

Case Number:	BOA-23-10300058
Applicant:	Santiago Mendoza
Owner:	Santiago & Norma R Mendoza
Council District:	6
Location:	6630 Gallery Oak
Legal Description:	Lot 56, Block 5, NCB 16171
Zoning:	“RM-4 MLOD-2 MLR-1 AHOD” Residential Mixed Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for a 9’-3" variance from the minimum 10' rear setback requirement, as described in Section 35-310.01, to allow an addition with an 8” overhang to be 9” from the rear property line.

Executive Summary

The subject property is located along Gallery Oak near Pinn Road. The applicant constructed a two-story addition in the rear yard without pulling building permits and a Stop Work Order was issued (INV-PBP-22-3100004562). Soon after, the applicant submitted an application for a residential building permit (RES-RBP-APP22-35504819) indicating the addition was 5’ from the rear property line. Upon site visits, staff observed the addition was closer to the rear property line. In an “RM-4” zoned district, additions are required to be setback 10’ from the rear property line and staff measured 8” with an 9” overhang included in the overall measurement.

Code Enforcement History

INV-OYT-22-255054101 (Overgrown Yard Investigation)- November 2022
 INV-PBP-22-3100004562 (Building Without A Permit- November 2022

Permit History

The Issuance of a Building Permit is Pending the Outcome of the Board of Adjustment.
 RES-RBP-APP22-35504819 (Residential Building Repair Permit)- November 2022
 REP-ROF-APP22-35012612 (Minor Building Repair)- November 2022
 REP-ROF-PMT22-35204019 (Re-Roof Permit)- November 2022

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 41422, dated December 25, 1972, and originally zoned Temporary “R-1” Single-Family Residence District. The property was rezoned by Ordinance 42219 dated May 17, 1973 to “R-6” Townhouse Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-6” Townhouse Residence District converted to the current “RM-4” Residential Mixed District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“RM-4 MLOD-2 MLR-1 AHOD” Residential Mixed 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	“RM-4 MLOD-2 MLR-1 AHOD” Residential Mixed Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
South	“RM-4 MLOD-2 MLR-1 AHOD” Residential Mixed Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
East	“RM-4 MLOD-2 MLR-1 AHOD” Residential Mixed Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
West	“RM-4 MLOD-2 MLR-1 AHOD” Residential Mixed 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 “Suburban Tier” in the future land use component of the plan. The subject property is not located within a registered neighborhood association.

Street Classification

Gallery Oak 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 minimum setbacks to provide adequate spacing between structures. The applicant is requesting a variance to allow an addition to be 9” from the rear property line. Staff finds this request is contrary to the public interest, as this distance does not provide suitable spacing between shared property lines, inflicts on the neighboring property, and rear yard maintenance has limited access.

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 10’ feet from the rear property line, which would not result in an unnecessary hardship as staff found no special conditions on the subject property that would warrant the need for a reduced rear setback.

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 addition is currently 9” from the rear property line, with overhang included. Allowing this variance to be granted will not observe the spirit of the ordinance, as minimum setback restrictions are required to mitigate spacing between property owners. The addition in its current placement allows for drainage issues and possibly trespass for routine maintenance.

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 addition will substantially injure the character of the district, as no other additions or structures were found that were imposing into the rear setback. The requested variance will substantially injure the adjacent property sharing the rear property line.

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 9” from the rear property line. Had the property owner obtained proper building permits prior to construction, the rear setback requirement could have been thoroughly communicated.

Alternative to Applicant’s Request

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

Staff Recommendation – Rear Setback Variance

Staff recommends Denial in BOA-23-10300058 based on the following findings of fact:

1. The addition is currently 9” from the rear property, with overhang included and
2. If granted, storm water runoff can impose on the adjacent property owner; and
3. No other structures in the immediate area seemed to impose into the rear setback.