requested variance would alter the essential character of the district. Two additional properties located along Vaughan Place were observed to have accessory structures within the side setback due to the size of the lots, therefore the request would not alter the essential character of the neighborhood.**

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 size and location of the lot. The variance request is not merely financial.**

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

The alternative to the applicant's request is to conform to the side setback regulations for Accessory Structures of UDC Section 35-370.

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

Staff recommends **Approval** in **BOA-22-10300070** based on the following findings of fact:

1. The request does not appear out of character for the area as there are similar structures in the surrounding area; and
2. Gutters are required which will mitigate any water runoff onto the abutting property; and
3. The structure is 2' 5" from the side property line and appears to have adequate space.