

Case Number:	BOA-23-10300011
Applicant:	Michael Paulos
Owner:	Michael and Kimberly Paulos
Council District:	10
Location:	3302 Carnaby Creek Drive
Legal Description:	Lot 15, Block 5, NCB 17194
Zoning:	“R-5 ERZD” Residential Single-Family Edwards Recharge Zone District
Case Manager:	Joseph Leos, Planner

Request

A request for a 4’-8” variance from the minimum 5’ side setback requirement, as described in Section 35-370(b)(1), to allow an accessory structure with a 3” overhang to be 4” from the side property line.

Executive Summary

The subject property is located along Carnaby Creek Drive south of Redland Road. The applicant constructed an accessory structure within the existing building footprint of a previously built accessory structure in the side yard, triggering a Permit Investigation (INV-PBP-23-3100000114) and Zoning UDC Investigation (INV-ZPS-23-3160000118). Per the UDC, accessory structures are required to be setback 5’ from the side property line and currently it is placed at 4” with 3” overhang included. Upon site visits, staff observed other accessory structures in the immediate area; however, none of which seemed to encroach into the setback areas.

Code Enforcement History

Permit Investigation- January 2023

Zoning UDC Investigation- January 2023

Permit History

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

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 81102, dated December 30, 1994, and originally zoned Temporary “R-1” Single-Family Residence District. The property rezoned under Ordinance 83859, dated May 21, 2015, from Temporary “R-1” Single-Family Residence District to “R-5” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-5” Single-Family Residence District converted to the current “R-5” Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-5 ERZD” Residential Single-Family Edwards Recharge Zone District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
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North	“R-5 ERZD” Residential Single-Family Edwards Recharge Zone District	Single-Family Residence
South	“R-6 ERZD” Residential Single-Family Edwards Recharge Zone District	Single-Family Residence
East	“R-5 ERZD” Residential Single-Family Edwards Recharge Zone District	Single-Family Residence
West	“R-5 ERZD” Residential Single-Family Edwards Recharge Zone District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the San Antonio International Airport Vicinity 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 Redland Springs Neighborhood Association. Additionally, the subject property is located less than 200’ feet from the boundaries of Redland Oaks and Range Rider Neighborhood Associations. All which have been notified of the request.

Street Classification

Carnaby Creek Drive 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 property line and structures. The applicant is requesting a variance to the side setback to allow a structure with a 3” overhang to be 4” from the side property line. Staff finds this distance is not suitable, as it is too close to the neighbors shared property line and can be seen from the public right of way.

Staff finds an alternate recommendation of a 2’ variance to allow an accessory structure to be 3’ from the side property line is suitable for this case. This allows for ample space between the accessory structure and property line, which seems not contrary to the public interest.

2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.

There are no special conditions on the subject property that warrant the accessory structure from meeting the minimum 5’ side setback requirement. Upon site visits, staff observed sufficient side yard spacing to provide for the relocation of the accessory structure.

Staff finds that a 2’ variance to allow an accessory structure to be 3’ from the side property line can mitigate an unnecessary hardship, as there would be sufficient room to access the accessory structure while providing more than enough side yard spacing all which maintaining distance from the shared 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. In this case, the intention is for proper storm water runoff mitigation. The accessory structure is currently 4' from the side property line, which does not observe the spirit of the ordinance as potential storm water runoff impedes on the neighboring property.

The spirit of the ordinance will be observed with a 3' side setback since it will allow adequate spacing while mitigating storm water runoff.

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 4' from the side property line, which is likely to alter the essential character of the district. Upon site visits, staff observed other accessory structures in the immediate vicinity; however, none of which were impeding on the side setbacks.

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 4' from the side property line, as there is adequate room in the side yard for the applicant to relocate.

Alternative to Applicant's Request

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

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 an accessory structure to be 3' from the side property line in BOA-23-10300011** based on the following findings of fact:

1. The structure is currently 4' from the rear property line, which does not provide adequate spacing; and
2. Storm water runoff can impede on the neighboring property if the variance is approved; and
3. The accessory structure shall be relocated to be 3' from the side property line to observe the spirit of the ordinance, which still allows for the applicant to have sufficient side yard spacing.

