

Case Number:	BOA-23-10300009
Applicant:	Daniel Marin
Owner:	Daniel Jonathan Marin & Maria M F Saenz
Council District:	1
Location:	1131 McIlvaine Street
Legal Description:	Lot 18, Block 59, NCB 7193
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for a 4’-11” variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow a structure with a 10” overhang to be 1" from the side property line.

### **Executive Summary**

The subject property is located along McIlvaine Street north of West Hildebrand Avenue. The applicant was in the process of constructing an attached structure in the side yard but was halted by Code Enforcement without pulling building permits. A permit investigation (INV-PBP-22-3100003550) began causing the applicant to obtain a building permit. In the permitting process, it was notified that the applicant would need to obtain a variance for the side setback. The structure is anticipated to be 1” from the side property line, with overhang included. Structures are required to be setback 5’ from the side property line. Upon site visits, staff observed the structure having more than 5’; however, were informed that the current fence indicating the property line was not accurately reflecting where the real property line was. The current location of the abutting lot’s fence is located 4’-11” inside their property line.

### **Code Enforcement History**

PMT- Building Without A Permit (INV-PBP-22-3100003550)- August 2022

Vehicle Investigation (INV-JNV-22-2810017358)- August 2022

Overgrown Yard Investigation (INV-VOP-21-2590000085)- January 2021

### **Permit History**

Residential Repair Permit (REP-RPR-PMT-21-35302546)-. August 2021

Re-Roof Permit (REP-ROF-PMT-21-35202908)- August 2021

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 1845, dated May 5, 1940, and originally 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 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

### **Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“C-3R AHOD” Commercial Restrictive Alcoholic Sales Airport Hazard Overlay District	Restaurant
South	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
East	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Culvert
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 Greater Dellview 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 Central Neighborhood Association, and they have been notified of the request.

### **Street Classification**

McIlvaine Street 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 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 with a 10” overhang to be 1” from the side property line. Staff finds this distance is not suitable, as it is too close to the neighbors shared property line, storm water runoff imposes onto the neighboring property, and side yard maintenance has limited access.

**Staff finds a 2’ variance from the side setback requirement to allow the structure to be 3’ from the side property allows for the mitigation of storm water, as the water will run off on the property owner’s yard rather the neighbors. Additionally, the property owner will have sufficient room to conduct routine maintenance in the side yard without imposing on the neighbor’s yard.**

*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 rebuilding the structure five feet from the side property line, which would not result in an unnecessary hardship as construction has been halted and appears to allow for alterations to meet the setback requirements. Upon site visits, staff observed no special conditions on the subject property that would warrant the need for this reduced setback.

**Staff finds an unnecessary hardship can be avoided by relocating the structure 3’ from the side property line.**

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 is currently 1” from the side property line with overhang included. Allowing the variance to be granted allows for the continuation of trespass for routine maintenance as well as drainage issues, which does not observe the spirit of the ordinance.

**The spirit of the ordinance will be observed with a 3’ side setback since it will allow adequate space from the adjacent structure.**

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” from the side property line, which is likely to alter the essential character of the district. No other structures in the immediate seemed to impose into the setbacks. Additionally, the requested distance creates issues that can affect the adjacent conforming property.

**A 3’ side setback for the accessory structure does not appear to alter the essential character of the district nor will it injure adjacent properties.**

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 found no unique circumstances to warrant the need for the accessory structure to be 1” from the side property line. The plight of the owner was caused entirely by the owner of the property. Had the property owner surveyed their property to indicate where the side property line was before construction, the setback protocols could have been thoroughly communicated.

### **Alternative to Applicant’s Request**

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

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

Staff recommends Denial **with an Alternate Recommendation for a 2’ variance from the minimum 5’ side setback requirement to allow a structure to be 3’ from the side property line** in **BOA-23-10300009** based on the following findings of fact:

1. The structure is currently 1” from the side property line; and
2. The structure shall be relocated to be 3’ from the side property line to observe the spirit of the ordinance, as this will provide sufficient room for routine maintenance and storm water runoff mitigation.