



# City of San Antonio

## Agenda Memorandum

**File Number:**18-3668

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**Agenda Item Number:** 8.

**Agenda Date:** 6/4/2018

**In Control:** Board of Adjustment

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Case Number: A-18-098  
Applicant: Antonio Perez  
Owner: Antonio Perez  
Council District: 1  
Location: 2331 Clower Street  
Legal: Lots 33 & 34, Block 29, NCB 8432  
Description:  
Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard  
Overlay District  
Case Manager: Dominic Silva, Planner

### **Request**

A request for 1) a 3' variance from the 5' side setback, as described in Section 35-370, to allow a carport to be 2' from side property line and 2) a 8' variance from the 10' front setback, as described in Section 35-310.01, to allow a carport to be 2' from the front property line.

### **Executive Summary**

The subject property is located at 2331 Clower Street, approximately 95' west of Muriel Avenue. Code Enforcement initiated this case on April 18<sup>th</sup>, 2018 due to setback violations. The applicant is requesting to keep a carport built without permits within the side and front setbacks.

The property has a history of building without permits: a second carport was constructed in the rear between 2016 and 2018 and a building addition to the primary structure was built in the rear between January and December of 2015. Neither construction had permits issued.

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

Existing Zoning	Existing Use
“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
East	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

### Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Near Northwest Plan and is currently designated Urban Low Density Residential in the future land use component of the plan. The subject property is within the Los Angeles Heights 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 variances are contrary to the public interest as the structure limits room for maintenance and increases fire spread with the wood construction of the carport. Further, a slope is present on the east side of the driveway which will create water runoff for the adjoining property where no water runoff controls are installed.

**Staff would support a modified request to allow the carport to be 3’ setback from the side property line with no eave overhang. Further, even without a variance, posts could be placed to meet the 10’ front setback with up to 5’ front eave extension.**

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 has a carport installed within the rear of the property, and no special condition is present to warrant the second carport beyond the side and front setback. If a permit was sought, staff could have advised on other approaches to achieve a similar result.

**Staff finds that the modification of the new carport to be 3' setback from the side property line with no eave overhang would limit any other hardships to the owner while limiting potential hardships on adjoining property owners.**

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. With the allowance of an all-wood constructed carport 2' from the side property line and no storm water controls present, staff cannot safely support the requested variances.

**Modifying the carport to be 3' setback from the side property line with no eave overhang would provide fair and equal access to air and light, while providing for adequate fire separation and storm water controls.**

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-4 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.*

While the carport is designed such that rainwater runoff is not a concern for the applicant's property, the structure itself is still located too near the shared property line and possible drainage could lead into the adjacent property. Staff finds that the carport, as designed, could present a negative impact on the adjacent property. Further, the slope east of the carport is directed towards the adjoining property.

**Staff recommends a 3' setback from the side property line with no eave overhang to alleviate concerns of injuring the appropriate use of adjacent conforming properties while also eliminating the hardship of dismantling the carport altogether.**

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 variances. Had the applicant have applied for a permit, staff could have assisted with an alternative design that benefits the applicant and the community. Further, the rear carport, as designed, can alleviate concerns of protection from

the elements.

**Staff supports the carport placement with reduced setbacks of 3' from the side property line with no eave overhang to alleviate concerns of storm water runoff, fire spread, and maintenance of the structure.**

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

Denial of the variance request would result in the owner having to meet the required side and front setback and adhere to Section 35-310.01 and Section 35-370.

### **Staff Recommendation**

Staff recommends **DENIAL** of the 3' variance from the 5' side setback and 8' variance from the 10' front setback with an **Alternate Recommendation** of a 2' variance from the 5' side setback in **A-18-098**, based on the following findings of fact:

1. With a noticeable slope present on the east side of the carport, water runoff will be a concern for adjoining properties, and;
2. Staff recommends an alternate of the carport setback variance to be 3' from the side property line to mitigate the effects of the construction.