



# City of San Antonio

## Legislation Details (With Text)

**File #:** 19-4219

**Type:** Zoning Case

**In control:** Board of Adjustment

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

**Title:** BOA 19-10300052: A request by Gilbert and Dolores Perez for a 4'2" variance from the 5' side setback requirement to allow for an existing attached carport to be 10" away from the side property line, located at 146 Helena 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 19-10300052 Attachments

Date	Ver.	Action By	Action	Result
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**Case Number:** BOA 19-10300052

**Applicant:** Gilbert and Dolores Perez

**Owner:** Gilbert and Dolores Perez

**Council District:** 5

**Location:** 146 Helena Street

**Legal:** Lot 71, NCB 2590

**Description:**

**Zoning:** "R-6 MLOD-2 MLR-2 AHOD" Residential Single-Family  
Lackland Military Lighting Overlay Military Lighting  
Region 2 Airport Hazard Overlay District

**Case Manager:** Mercedes Rivas, Planner

### Request

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

### Executive Summary

The subject property is located at 146 Helena Street. The applicant is requesting a decrease of the side building setback line to keep the existing attached carport where it is currently located. The elderly homeowner needs to encroach on the side setback requirement in order for there to be ample space to pull his vehicle into the driveway so that he can then access a wheelchair ramp located at the rear of the home. The attached carport was

built without permits.

### **Code Enforcement History**

On April 5, 2019 the applicant received a code violation for building the carport without a permit and for building the carport within the side setbacks. 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-6 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

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

Orientation	Existing Zoning District(s)	Existing Use
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 MLOD-2 MLR-2 AHOD” Residential Single-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 located within the Lone Star Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Lone Star Neighborhood Association. As such, they were notified and asked to comment.

### **Street Classification**

Helena 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 10 inches from the side property line. Allowing the carport to be ten inches 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.

**However, the carport could be modified to be located 3 feet from the property line and still allow for adequate access.**

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 setback to ten inches.

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.

**However, the carport could be modified to be located 3 feet from the property line and still allow for maintenance and meet 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 attached carport ten inches from the side property line is contrary to the essential character of the district.

**However, the carport could be modified to be located 3 feet from the property line and still allow for adequate access.**

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 requirement.

**However, the carport could be modified to be located 3 feet from the property line and still allow for adequate access.**

#### **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 to allow an attached carport to be 3' from the side property line in 19-10300052**, 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.