

Case Number:	BOA-23-10300051
Applicant:	Isela Garcia
Owner:	Isela Garcia
Council District:	6
Location:	3930 Spear Street
Legal Description:	Lot 70, NCB 12076
Zoning:	"R-5 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

Request

A request for 1) a 2'-7" variance from the minimum 5' side setback requirement, as described in Sec. 35-371(b)(3), to allow an accessory dwelling unit with a 1' overhang to be 2'-5" from the side property lines and 2) a 5' variance from the minimum 15' clear vision requirement, as described in Sec. 35-514(2)(b), to allow a fence to be 10' from the front driveway.

Executive Summary

The subject property is located along Spear Street east of SW 34th Street and north of Castroville Road. The applicant has an accessory dwelling unit that is less than 5' from the side property line. The property owner started the work prior to obtaining a building permit. Per the UDC, accessory dwelling units are required to be setback 5' from the side property line and currently it is placed at 2'-5" with a 1' overhang. Upon site visits, staff did not observe other accessory dwelling units in the immediate area.

Code Enforcement History

Overgrown Yard-November 2022

Building Without a Permit-November 2022

Permit History

Residential Fence Permit-February 2023

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 1258, dated August 2, 1944, and originally zoned "C" Apartment District. The property rezoned under Ordinance 72510, dated October 18, 1990, from "C" Apartment 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 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-5 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
South	"R-5 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
East	"R-5 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
West	"R-5 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the West/Southwest Sector Plan and is designated [as](#) “General Urban Tier” in the future land use component of the plan. The subject property is located within the boundary of the Los Jardines Neighborhood Association, and they have been notified of the request.

Street Classification

Spear 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 detached accessory dwelling unit to be 2’-5” from the side property line. Staff finds that this distance is not suitable, as it is too close to the neighbors shared property line; Additionally, storm water runoff could impose onto the neighboring property.

The applicant is requesting a 5’ variance from the minimum 15’ clear vision requirement to allow a fence to be 10’ from the front driveway. In this case, the predominately open fence does not impede vehicles from entering or exiting the property. Staff finds that this request is not contrary as this distance does not propose any safety issues.

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 relocating the structure five feet from the side property line, which would not result in an unnecessary hardship.

Upon site visits, staff observed no special conditions on the subject property that would warrant the need for this reduced setback, as the applicant could have met setback requirements because of the amount of space in the rear yard.

A literal enforcement of the ordinance would result in the applicant altering the fence to meet the minimum 15' distance requirement as this would create an unnecessary hardship, as the yard maintains limited spacing.

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 dwelling would be 2'-5" from the side property line. Allowing the variance to be granted could lead to water drainage concerns and structures being close together, which does not observe the spirit of the ordinance.

The fence is currently 10' from the front driveway. Staff finds the spirit of the ordinance will be observed and substantial justice will be done with the requested variance as adequate sight distance is presented.

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 be 2'-5" 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 side setbacks. Additionally, the requested distance creates issues that can affect the adjacent property.

If granted, the distance will maintain 10' from the front driveway which will not likely alter the essential character of the district. Upon site visits, staff observed other front yard predominantly open fences in the immediate vicinity.

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 addition to be 2'-5" from the side property line. Had the property owner obtained building permits prior to construction, the setback restrictions could have been communicated thoroughly. Additionally, staff found the rear yard had adequate spacing to build a sizeable accessory dwelling, without imposing into the setback area.

Staff finds the plight of the owner of the property for which the variance is sought do not appear to be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the setback requirements of the UDC Section 35-371(b)(3) and Section 35-514(2)(b).

Staff Recommendation – Side Setback Variance

Staff recommends Denial in BOA-23-10300051 based on the following findings of fact:

1. The structure is currently 2'-5" from the side property line which does not observe the spirit of the ordinance by preventing space from the neighboring property; and
2. Staff found the applicant could have built a sizable accessory dwelling without imposing into the side setback because of the size of the rear yard.

Staff Recommendation – Clear Vision Variance

Staff recommends **Approval** in **BOA-23-10300051** based on the following findings of fact:

1. The predominately open fence does not impede vehicles from entering or exiting the property; and
2. The variance will not alter the essential character of the district.