

Case Number:	BOA-22-10300196
Applicant:	Tom Portillo
Owner:	Tom Portillo & Karina Fuentes
Council District:	1
Location:	232 Cornell Avenue
Legal Description:	Lot 17, Block 3, NCB 2076
Zoning:	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

### **Request**

A request for a 3’-5” variance from the minimum 5’ side setback requirement, as described in Sec 35-310.01, to allow a structure to be 1’-7” from the side property line.

### **Executive Summary**

The subject property is located on Cornell Avenue and contains a single-family residence. The variance is for the side setback encroachment into the side property line for a detached structure being converted to a duplex. A building permit is currently in review and the setback encroachment was noted during the review process. Upon staff site visit, staff observed other similar accessory structures in the surrounding area.

### **Code Enforcement History**

There are no relevant code cases.

### **Permit History**

There are a variety of Building and Trade permits on file. RES-RBP-APP22-35503194 issuance is pending Board of Adjustment variance approval.

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “B” Residence District. The property was rezoned by Ordinance 86704, dated September 25, 1997 to “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property 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**

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
South	“I-1 AHOD” General Industrial Airport Hazard Overlay District	Storage Warehouse

East	“R-6 AHOD” Residential Single-Family 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 Midtown Regional Center Area Plan and is designated “Urban Low Density Residential” in the future land use component of the plan. The subject property is located within the Uptown Neighborhood Association and were notified of the case.

### **Street Classification**

Cornel Avenue is classified as a local road.

### **Criteria for Review – Side 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 variance request is to allow a detached structure to be reduced to less than the minimum requirements.

**Staff finds an alternate recommendation for the minimum side setback requirement to be 3’ from the side property line. The structure is contrary to the public interest, there is sufficient space to allow the structure to be 3’ from 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 having to meet the minimum side setback from the property line. The subject property currently has an existing structure situated close to the side property line.

**Staff finds an unnecessary hardship since the lot will allow for the development of a structure with the 5’ side setback requirement.**

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 structure has been constructed and the current setback is 1’-7” from the side property lines. The spirit of the ordinance will not be observed as there is no reasonable space between the structure and neighboring properties.

**An alternate recommendation for the side setback variance would observe the spirit of the ordinance by still maintaining the side setback from the side property line.**

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 detached structure will be subject to maintain a 1'-7" side setback from the side property line which is likely to negatively affect the adjacent neighboring properties.

**In order to mitigate any adverse effects on neighboring properties, it is recommended that the detached structure maintain a 3' side setback from the side property line.**

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.*

**It appears the plight of the owner of the property for which the variance is sought is due to unique circumstances because of the width of the lot and configuration of the existing residence, maintaining a 3' side setback as staff is recommending is achievable. The request is not merely financial.**

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

The alternative to the applicant's request is to conform to the setback requirements of the UDC Sec 35-310.01.

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

Staff recommends Denial **with an Alternate Recommendation for a 3' setback from the side property line in BOA-22-10300196** based on the following findings of fact:

1. The accessory structure can adequately be setback 3' from the side property line; and
2. There is possible water runoff to the neighboring properties.