



# City of San Antonio

## Legislation Details (With Text)

**File #:** 16-5680

**Type:** Zoning Case

**In control:** Board of Adjustment

**On agenda:** 11/7/2016

**Title:** A-16-182: A request by Carlos Colorado for 1) a three foot variance from the maximum three foot solid screen fence height in the front yard to allow a maximum six foot fence; 2) a five foot variance from the minimum five foot side setback to allow a carport on the side property line; and 3) a variance from the clear vision requirements to allow a fence to be located in the Clear Vision field, located at 578 Kendalia Avenue. Staff recommends Denial with an Alternate Recommendation. (Council District 3)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Maps and Pictures

Date	Ver.	Action By	Action	Result
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**Case Number:** A-16-182

**Applicant:** Carlos Colorado

**Owner:** Carlos & Claudia Colorado

**Council District:** 3

**Location:** 578 Kendalia Avenue

**Legal:** Lot 21, Block 1 NCB 7645

**Description:**

**Zoning:** "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District

**Case Manager:** Margaret Pahl, AICP, Senior Planner

### Request

A request for 1) a three foot variance from the maximum three foot solid screen fence height as described in Section 35-514 to allow a maximum six foot fence in the front yard; 2) a five foot variance from the minimum five foot side setback, as described in Table 35-310-1, to allow a carport on the side property line; and 3) a variance from the clear vision requirements to allow a fence to be in the Clear Vision field.

### Executive Summary

The subject property includes a 9,250 square foot parcel, with a home built in 1953. A home addition was constructed in 2007, right after the applicant purchased the home. As described above, the applicant was cited recently for construction without a building permit. This enforcement action was focused on both the carport and the front yard privacy fencing. Most of the side front yard fencing is four feet, which transitions down from the six foot fence height in the rear. According to the application, the applicant has experienced "break-ins" and decided to increase security around the house by installing a fence and gated driveway. In addition,

the neighbors have dogs which bark at them and they were hoping that the addition of a more private front fence would reduce the barking. The carport was constructed very close to the side property line, and includes storm gutters. The applicant submitted several photographs of similar carports, built very close to the side property line, from house around their homes. The applicant is requesting the variances to keep the improvements as constructed.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Home

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

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Home
South	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Home
East	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Home
West	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Home

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

The property is within the boundaries of the South Central Community Plan and currently designated as Low-Density Residential in the future land use component of the plan. The subject property is not located within the boundaries of a registered Neighborhood Association.

### **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 defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by setbacks, established to allow for maintenance without trespass and access to air and light. While they have installed gutters to address stormwater, the carport still poses a fire threat. If they are allowed to keep the carport as constructed, they will be required to fire rate the area inside the five feet.

The fencing was constructed to increase privacy from neighboring dogs. A small section of it encroaches into the clear vision area but impacts only their clear vision. According to the applicant, the fencing was added to resolve problems with the neighbors. Staff finds that the requests are contrary to the public interest.

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

Literal enforcement of the ordinance would result in a carport that is wide enough for one vehicle, rather than two. The applicant states that the reason for both the carport and the fencing is that their vehicles have been

vandalized. They also stated that the neighbors were concerned about their cars parked on the street. The current fencing regulations prohibit privacy fencing taller than three feet, requiring that the fence be shortened by one foot.

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. The intent of the Code is to provide fire safety and allow maintenance without trespass. Front yard fencing is limited to allow clear vision areas around driveways and eliminate hiding places for vandals. The spirit of the Code would not be observed by granting the requested variances.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variances will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-6 AHOD” Residential Single-Family Airport Hazard Overlay 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 requested variances would allow the carport and the fencing to remain as constructed, potentially impacting the adjacent property with an increase in fire hazard.

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 could find no unique circumstance which would warrant elimination of the entire side setback. The applicant submitted photographs of 13 other carports along their street. According to the site plan submitted by the applicant, the carport is 14.5 feet in width. The carport could be reduced in width, providing a setback which would allow long-term maintenance.

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

Without the requested variances, the owner will have to reduce the width of the carport and reduce the height of the front yard fencing.

### **Staff Recommendation**

Staff recommends **DENIAL of the requested five foot side setback variance detailed in A-16-182** based on the following findings of fact:

1. The carport as constructed poses a fire hazard; and
2. The applicant has constructed the carport directly on their property line.

Staff recommends **APPROVAL of an alternative variance of three feet** to allow the carport with a two foot side setback, based on the following findings of fact:

1. The carport can be rebuilt with fire-rated materials, reducing the threat of fire spread; and
2. The carport meets the minimum front setback.

Staff recommends **DENIAL of the requested fence variance** based on the findings that:

1. The fence as constructed encroaches into the clear vision area.