

Case Number:	BOA-22-10300019
Applicant:	Linda Resendiz
Owner:	Linda Resendiz
Council District:	5
Location:	1337 West Gerald Avenue
Legal Description:	Lot 19, 20 & 21, Block 122, NCB 8018
Zoning:	"R-4 MLOD-2 MLR-1 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Roland Arsate, Planner

**Request**

A request for 1) 14' 7" variance from the minimum 20' rear setback requirement, as described in Section 35-310, to allow an attached room addition with 1' overhang to be 5' 5" from the rear property line.

**Executive Summary**

The subject property is located on West Gerald Avenue and there is currently a single-family dwelling unit on the property. A large two-story room addition was constructed to rear of existing dwelling unit. The applicant has stated the room addition is a garage with a small office to the rear of the garage. The property is zoned "R-4" Residential Single-Family District, which requires a 20' rear setback. The addition encroaches into the rear setback requirement by 14' 7". The addition also encroaches into the side setback by 7", however this is permitted per Section 35-516(b) since it is an in-line addition where the existing residence having a side yard of three (3) or more feet.

**Code Enforcement History**

March 2020 – Strike Team, working without permits  
 January 2022 – Building without a permit

**Permit History**

There are no permits on file for the subject property. Building permits are pending the outcome of the BOA Hearing.

**Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 1391 dated September 22, 1944 and zoned "B" Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted from "B" Single-Family Residence District to the current "R-4" Residential Single-Family District.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
"R-4 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**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	"R-4 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-4 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-4 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-4 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 Nogalitos/South Zarzamora Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Tierra Linda Neighborhood Association and were notified of the case.

**Street Classification**

West Gerald Avenue is classified as a local road.

**Criteria for Review - Variances**

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. The applicant is requesting a 14’ 7” variance to the rear setback for an attached room addition to an existing primary dwelling. The proposed room addition is to be 5’ 5” away from the rear property line, which is contrary to the public interest.

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 having to move the structure an additional 14’ 7” from the rear property line. This would result in the room addition to be 20’ from the rear property line, avoiding any fire/safety issue that might arise being too close to neighboring structures since the structure was built too close to the 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 was built without permits and inspections and was reported to both the strike team and code enforcement. A 5' 5" rear setback will not observe the spirit of the ordinance, as it may pose a fire/safety hazard as it sit too close to property lines and neighboring structures.

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.*

Staff finds the request for a 14' 7" variance is proposed too close to the property line and is likely to affect the adjacent neighboring property as well as pose a life/safety risk. There are some two-story homes in the immediate area, but not many two-story room additions were observed.

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 not due to unique circumstances existing on the property, the property is very large versus other surrounding properties and there is ample space for a room addition to meet the needs of the owner and still abide by the setbacks set forth by the UDC Section 35-310.

### **Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the Lot and Building Dimensions of the UDC Section 35-310.

### **Staff Recommendation – Rear Setback Variance**

Staff recommends Denial in BOA-22-10300019 based on the following findings of fact:

1. The attached room addition is 5' 5" away from the rear property line; and
2. There is adequate space in the rear yard to construct an addition to the primary dwelling while meeting the rear setback requirements in the UDC Section 35-310.