



City of San Antonio

Legislation Details (With Text)

File #: 20-1468
Type: Staff Briefing - Without Ordinance
In control: Board of Adjustment
On agenda: 2/3/2020
Title: BOA-19-10300170: A request by Jesse Barrera for 1) a 4' variance from the 5' side setback requirement to allow an attached carport to be 1' from the side property line and 2) a 2' variance from 5' side setback requirement to allow a detached accessory structure with projected eaves to be 3' from the side property line, located at 2507 Menchaca. Staff recommends Denial. (Council District 5) (Dominic Silva, Senior Planner (210) 207-0120, dominic.silva@sanantonio.gov, Development Services Department)

Sponsors:

Indexes:

Code sections:

Attachments: 1. Attachments

| Date | Ver. | Action By | Action | Result |
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Case Number: BOA-19-10300170
Applicant: Jesse Barrera
Owner: Jesse Barrera
Council District: 5
Location: 2507 Menchaca Street
Legal: Lot 15, Block 7, NCB 8887
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: Dominic Silva, Senior Planner

Request

A request for 1) a 4' variance from the 5' side setback requirement, as described in Section 35-370, to allow an attached carport to be 1' from the side property line and 2) a 2' variance from 5' side setback requirement, as described in Section 35-371, to allow a detached accessory structure with projected eaves to be 3' from the side property line.

Executive Summary

The subject property is located at 2507 Menchaca Street, approximately 1,900 feet east of General McMullen.

On September 23, 2019 the owner applied for a permit; however, all inspections were placed on hold due to setback violations. The owner submitted a site plan with the permit that placed the carport 3' away from the side property line.

During site visits, staff took note of a detached accessory structure also within the side setback in the rear of the property. There is a rear alley present with a depth of more than 10', thus no rear setback variance is required.

The applicant is requesting to keep a carport and accessory structure built without permits within the side setback. The general character of the neighborhood consists of single-family residences and no carports. Because of this, the carport is noticeably out of character within the community. Additionally, the slope of the carport directs storm water drainage towards the west of the property and onto the adjacent property. Draining onto adjacent property is not allowed by code. The owner will have to mitigate this and comply with code for proper drainage.

Zoning History

The property was annexed in September of 1945, per Ordinance 2590, and was originally zoned "C" Apartment District. Upon adoption of the 2001 Unified Development Code, the previous base zoning district converted to "MF-33" Multi-Family District. In a 2003 City-initiated case, the property was rezoned to the current "R-6" Residential Single-Family District.

Code Enforcement History

Code Enforcement initiated this case on August 14, 2019 due to the carport built without a permit.

Permit History

The owner applied for a permit for the carport on September 23, 2019. Inspections were placed on hold due to setback violations.

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 | "RM-5 MLOD-2 MLR-2 AHOD" Residential Mixed 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 not located within the boundaries of any plan. The subject property is within the Prospect Hill/West End Hope in Action Neighborhood Association. As such, they were notified and asked to comment.

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 variance is contrary to the public interest. The owner applied for a permit with a site plan that placed the carport 3' from the side property line. There is room to move the carport posts 2' to satisfy the 3' side setback with no overhang requirement.

While the accessory structure is designed such that rainwater runoff is not a concern for the applicant's property, the structure fails to adequately mitigate storm water runoff through installation of proper controls. Downspouts are present but are located outside the applicant's property. Staff finds that the accessory structure, as designed, could present a negative impact on the adjacent property.

1. *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. No special condition is present to warrant the carport to be within the side setback by 2'. A permit was sought and staff advised the applicant on side setback requirements. The site plan submitted showcased the carport 3' away from the side property line.

Staff also cannot find any special conditions that, if enforced literally, would result in any unnecessary hardship for the placement of the accessory structure. No special condition is present to warrant the carport to be within the side setback by 2', and the eaves can be modified to adhere to the 3' side setback requirement.

2. *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. Although storm water controls are present on the carport, there is a lack of adequate space for maintenance and increases density between the applicant's property and adjacent property (currently vacant).

Similarly, although there is adequate space for maintenance for the accessory structure, storm water controls are lacking or being directed with downspouts located outside the property. **The eaves of the accessory structure can be modified to adhere to the 3' side setback requirement.** Staff cannot support the requested variance when alternative options are available that doesn't require Board approval.

3. *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" Residential Single-Family District.

4. *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 carport is noticeably out of character within this district. There are no other carports of similar design or placement within the immediate vicinity. Staff finds the carport detracts from the essential character of the district. Staff notes that, while a carport can be permitted within the district, the location of the structure does not warrant a variance, rather, the applicant can modify the carport to meet requirements without Board approval.

Likewise, although the accessory structure is permitted within the district, the location of the structure does not warrant a variance, rather, the applicant can modify the overhang to meet the side setback requirements.

5. *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 not find any unique circumstances that warrant the granting of the requested variance. Had the applicant applied for a permit before work was started on the carport, staff could have assisted with an alternative design that benefits the applicant and the community. Although staff recommends denial, there are other options available to the applicant that doesn't require a variance: the posts of the carport can be located 3' from the side property line with no overhang as the owner initially submitted on their site plan during permit intake.

Staff could not find any unique circumstances for the accessory structure either. The applicant can modify the overhang to meet the side setback requirements without Board approval.

Alternative to Applicant's Request

Denial of the variance request would result in the owner having to meet the required side setback and adhere to

Section 35-370 and 35-371.

Staff Recommendation

Staff recommends **DENIAL** of **BOA-19-10300170**, based on the following findings of fact:

1. The applicant applied for a carport permit and submitted a site plan with a 3' side setback, and;
2. The carport posts can be relocated 3' from the side property line with no overhang while the eaves of the accessory structure can be modified to adhere to a 3' side setback requirement without Board approval, and;