

Case Number:	BOA-21-10300174
Applicant:	Carlos Sanchez
Owner:	Carlos Sanchez and George Salinas
Council District:	5
Location:	153 Oelkers Street
Legal Description:	Lot 16, Block 1, NCB 3572
Zoning:	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager:	Roland Arsate, Planner

Request

A request for a 3' 6" variance from the 5' side setback requirement, as described in Section 35-370, to allow an accessory structure with 1' overhang to be 1' 6" away from the side property line.

Executive Summary

The subject property is located along Oelkers Street and there is a single-family residence currently on the property. The applicant has constructed a 380 sq. ft. detached accessory structure in the rear yard of the property. The structure currently sits 1' 6" from the side property line where the Unified Development Code requires a minimum 5' side setback and they are requesting a variance of 3' 6" from the side setback. Upon site visit, staff noticed that there was a privacy fence in the front façade of the home in which the owner stated that they would either cut down to 3' in height or make into a predominately open fence to comply with section 35-514 of the Unified Development Code to comply with fence height regulations.

Code Enforcement History

A Building Investigation was created on July 12, 2021. Resolution is pending the issuance of a permit.

Permit History

A Fence Permit and a Re-Roof Permit were issued in July 2021.

A Residential Repair Permit was issued in July 2021.

Zoning History

The subject property was located within the Original City Limits of San Antonio and was zoned "C" Apartment District. Upon adoption of the 2001 Unified Development Code, the zoning converted from "C" Apartment District to "MF-33" Multi-Family District, established by Ordinance 93881, dated May 3, 2001. The subject property was rezoned by ordinance 2006-12-14-1441, dated December 14, 2006 to the current "R-4" Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 CD AHOD" Residential Single-Family Airport Hazard Overlay District w/ Conditional Use for a Triplex	Single-Family Residence
South	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
West	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Downtown Area Regional Center Plan and is designated “Urban Low Density Residential” in the future land use component of the plan. The subject property is located within the Lone Star Neighborhood Association and were notified of the case.

Street Classification

Oelkers Street 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 variance to the side setback for an accessory structure.

The structure is currently 1’ 6” away from the side property line and staff recommends the structure to be 3’ away to better serve 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 to 5’ away from side property line. This would result in the accessory detached dwelling unit being 5’ from the side property line, avoiding any fire/safety issue that might arise being too close to neighboring structure.

Staff finds that a 3’ setback will avoid unnecessary hardships on the property and still avoid fire and safety issues.

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 current request to be 1’ 6” away from the side property line does not observe the spirit of the ordinance.

A 3' side setback will observe the spirit of the ordinance, as there it will provide plenty of room from the side property line 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 an accessory structure to be 1' 6" away from side property line may alter the essential character of the district.

An alternate recommendation of a 2' variance to allow the structure to be 3' from the side property line does not appear to injure adjacent properties nor alter the essential character of the district.

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 lots are small and there are similar structures in the area.

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 35-370.

Staff Recommendation – Side Setback Variance

Staff recommends Denial with an **Alternate Recommendation of a 2' variance to allow an accessory structure with 1' overhang to be 3' from the side property line in BOA-21-10300174** based on the following findings of fact:

1. The accessory structure currently sits 1' 6" from side property line; and
2. A 3' setback will better observe the spirit of the ordinance and provide adequate space from adjacent properties.