



City of San Antonio

Legislation Details (With Text)

File #: 18-6055

Type: Zoning Case

In control: Board of Adjustment

On agenda: 11/5/2018

Title: A-18-175: A request by Jorge and Martha Rodriguez for 1) a 4' variance from the 5' side setback to allow a carport to be 1' from the side property line, 2) a 9' variance from the 10' front setback to allow a carport to be 1' from the front property line and 3) a 8" variance from the maximum 5' front yard fence height to allow a fence to be 5'8" tall, located at 350 Cosgrove Street. Staff recommends Denial. (Council District 3)

Sponsors:

Indexes:

Code sections:

Attachments: 1. A-18-175 Attachments

Date	Ver.	Action By	Action	Result
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Case Number: A-18-175

Applicant: Jorge and Martha Rodriguez

Owner: Jorge and Martha Rodriguez

Council District: 3

Location: 350 Cosgrove Street

Legal: Lot 25 and 26, Block 26, NCB 3820

Description:

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

Case Manager: Debora Gonzalez, Senior Planner

Request

A request for 1) a 4' variance from the 5' side setback, as described in Section 35-310.01, to allow a carport to be 1' from the side property line, 2) a 9' variance from the 10' front setback, as described in Section 35-310.01, to allow a carport to be 1' from the front property line and 3) a 8" variance from the maximum 5' front yard fence height, as described in Section 35-514, to allow a fence to be 5'8" tall.

Executive Summary

The subject property is located at 350 Cosgrove Street at its intersection with South Walters Street. The applicant is requesting to keep a carport built without permits within the front and side property setbacks and received a citation from Code Enforcement on July 6, 2018. The carport is built out of metal and wood. The applicant also built a front yard fence without permits and paid a double fee permit on October 17, 2018. The

applicant did a second curb cut without permits and staff confirmed with traffic that a permit is needed. The subject property is located at a corner and has a detached two car garage with an attached carport located in the rear of the property with a wide curb cut approach. During visits to the site, staff was unable to identify any of the corner properties with carports located on the front yard. This block has some properties not located on intersections with carports located within the side and front yards.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

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

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Highlands Plan and is currently designated Low Density Residential in the future land use component of the plan. The subject property is 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 defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by required setbacks to ensure equal access to air, light, and distance for fire separation. The subject property has a detached two car garage with an attached carport located in the rear of the property. Staff finds that the requested variance is contrary to the public interest.

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

Staff cannot find any special conditions that, if enforced literally, would result in any unnecessary hardship. The property already benefits from a two car garage with an attached carport on the rear.

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 setback limitation is to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage. The request detracts from each of these purposes.

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

The variance will not authorize the operation of a use other than those uses specifically authorized 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 structure itself is located too near the shared property line and water drainage could runoff onto the adjacent property. Staff finds that the carport, as designed, presents a negative impact on the adjacent property.

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 did not find any unique circumstance that warrants the granting of the requested side and front setback variance.

Criteria for Review

According to Section 35-482(h) of the UDC, in order for a special exception to be granted, the Board of Adjustment must find that the request meets each of the five following conditions:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter.*

The spirit of the chapter is intended to provide for reasonable protections to property owners and to establish a sense of community within our neighborhoods. The request for the side fence is out of character within the community in which it is located as no other properties within the immediate vicinity have similar fencing. Staff finds that this request is not in harmony with the spirit and purpose of the chapter and differs from other properties in the neighborhood.

- B. *The public welfare and convenience will be substantially served.*

Staff is unable to establish a special condition that would allow for a 5’8" tall wrought iron fence along the west property line within the front yard.

- C. *The neighboring property will not be substantially injured by such proposed use.*

The proposed fence is not consistent with surrounding properties and allowing this one property owner to have a 5'8" tall wrought iron fence negatively affects the design consistency within the neighborhood.

D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.

The proposed 5'8" wrought iron fence along the west property line would be the only fence of this type within this block. The proposed fence creates inconsistency and alters the essential character of the community in which the property is located.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The property is located within the "R-6" Residential Single-Family District and permits the current use of a single-family home. The fencing regulations are established to ensure consistency within our communities, and it is difficult to establish how granting the requested special exception will not weaken that purpose.

Alternative to Applicant's Request

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

Staff Recommendation

Staff recommends **DENIAL** of variance in **A-18-175**, based on the following findings of fact:

1. There are no special conditions present to warrant the granting of the requested variances, and;
2. The request does not observe the spirit of the ordinance.
3. The request could harm adjacent properties.

Staff recommends **DENIAL** of special exception in **A-18-175**, based on the following findings of fact:

1. The requested fence detracts from the character of the community.