

Case Number:	BOA-21-10300183
Applicant:	Mario A Zuazua
Owner:	Mario A Zuazua
Council District:	4
Location:	1831 Red Elm
Legal Description:	Lot 29, Block 5, NCB 15494
Zoning:	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

**Request**

A request for a 4' 9" variance from the minimum 5' side setback requirement, as described in Section 35-310, to allow a patio cover with no overhang to be 3" from side property line.

**Executive Summary**

The subject property is located along Red Elm within a single-family subdivision. The applicant has constructed a covered patio that encroaches into the side setback. The patio cover is built on the northern side of the property which is directly abutting a neighbor. The applicant has confirmed in writing that the overhang will be trimmed to be flush with the posts of the structure. The applicant is requesting a 4' 9" variance from the minimum 5' side setback requirement to allow a patio cover with no overhang to be 3" from side property line.

**Code Enforcement History**

A Code Enforcement Investigation was opened on September 21, 2021, for property setback investigation, pending resolution.

**Permit History**

No permits have been issued. A permit is pending the outcome of the BOA Meeting.

**Zoning History**

The subject property was annexed into the City Limits of San Antonio by Ordinance 41422 dated December 25, 1972 and was zoned “B-3” Business District. Ordinance 85049, dated October 24, 1996, rezoned the property to “R-1” Single-Family Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted from “R-1” Single-Family Residence District to the current “R-6” Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling
South	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling
East	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling
West	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the West/ Southwest Sector Plan and is designated "General Urban Tier" in the future land use component of the plan. The subject property is located within the Lackland Terrance Association and were notified of the case.

**Street Classification**

Red Elm 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 4' 9" variance from the minimum 5' side setback requirement to allow a patio cover with no overhang to be 3" from side property line. The proximity to the property line appears 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 having to move the post of the structure to 5' away from side property lines which would require demolishing the covered patio and wouldn't leave much room in the side yard for a covered patio. Seeing as there is adequate space in the rear yard for a covered patio, an unnecessary hardship is not found.

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. With the structure being 3” away from the side setback where a 5’ setback is normally required, the spirit of the ordinance does not appear to be observed.

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 that the proximity of the structure to the side property line and adjacent structure may be altering 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 does not find 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 due to the general conditions in the district.

### **Alternative to Applicant’s Request**

The alternative to the applicant’s request is to conform to the Setbacks per 35-310 and the accessory structure regulations in 35-370 in the UDC Code.

### **Staff Recommendation – Side Setback Variance**

Staff recommends Denial in BOA-21-10300183 based on the following findings of fact:

1. The attached patio cover encroaches into the side setback and is 3” away from the side property line; and
2. There is adequate space in the rear yard for a covered patio.