

Case Number:	BOA-22-10300123
Applicant:	Reuben Rivas
Owner:	Circle R Ventures, LLC
Council District:	2
Location:	301 Piedmont Avenue
Legal Description:	The east 86.5 feet of Lot 10, Block 1, NCB 1697
Zoning:	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

Request

A request for 1) a 6" variance from the minimum 10' front setback requirement, as described in Section 35-310.01, to allow a structure to be 9' 6" from the front property line, 2) a 5' variance from the minimum 10' side setback requirement, as described in Section 35-516(i) to allow a structure to be 5' from the side property line, 3) a 5' variance from the minimum 10' rear setback requirement, as described in Section 35-310.01, to allow a structure to be 5' from the rear property line, and 4) a half-story variance from the two and a half story maximum, as described in Section 35-310.01, to allow a structure to be three stories tall.

Executive Summary

The subject property is located on the east side of San Antonio and is currently a vacant lot. The applicant is proposing to build two (2) dwelling units which will be three (3) stories tall. While the base zoning district of "RM-4" Residential Mixed District allows the development of structures at a height of 35' and three (3) stories tall, Section 35-310.01 states that if a property is surrounded by established single-family residential uses, the height limit is restricted to two and a half stories. The applicant is requesting to have the proposed structures to maintain a 9'6" front setback, 5' rear setback, and 5' side setbacks. Based on the zoning district, the structures are required to maintain a 10' front setback, 10' rear setback, and 5' side setbacks. The applicant will be requesting to have the structures addressed off Wyoming, resulting in a reversed corner lot. Per Sec. 35-516(i), "the setback adjacent to the street shall be at least equal to the front setback required for the lot immediately adjacent to the rear". Since the rear property is front of Piedmont, the side setback for the proposed structure will need to be 10'.

Code Enforcement History

There are no Code Enforcement investigations open for the subject property.

Permit History

There are no relevant permits issued for the subject property. Submittal of plans to Development Services 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 zoned "D" Apartment District. The property was rezoned by Ordinance 79329, dated December 16, 1993 to "R-2" Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "R-2" Two-Family Residence District converted to "RM-4" Residential Mixed District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District	Vacant Lot

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District	Single-Family Residence
South	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District	Vacant Lot
East	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District	Single-Family Dwelling
West	"RM-4 AHOD" Residential Mixed Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Arena District/Eastside 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 Denver Heights Neighborhood Association, and they have been notified of the request.

Street Classification

Wyoming is classified as a local road.

Criteria for Review – Half Story 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 building height regulations to allow for a three-story development. The surrounding properties are single-family residential uses and maintain a single-story therefore the request 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 development being limited to 2 ½ stories tall. This will continue to allow the development of two single-family dwellings on the property therefore, an unnecessary hardship is not posed.

- 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 Board could consider that the height of 35 feet can still be maintained while limiting the structure to 2 ½ stories.

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 find evidence that the requested variance would alter the essential character of the district. There are no additional three-story developments in the immediate area. The neighborhood is composed of mostly single-story one family dwelling units thus the request is uncharacteristic for the area.

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. The proposed structures could be redesigned to limit the number of stories to 2 ½. The request could potentially be merely financial.

Criteria for Review – Front, Side, and Rear Setback 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 front, side, and rear setback to allow two structures to be 9'6" from the front, 5' to the sides, and 5' to the rear. The structures will have adequate spacing between the adjacent properties, 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 having to meet the front, side, and rear setback requirements set forth in Section 35-310.01 of the UDC. Staff finds an unnecessary hardship due to the proposed configuration of the residences on the lot, fronting of Wyoming. A literal enforcement would result in a significant reduction on the footprint of the proposed structures.

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 proposed structures will maintain adequate spacing to adjacent properties and will nearly follow the setback requirements. The spirit of the ordinance will be observed as the structures do not encroach on the neighboring properties and does not pose a fire/safety hazard to any 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 does not find evidence that the requested variance would alter the essential character of the district. The property is in an older neighborhood where non-conforming structures that do not meet the setback requirements 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 due to the size of the lot and placement of the proposed residences and is not merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the building height regulations of Section 35-310.01 of the Unified Development Code.

Staff Recommendation – Half Story Variance

Staff recommends Denial in BOA-22-10300123 based on the following findings of fact:

1. The abutting residential structures are restricted to 2.5 stories; and
2. A three-story development may alter the essential character of the district.

Staff Recommendation – Front, Side, and Rear Setback Variances

Staff recommends **Approval** in **BOA-22-10300123** based on the following findings of fact:

1. The lot is currently vacant, and the proposed dwellings will be new construction; and
2. The small size and configuration of the lot present hardships to new construction with the UDC setback requirements in place; and
3. The variance requests do not appear to alter the essential character of the district.