



# City of San Antonio

## Agenda Memorandum

**File Number:**18-6390

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**Agenda Item Number:** 4.

**Agenda Date:** 11/19/2018

**In Control:** Board of Adjustment

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**Case Number:** BOA-18-900003  
**Applicant:** Michael Perez  
**Owner:** Michael Perez  
**Council District:** 2  
**Location:** 817 East Josephine Street  
**Legal:** The East 43 feet of Lot 29, NCB 6300  
**Description:**  
**Zoning:** "R-4 NCD-9 AHOD" Residential Single-Family Westfort  
Alliance Neighborhood Conservation Airport Hazard  
Overlay District  
**Case Manager:** Debora Gonzalez, Senior Planner

### **Request**

A request for 1) a 10' variance from the 20' rear setback, as described in Section 35-310.01, to allow an addition to be 10' from the rear property line, 2) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall be located in the rear to allow a carport in the side yard, 3) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall not exceed 10' in height to allow a carport to be taller than 10 feet to allow a carport taller than 10 feet, 4) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall have a flat roof to allow a carport with a sloped roof, and 5) a 2' variance from the 5' side setback requirements, as described in Section 35-310.01, to allow an attached carport to be 3' away from the side property line.

### **Executive Summary**

The subject property is located at 817 East Josephine Street, approximately 170 feet west of North Pine Street. The applicant is proposing to enlarge an existing structure by adding a large addition and seeks to add an attached carport on the side of the primary structure. The applicant is seeking a total of five variances. The first request is to reduce the rear setback for an addition to the existing structure. The second variance is to locate an attached carport on the side of the primary structure, instead of a detached carport located in the rear yard, which is required by the Neighborhood Conservation District. The third request is to allow the carport to be taller than 10 feet, also in violation of the NCD requirements, and directly ties to the forth request to waive the requirements that carports shall have a flat roof. The last request is to allow an attached carport to be 3 feet away from the side property line.

The Neighborhood Conservation District was created in 2011 to address neighborhood stability through compatible infill construction and rehabilitation within this unique neighborhood.

The intent of the Neighborhood Conservation District is to maintain the essential character of the community. Staff can find no specific hardship the warrant most of the requests. The NCD provides design requirements that stress specific architectural criteria, and clearly call for detached carports. The size of the planned addition interferes with the ability to adhere to the intent of the NCD. The applicant could consider a second story addition, which would free up room in the rear yard for the detached carport, which could further be designed to not exceed 10 feet in height by including a flat roof.

Staff is comfortable supporting the request to reduce the rear setback, but is concerned that almost every other variance request comes as a result of the large, one-story addition.

### **Code Enforcement History:**

No Code Enforcement history exists on the property.

### **Permit History:**

No permit history related to this proposed additions exists on the property. The property owner has permit for general repairs.

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

Existing Zoning	Existing Use
“R-4 NCD-9 AHOD” Residential Single-Family Westfort Alliance Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling

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

Orientation	Existing Zoning District(s)	Existing Use
North	“O-2 NCD-9 AHOD” High Rise Office Westfort Alliance Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling
South	“MF-18 AHOD” Limited Density Multi-Family Airport Hazard Overlay District	Multi-Family Dwelling
East	“O-2 NCD-9 AHOD” High Rise Office Westfort Alliance Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling
West	“O-2 NCD-9 AHOD” High Rise Office Westfort Alliance Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling

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

The subject property is within the boundaries of the Westfort Alliance Neighborhood Plan and currently

designated “Urban Single Family Residential” in the future land use component of the plan. The subject property is located within the Downtown Residents Association and within 200 feet of Government Hill Alliance Neighborhood Association and Westfort Alliance Neighborhood Association. As such they were notified and asked to comment.

### **Street Classification**

East Josephine 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. The public interest is further represented by preserving the unique character of this community. The size of the planned addition interferes with the ability to adhere to the intent of the NCD and is contrary to the public interest. The applicant could consider a second story addition, which would free up room in the rear yard for the detached carport, which could further be designed to not exceed 10 feet in height by including a flat roof.

**Staff supports the request to reduce the rear setback, but is concerned that almost every other variance request comes as a result of the large, one-story addition.**

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

Literal enforcement would require that the owner design a project that mirrors the requirements of the NCD, or at least the intent of them. This would not result in an unnecessary hardship.

**Staff supports the requested rear setback reduction to allow for an addition to the primary structure, as it is unlikely to detract from the neighborhood.**

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The NCD provides design requirements that stress specific architectural criteria, and clearly call for detached carports. The size of the planned addition interferes with the ability to adhere to the intent of the NCD.

**Staff supports a rear setback reduction to 10 feet which is unlikely to detract from the character of the community. Several residential zoning districts allow for a 10’ rear setback.**

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.*

Staff cannot support the requests to deviate from the intent of the NCD. These requests are clearly at odds with the intent of the Neighborhood Conservation District, and would allow for the development of a lot that is immediately out of character with the surrounding community. The applicant could consider a second story addition, which would free up room in the rear yard for the detached carport, which could further be designed to not exceed 10 feet in height by including a flat roof.

**The reduction of the rear setback is unlikely to detract from the essential character of the community.**

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 circumstances existing on the site that warrant so many deviations from code and the Neighborhood Conservation District. The project should be designed in a manner that respects the intent of the code.

**The rear side setback reduction to increase the size of the primary structure is not at odds with the Neighborhood Conservation District, and is unlikely to harm adjacent properties.**

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

The alternative to the applicant's request would be to adhere to the requirements of both the Unified Development Code and the Neighborhood Conservation District.

### **Staff Recommendation**

Staff recommends **APPROVAL** of 1) a 10' variance from the 20' rear setback to allow an addition to be 10' from the rear property line, based on the following findings of fact:

1. The requested setback provides room for adequate light, air, and maintenance, and;
2. The variance is unlikely to detract from the character of the district.

Staff recommends **DENIAL** 2) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall be located in the rear to allow a carport in the side yard, 3) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall not exceed 10' in height to allow a carport to be taller than 10 feet, 4) a variance from the Westfort Alliance Neighborhood Conservation District design requirement that a carport shall have a flat roof, and 5) a 2' variance from the 5' side setback requirements, as described in Section 35-310, to allow an attached carport to be 3' away from the side property line, based on the following findings of fact:

1. The variances are contrary to the public interest in that they are all required because the design fails to adhere to the intent of the Neighborhood Conservation District.