

Case Number:	BOA-22-10300133
Applicant:	Aviad Peretz
Owner:	Aviad Peretz
Council District:	2
Location:	301 South Monumental
Legal Description:	The east 43.9 feet of north 109.5 feet of A15, Block 111, NCB 45
Zoning:	“RM4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

### **Request**

A request for 1) a 9" variance from the minimum 5' side setback to allow a structure with overhang and gutters, as described in section 35-370(b)(1), to be 4' 3" from the side property line and 2) a 1' 10" variance from the minimum 5' rear setback requirement to allow a structure with overhang and gutters, as described in section 35-370(b)(1), to be 3' 2" from the rear property line.

### **Executive Summary**

The subject property is located on South Monumental Street and contains a single-family residence on a corner lot. The applicant is remodeling an accessory structure on the side of the existing residence. During the plan review process, it was noted that a variance would be required for the accessory structure located within the minimum 5' side and rear setback requirement. Upon site visit, staff observed other accessory structures in the area.

### **Code Enforcement History**

There are no relevant code cases on file.

### **Permit History**

A variety of building permits were pulled for the subject property.

The issuance of the building permit is pending the outcome of the Board of Adjustment Meeting.

### **Zoning History**

The subject property is located within the original 36 square miles of the City of San Antonio and zoned “D” Apartment District. The property was rezoned by Ordinance 79329, dated December 16, 1993, to “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-2” Two Family Residence District converted to “RM-4” Residential Mixed District.

### **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**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
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 Downtown Plan and is designated “Residential” in the future land use component of the plan. The subject property is located within the boundary of the Denver Heights Neighborhood Association, and they have been notified of the request.

### **Street Classification**

South Monumental Street is classified as a Local Road.

### **Criteria for Review –Side and Rear Setback Variance**

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 has requested a variance to allow a structure with overhang and gutters to be 4’ 3” from the side property line and 2.) a variance to allow a structure with overhang and gutters to be 3’ 2” from the rear 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 being reduced to maintain a 5’ side and rear setback. This would decrease the square footage of the structure and would not allow for adequate space. This would result in an unnecessary hardship.**

- 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 9” variance from the 5’ minimum side setback requirement and a 1’ 10” variance from the 5” minimum rear setback requirement will observe the spirit of the ordinance and will not adversely affect surrounding properties 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.*

**If granted, the structure will maintain a 4' 3" setback from the side property line and 3' 2" from the rear property line, respectively. This will not alter the essential character of the district as there are similar structures in the area with similar setbacks.**

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 existing structure cannot be developed with the existing setback requirements as there is insufficient space.**

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

The alternative to the applicant's request is to conform to the setback requirements listed in Section 35-370(b)(1).

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

Staff recommends **Approval** in **BOA-22-10300133** based on the following findings of fact:

1. The structure is setback at 4'3' from the side property line and 3'2" from the rear property line and will include gutters to mitigate water runoff; and
2. The structure does not appear to be out of character for the area; and
3. Other properties in the surrounding area appear to have similar structures in place within the same distance.