



# City of San Antonio

## Agenda Memorandum

**File Number:**19-3328

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**Agenda Item Number:** 10.

**Agenda Date:** 4/15/2019

**In Control:** Board of Adjustment

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Case Number: BOA 19-10300039  
Applicant: Julieta Serna  
Owner: Julieta Serna  
Council District: 3  
Location: 126 Beatrice Avenue  
Legal: The West 50 feet of Lot 1 and the West 49.3 feet of Lot 5C,  
Description: NCB 7791  
Zoning: "R-6 MF-33 MLOD-2 MLR-2 AHOD" Residential Single-Family and Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District  
Case Manager: Mercedes Rivas, Planner

### **Request**

A request for a 4'11" from the 5' side setback requirement, as described in Section 35-371(a), to allow an addition to be 1" away from the side property line.

### **Executive Summary**

The applicant is requesting a decrease of the side building setback line for an addition that was added to the home. The addition is being used as an extra bathroom in the home to accommodate for the size of the family. The owner of this lot also owns the lot directly adjacent to the addition in question. The addition was built without permits. Had the applicant applied for a permit, we would have informed the owner that you cannot build within the side building setback line.

### **Code Enforcement History**

No Code Enforcement history exists on the property.

### **Permit History**

There is no permit history related to the addition on the property. The property owner is seeking a variance to allow for permit to be issued.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
“MF-33 AHOD” Multi-Family Airport Hazard Overlay District	Multi-Family Dwelling

### **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“R-6 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	“R-6 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	“R-6 MF-33 MLOD-2 MLR-2 AHOD” Residential Single-Family and Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	“R-6 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

### **Comprehensive Plan Consistency/Neighborhood Association**

The property is within the South Central Community Plan and is currently designated “Low Density Residential” in the future land use component of the plan. The subject property is not within a neighborhood association.

### **Street Classification**

Beatrice Avenue is classified as a Local Street.

### **Criteria for Review**

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 served by setbacks, which help to provide consistent development within the City of San Antonio. The applicant is seeking a variance to allow an addition to remain 4’11” from the 5’ side setback requirement. Allowing the addition to be 1” from the side property line interferes with the character of the

neighborhood. Staff finds that the addition, as constructed, is contrary to the public interest.

**However, allowing the structure to be 3' away from the side property line may not be contrary to the public interest.**

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

Staff is unable to establish any special condition that warrants allowing an addition to remain 1" from the side property line.

**However, allowing the structure to be 3' away from the side property line may not be an unnecessary hardship.**

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 the intent of the Code, rather than the strict letter of the law. In this case, the intent is to provide enough of a setback to allow for long-term maintenance without trespass. The near elimination does not provide such clearance and does not observe the spirit of the ordinance.

**However, allowing the structure to be 3' away from the side property line may observe the spirit of the ordinance.**

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.*

The variance will not authorize the operation of a use other than those uses specifically authorized by the zoning district.

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.*

The placement of an addition 1" from the side property line is contrary to the essential character of the district.

**However, allowing the structure to be 3' away from the side property line may not 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 is unable to determine any unique circumstance existing on the site that warrants the near elimination of the side setback.

**However, allowing the structure to be 3' away from the side property line may not be harmful.**

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

Denial of the variance request would result in the owner having to meet the required five foot side setback.

### **Staff Recommendation**

Staff recommends **DENIAL with an Alternate Recommendation of a 2' variance from the 5' side setback requirement to allow an addition to be 3' from the side property line** in 19-10300039, based on the following findings of fact:

1. The addition is contrary to the public interest in that it detracts from the essential character of the community.