

Case Number:	BOA-23-10300048
Applicant:	Ortiz McKnight, PLLC
Owner:	Balous T & Julie Miller
Council District:	9
Location:	Generally Located in the 27000 Block of U.S. Highway 281 North
Legal Description:	P-4, 4861 P-1, 4862 P-5, 4864 P-2, CB 4860 (BCAD Parcel 1051293)
Zoning:	“MF-18 GC-3 MLOD-1 MLOD-2” Limited Density Multi-Family U.S. 281 North Gateway Corridor Camp Bullis Military Lighting Overlay Military Lighting Region 2 District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for a 30’ variance from the maximum 90’ front setback requirement for properties with 100’ or more of frontage, as described in Section 35-310.01 to allow a 120’ front setback.

### **Executive Summary**

The subject property is located near the most northern part of the city limits, at the intersection of East Borgfeld Drive and U.S. Highway 281 North. The applicant is requesting a variance from the maximum front setback requirement for properties with 100’ or more of frontage to construct a multi-family development. The proposed development cannot conform to this requirement, as there is currently a 100’ wide existing electrical easement, causing the applicant to construct the development passed the 90’ maximum front setback. As per the UDC, the maximum front setback requirement is 90’ and the applicant is requesting for 120’. No parking or drives other than egress/ingress drives will be located withing twenty feet of the front property line.

### **Code Enforcement History**

There is no 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.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 2016-12-01-0899, dated December 1, 2016, and originally zoned “C-2” Commercial District. The property rezoned under Ordinance 2022-12-15-1022, dated December 15, 2022, from “C-2” Commercial District to the current “MF-18” Limited Density Multi-Family District.

### **Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“MF-18 GC-3 MLOD-1 MLOD-2” Limited Density Multi-Family U.S. 281 North Gateway Corridor Camp Bullis Military Lighting Overlay Military Lighting Region 2 District	Vacant Commercial

## **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	Outside City Limits	Vacant
South	“C-2 GC-3 MLOD-1 MLOD-2” Commercial Family U.S. 281 North Gateway Corridor Camp Bullis Military Lighting Overlay Military Lighting Region 2 District	Vacant
East	ROW	US Highway 281 North
West	Outside City Limits	Vacant

## **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the North Sector Plan and is designated as “Suburban Tier” in the future land use component of the plan. The subject property is located not located within a registered neighborhood association.

## **Street Classification**

U.S. Highway 281 North is classified as an Interstate.  
Borgfeld Drive is classified as a Secondary Arterial A.

## **Criteria for Review – Maximum 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 maximum setbacks established to ensure uniform development within a community. The applicant is requesting a variance to deviate from the maximum setback of 90’, to allow a maximum setback of 120’. Staff finds this request is not contrary to the public interest, as this will allow for the development of a multi-family residential community. Additionally, the structures will not impede the surrounding property owners, as they are abiding by all other setback requirements.**

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

**The special condition found on the subject property is the location of an existing 100’ wide electrical easement located within the maximum building setback area. Staff finds that a literal enforcement of the ordinance will result in an unnecessary hardship, as the subject property will be undevelopable due to this development restriction.**

- 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 request to allow the applicant to exceed the maximum setback requirement will observe the spirit of the ordinance and substantial justice will be done**

as this will allow for the prevention of construction on an electrical easement. Additionally, the observance is portrayed by the applicant meeting all other building requirements.

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 setback will be increased to 120' instead of the required maximum 90'. The variance request will not substantially injure the appropriate use of adjacent conforming properties or alter the essential character of the district, as the property is abutting U.S. Highway 281 North to the east and Outside City Limits to the west and north.**

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 location of an electrical easement being located within the maximum setback. 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 Zoning District Design Regulations of the UDC Section 35-310.01.

#### **Staff Recommendation – Maximum Setback Variance**

Staff recommends **Approval** in **BOA-23-10300048** based on the following findings of fact:

1. The structures will not impede the surrounding property owners, as they are abiding by all other setback requirements; and
2. The location of an electrical easement being located within the maximum setback is the special condition for the subject property.