

Case Number:	BOA-21-10300164
Applicant:	Ilija Huljev
Owner:	Monolith Limited Partners, LP
Council District:	2
Location:	1843 Dawson Street
Legal Description:	Lot 27, Block 5, NCB 6160
Zoning:	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Planner

### **Request**

A request for an 11’ variance from the 20' minimum rear setback, as described in Section 35-310, to allow a structure to be 9’ from the rear property line.

### **Executive Summary**

The subject property is located along Dawson Street near North Mittman Street. The applicant constructed an attached structure in the rear yard without obtaining building permits and a Stop Work Order was posted. Upon the site visit conducted by staff, the attached structure measured to be 9’ from the rear property line. Attached structures are required to maintain a setback of 20’ from the rear property line, so the variance being requested is for 11 feet.

### **Code Enforcement History**

An investigation was opened on June 4, 2021 for Building Without a Permit/Working outside Scope of Work. The case is pending resolution.

### **Permit History**

There is a Residential Minor Repairs permit pulled for the subject property. The permit for the addition is pending the outcome of the Board of Adjustment Hearing.

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio, and originally zoned “C” Apartment District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “C” Apartment District converted to “MF-33” Multi-Family District.

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

Existing Zoning	Existing Use
“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

## Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
South	“R-4 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
East	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“MF-33 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

## Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Arena District Community Plan and is designated “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Harvard Place Eastlawn Neighborhood Association and they have been notified of the request.

## Street Classification

Dawson Street 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. The applicant is requesting a variance to the rear setback to allow an attached structure to be 9’ from the rear property line. There is still adequate spacing between the structure and the rear property line, which does not appear to be 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 building the attached structure twenty feet from the rear property line, which results in unnecessary hardship as the property is small in size, prohibiting a rear addition to be erected. Staff finds an unnecessary hardship due to the size of the lot, which prevents the development of a rear addition.**

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 structure is currently 9' from the rear property line, which does observe the spirit of the ordinance by providing space between the structure and the rear property line. The spirit of the ordinance will be observed with a 9' rear setback since it will allow reasonable space between the new structure and the rear property line.**

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 does not find evidence that the requested variance would alter the essential character of the district. Small lots were observed throughout the surrounding area including those directly abutting the subject site. A 9' rear setback for the attached structure does not appear to 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 finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property and is not 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 35-310.

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

Staff recommends **Approval** in **BOA-21-10300164** based on the following findings of fact:

1. The structure is currently 9' from the rear property line; and
2. The structure conforms to the side setback requirements; and
3. The structure does not appear out of character of the neighborhood.