

Case Number:	BOA-23-10300010
Applicant:	Michael Potter
Owner:	Michael Potter
Council District:	1
Location:	257 Lovera Boulevard
Legal Description:	Lots 83, 84 and 85, Block 2, NCB 9004
Zoning:	“R-4 H AHOD” Residential Single-Family Historic Olmos Park Terrace Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for a 3’-4” variance from the minimum 5’ side setback, as described in 35-371 (b)(1), to allow a structure to be 1’-8” from the side property line.

Executive Summary

The subject property is located along Lovera Boulevard east of San Pedro Avenue. The applicant was in the process of conducting residential repairs but was prompted during the permitting process that they would need a variance for the side setback for the rear structure. Reason being that the applicant is changing the primary use from garage to accessory detached dwelling unit. Per the UDC, ADDU’s are required to be setback 5’ from the side property line, and the existing structure is currently 1’-8”. The Office of Historic Preservation provided an Administrative Certificate of Appropriateness for the project.

Code Enforcement History

There is not relevant code enforcement history for the subject property.

Permit History

The issuance of a building permit is pending the outcome of the Board of Adjustment
Residential Repair Permit- September 2022
Electrical General – July 2022
Plumbing Completion Permit- April 2022
Mechanical Permit- December 2021
Residential Repair Permit- November 2021
Plumbing Gas Permit- September 2021
Plumbing General Permit- September 2021
Electrical General Permit- September 2021
Plumbing General Permit- August 2021
Plumbing Sewer Permit- August 2021

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 1941, dated May 30, 1940 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” District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
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“R-4 H AHOD” Residential Single-Family Historic Olmos Park Terrace Airport Hazard Overlay District	Single-Family Residence
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Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 H AHOD” Residential Single-Family Historic Olmos Park Terrace Airport Hazard Overlay District	Single-Family Residence
South	“R-4 H AHOD” Residential Single-Family Historic Olmos Park Terrace Airport Hazard Overlay District	Single-Family Residence
East	“R-4 H AHOD” Residential Single-Family Historic Olmos Park Terrace Airport Hazard Overlay District	Single-Family Residence
West	“R-4 H AHOD” Residential Single-Family Historic Olmos Park Terrace Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the North Central Neighborhoods Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Olmos Park Terrace Neighborhood Association, and they have been notified of the request.

Street Classification

Lovera Boulevard is classified as a local road.

Criteria for Review – 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. In this case, the public interest is represented by restricted setbacks to provide ample spacing between structures. The applicant is requesting a variance to the side setback to allow a structure to be 1’ 8” from the side property line with 1’ of overhang. Per BCAD, the structure was constructed and has been in its existing footprint since 1940, which has not been contrary to the public interest with its reduced setback.

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 the structure five feet from the side property line, which results in unnecessary hardship considering the structure is existing.

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 accessory structure is currently 1' 8" from the side property line with a 1' overhang, which will observe the spirit of the ordinance considering it was established before the current UDC regulations.

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' 8" from the side property line. Upon site visits, staff observed older homes and structures with reduced side and rear setbacks, which does not alter the essential character of the district or impose on the fabric of the community.

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 structure being existing. Additionally, the request does not seem unusual with the characteristic of the neighborhood. The circumstances do not appear to be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the accessory dwelling unit setback of the UDC Section 35-371 (b)(1).

Staff Recommendation – Side Setback Variance

Staff recommends **Approval of a 3'-4" variance from the minimum 5' side setback to allow a structure to be 1'-8" from the side property line in BOA-23-10300010** based on the following findings of fact:

1. The structure is currently 1'-8" from the side property line and has not been contrary considering it was constructed in 1940; and
2. The request does not seem to be out of character with the community, as other structures were seen with reduced setbacks.