



# City of San Antonio

## Legislation Details (With Text)

**File #:** 19-4216

**Type:** Zoning Case

**In control:** Board of Adjustment

**On agenda:** 5/20/2019

**Title:** BOA 19-10300017: A request by Mirna Montoya for 1) a 8' variance from the 10' front setback requirement to allow for an attached carport to be 2' away from the front property line, and 2) a 4'11" variance from the 5' side setback requirement to allow for an existing attached carport to be 1" away from the side property line, located at 118 Cosgrove Street. Staff recommends Denial with an Alternate Recommendation. (Council District 5) (Mercedes Rivas, Planner, (210) 207-0215, Mercedes.Rivas2@sanantonio.gov, Development Services Department)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. BOA 19-10300017 Attachments

Date	Ver.	Action By	Action	Result
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**Case Number:** BOA 19-10300017

**Applicant:** Mirna Montoya

**Owner:** Mirna Montoya

**Council District:** 5

**Location:** 118 Cosgrove Street

**Legal** Lot 5, Block 9, NCB 2947

**Description:**

**Zoning:** "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

**Case Manager:** Mercedes Rivas, Planner

### Request

A request for 1) a 8' variance from the 10' front setback requirement, as described in Section 35-371(a), to allow for an attached carport to be 2' away from the front property line; 2) a 4'11" variance from the 5' side setback requirement, as described in Section 35-371(a), to allow for an existing attached carport to be 1" away from the side property line.

### Executive Summary

The subject property is located at 118 Cosgrove Street. The applicant is applying for a variance to allow an existing attached carport to remain where it is currently located. The carport had already been constructed when

the current owner purchased the home. There are other carports that encroach on the front and side property lines within this community. The attached carport was built without permits.

**Code Enforcement History**

On April 23, 2018 the applicant received a code violation for building within the front and side building setback lines without a permit. The case is currently open. On October 20, 2014 the applicant received a code violation for pouring a new driveway approach without a permit. The case is currently open.

**Permit History**

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

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
East	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The property is located within the Highlands Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Highland Park Neighborhood Association. As such, they were notified and asked to comment.

**Street Classification**

Cosgrove Street 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 the existing attached carport to remain two feet from the front property line and one inch from the side property line. Allowing the attached carport to be one inch from the side property line interferes with the character of the neighborhood. Staff finds that the attached carport, as proposed, is contrary to the public interest.

**Staff's alternate recommendation for a 3' side setback is more appropriate because it adequately addresses fire separation needs and provides adequate space to maintain the structure without trespass.**

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 reducing the side setbacks to one inch.

**Staff finds that the modification of the attached carport to be 3' from the side property line would limit potential hardships on adjoining property owners.**

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 of the side setback requirement does not provide such clearance and does not observe the spirit of the ordinance.

**Modifying the attached carport to be 3' from the side property line would provide fair and equal access to air and light, while providing for adequate fire separation and storm water controls.**

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 the attached carport one inch side property lines is contrary to the essential character of the district.

**Staff finds that a 3' setback from the side property line would alleviate concerns of injuring the appropriate use of adjacent conforming 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 is unable to determine any unique circumstance existing on the site that warrants the near elimination of the front and side setbacks.

Staff supports the attached carport placement with a 2' setback from the front property line and a 3' setback from the side property line would alleviate concerns of storm water runoff, fire spread, and maintenance of the structure.

### Alternative to Applicant's Request

Denial of the variance request would result in the owner having to meet the required front and side setbacks.

### Staff Recommendation

Staff recommends **APPROVAL** of 1) a 8' variance from the 10' front setback requirement to allow for an attached carport to be 2' away from the front property line; and 2) **DENIAL** of a 4'11" variance from the 5' side setback requirement to allow for an existing attached carport to be 1" away from the side property line **with an Alternate Recommendation of a 2' variance from the 5' side setback to allow an existing attached carport to be 3' from the side property line and property line in 19-10300017**, based on the following findings of fact:

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