



City of San Antonio

Agenda Memorandum

File Number:19-3324

Agenda Item Number: 7.

Agenda Date: 4/15/2019

In Control: Board of Adjustment

Case Number: BOA 19-10300032
Applicant: Josepha Rodriguez
Owner: Josepha Rodriguez
Council District: 3
Location: 553 West Harlan Avenue
Legal: Lot 26 and 27, Block 6, NCB 7869
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 4'11" variance from the 5' side setback requirement, as described in Section 35-371(a), to allow for an existing detached carport with overhang to be 1" away from the side property line.

Executive Summary

The subject property is located at 553 West Harlan Avenue. The applicant is requesting a decrease of the side building setback line for an existing detached carport with overhang in order to keep the existing detached carport where it is currently located. There are several structures encroaching on the side setbacks within this community. The detached carport was built without permits. Had the applicant applied for a permit, we would have informed the owner that you cannot build within the side building setback lines.

Code Enforcement History

On February 18, 2019 the applicant received a code violation for building the carport without a permit and for building the carport within the side building setbacks. The case is currently open.

Permit History

There is no permit history related to the detached 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 South Central Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is not located within a neighborhood association.

Street Classification

West Harlan Avenue 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 detached carport to remain one inch from the side property line. Allowing the carport to be one inch from the side property line interferes with the character of the neighborhood. Staff finds that the detached accessory dwelling unit, as proposed, is contrary to the public interest.

However, a detached carport 3 feet from the side property line may not be contrary to the public interest.

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 one inch.

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 elimination does not provide such clearance and does not observe the spirit of the ordinance.

However, a detached carport 3 feet from the side property line may 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 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 a detached carport one inch from the side property line is contrary to the essential character of the district.

However, a detached carport 3 feet from the side property line may not alter 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 is unable to determine any unique circumstance existing on the site that warrants the near elimination of the side setback.

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 a detached carport with overhang to be 3' from the side property line in 19-10300032, based on the following findings of fact:

1. The existing detached carport is contrary to the public interest in that it detracts from the essential character of the community.