



# City of San Antonio

## Legislation Details (With Text)

**File #:** 19-3325

**Type:** Zoning Case

**In control:** Board of Adjustment

**On agenda:** 4/15/2019

**Title:** BOA-19-10300034: A request by Maria Castillo for 1) a 4' variance from the 5' side setback requirement to allow for a carport to be 1' away from the side property line, 2) a special exception to allow a privacy fence to be up to 8' tall on the west and rear property line, and 3) a variance from the restriction of corrugated metal as a fencing material to allow for the use of fencing, located at 423 West Norwood Court. Staff recommends Denial with an Alternate Recommendation. (Council District 1) (Mercedes Rivas, Planner, (210) 207-0215, Mercedes.Rivas2@sanantonio.gov, Development Services Department)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. BOA 19-10300034 Attachments

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
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**Case Number:** BOA-19-10300034

**Applicant:** Maria and Gilbert Castillo

**Owner:** Maria and Gilbert Castillo

**Council District:** 1

**Location:** 423 West Norwood Court

**Legal** The West 10 feet of Lot 20 and East 40 feet of Lot 21, Block

**Description:** 28, NCB 6889

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

**Case Manager:** Mercedes Rivas, Planner

### Request

A request for 1) a 4' variance from the 5' side setback requirement, as described in Section 35-371(a), to allow for a carport to be 1' away from the side property line, 2) a special exception, as described in Section 35-514, to allow a privacy fence to be up to 8' tall on the west and rear property line, and 3) a variance from the restriction of corrugated metal as a fencing material, as described in Section 35-514, to allow for the use as fencing.

### Executive Summary

The applicant wishes to keep an 8' tall fence constructed of corrugated metal located on all sides of the property and carport that is located 1' from the side property lines. The applicant states that she has a need for increased

security and privacy which warrants the additional fence height and material. The applicant built the fence without first obtaining a permit for the carport or the fence. Had the applicant applied for a permit, we would have informed the owner that you cannot build a fence at that height, use corrugated metal, or construct a carport 1' from the side property line.

### **Code Enforcement History**

No Code Enforcement history exists on the property.

### **Permit History**

The applicant is waiting for variances to be approved to obtain a fence and carport permit.

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

| <b>Existing Zoning</b>  | <b>Existing Use</b> |
|---|---------------------|
| "R-4 AHOD" Residential Single-Family<br>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-4 AHOD" Residential Single-Family<br>Airport Hazard Overlay District | Single-Family Home  |
| South              | "R-4 AHOD" Residential Single-Family<br>Airport Hazard Overlay District | Single-Family Home  |
| East               | "R-4 AHOD" Residential Single-Family<br>Airport Hazard Overlay District | Single-Family Home  |
| West               | "R-4 AHOD" Residential Single-Family<br>Airport Hazard Overlay District | Single-Family Home  |

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

The property is within the boundaries of the Lavaca Neighborhood Plan and currently designated as "Mixed Use" in the future land use component of the plan. The subject property is located within the boundaries of the Lavaca Neighborhood Association. As such, they were notified and asked to comment.

### **Street Classification**

West Norwood Court 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:

### **Variance request for Carport and Use of Corrugated Metal:**

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 variance is contrary to the public interest as the fence was built with corrugated metal a prohibited material. The corrugated metal fence is inconsistent with the neighborhood design and the material is immediately noticeable from the adjacent public park, further, this type of material can be dangerous.

The applicant is also seeking a variance to allow the carport to remain 1' from the side property line. Allowing the carport to be 1' from the side property line interferes with the character of the neighborhood. Staff finds that the carport, as proposed, 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. As designed, the metal fence appears to surround the property for security and privacy. If a permit was sought, staff could have advised on other approaches to achieve a similar result.

Staff is also unable to establish any special condition that warrants reducing the side setback to 1'.

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 permitted materials for fencing is to create a consistent community character. Granting the requested variance for the fence will not result in substantial justice because the fence, as designed, is out of place within this residential community.

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 reduction of the side building setback line to 1' does not provide such clearance and does not 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 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 corrugated metal fence is noticeably out of character within this community. The fence dominates the back yard of the property and is visible from the public park to the south of the property. Staff finds the fence detracts from the essential character of the community.

Staff also finds that the placement of a carport 1' from the side property line is contrary to 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 did not find any unique circumstances that warrant the granting of the requested variance. Had the applicant applied for a permit, staff could have assisted with an alternative design that benefits the applicant and the community.

Staff is unable to determine any unique circumstance existing on the site that warrants the near elimination of the side setback.

### **Special Exception for Fence Height:**

According to Section 35-482(h) of the UDC, in order for special exception to be granted, 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 an 8' foot tall fence along the side and rear property lines is in harmony with the spirit of the chapter. No portion of the fence is in violation of the Clear Vision field.**

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

**The public welfare and convenience can be served by the added protection of higher fencing, allowing the owner to protect the subject property.**

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

**No portion of the fence is in violation of the Clear Vision field. No adjacent property owner, nor the traveling public, will be harmed by the proposed fence.**

*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 front yard fence will create enhanced security for subject property and is highly unlikely to injure adjacent properties.**

*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-4" Residential zoning district and permits the current use of a single-family home. Therefore, the requested special exception will not weaken the general purpose of the district.**

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

The applicant would need to adhere to the permitted fence height and materials as described in Section 35-514.

The alternative to the applicant's request is to conform to the setback limitations and fence material limitations established by the Unified Development Code Section 35-310.01.

**Staff Recommendation**

Staff recommends:

**DENIAL of 1) a 4' variance from the 5' side setback requirement to allow for a carport to be 1' away from the side property line,**

**APPROVAL of 2) a special exception to allow a privacy fence to be up to 8' tall on the west and rear property line, and**

**DENIAL of 3) a variance from the restriction of corrugated metal as a fencing material to allow for the use of fencing, based on the following findings of fact:**

1. Staff could not find any special condition to warrant a 1' side setback; and
2. The applicant states the fence is necessary for privacy and security purposes, and;
3. The fence does not visually hinder the adjacent property's driveway or other motorists view.