



City of San Antonio

Agenda Memorandum

File Number:19-7471

Agenda Item Number: 9.

Agenda Date: 10/7/2019

In Control: Board of Adjustment

Case Number: BOA-19-10300109
Applicant: Florabella Castillo
Owner: Florabella Castillo
Council District: 1
Location: 1544 West Agarita Avenue
Legal: NCB 6496 BLK 8 LOT 32 & 33
Description:
Zoning: "R-6 UC-3 AHOD" Residential Single Family,
Fredericksburg Road Urban Corridor, Airport Hazard
Overlay District
Case Manager: Rachel Smith, Planner

Request

A request for 1) a 4'11" variance from the 5' side setback requirement, as described in Section 35-310.01, to allow an attached carport to be 1" from the east property line, 2) a 2' variance from the 10' front setback requirement to allow an attached carport to be 8' from the north property line, and 3) a special exception to allow a wrought iron fence to be 6' tall on the front yard.

Executive Summary

The subject property is located within the Jefferson Neighborhood and is being used as a single-family dwelling. The property is just off Fredericksburg Road on a street with other single-family residences and smaller office buildings. The applicant is requesting variances for setbacks for an existing carport (request #1 and #2 above) and a special exception for an existing fence (request #3). During field visits, staff noticed the front fence was taller than what was approved in their permit. The carport is constructed of metal posts and metal roof and has an overhang on the front that is five (5) feet from the front property line. During the field visit there was no gutter but the neighbor stated that the applicant said when it was constructed that there would be one. The fence is constructed of wrought iron and is up to 6 feet tall.

Code Enforcement History

7/31/19: Work without a permit, carport

Permit History

6/7/17 permit secured for 5-foot wrought iron fence along the front property line.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-6 UC-3AHOD” Residential Single family, Urban Corridor Overlay District (Fredericksburg Rd Corridor) Airport Hazard Overlay District	Single-Family Detached Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“C-2NA UC-3” Commercial Non-Alcohol Urban Corridor Overlay District	Office Buildings Apartments
South	“R-6 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Detached Dwelling
East	“R-6 UC-3AHOD” Residential Single family, Urban Corridor Overlay District (Fredericksburg Rd Corridor) Airport Hazard Overlay District	Single-Family Detached Dwelling
West	“R-6 UC-3AHOD” Residential Single family, Urban Corridor Overlay District (Fredericksburg Rd Corridor) Airport Hazard Overlay District	Single-Family Detached Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is located in the area of the Near Northwest community perimeter plan and Near North subarea plan. The Jefferson Park neighborhood association was notified about the case and provided with the opportunity to comment.

Street Classification

West Agarita 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 defined as the general health, safety, and welfare of the public. In this case, the public

interest is represented by required setbacks to ensure equal access to air, light, and distance for fire separation. Staff finds that the requested variance is contrary to the public interest.

Staff realizes some relief is merited given the size of the lot; staff recommends a 3' side setback to limit any potential storm water runoff onto adjacent properties and adhere to fire separation and fire rating and 8' from the north property line.

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. If a permit was initially sought, staff could have advised on other approaches to achieve a similar result.

Staff recommends a modification of the carport to be 3' from the side property line and supports the front setback variance request to allow the carport to be 8' from the front property.

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. As the carport is built entirely of metal, allowing the structure to remain 1" from the side property line increases storm water runoff onto adjacent property.

Modifying the carport to be 3' from the side property line would provide space for maintenance, encourage storm water drainage, and provide adequate fire separation.

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 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 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.

Staff recommends a 3' setback from the side property line would 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 circumstance that warrants the granting of the requested side setback variance. Had the applicant applied for a permit, staff could have assisted with an alternative design that benefits the applicant and the community.

Staff supports the carport placement with reduced side setbacks of 3' feet from the side property line and 8' from the front property line that would alleviate concerns of storm water runoff, fire spread, and maintenance of the structure.

Alternative to Applicant's Request for Variance

Denial of the requested variances would require that the owner bring the existing carport into compliance with the setback requirements in Section 35-310.01.

Criteria for Review

According to Section 35-482(h) of the UDC, in order for a special exception to be granted, the Board of Adjustment must find that the request meets each of the five following conditions:

A. The special exception will be in harmony with the spirit and purpose of the chapter.

The UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height in the front yard is intended to provide safety and security of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.

B. The public welfare and convenience will be substantially served.

In this case, these criteria are represented by maximum fence heights to protect residential property owners while still promoting a sense of community. A 6' tall predominantly open fence in the front yard is not contrary to the public interest.

C. The neighboring property will not be substantially injured by such proposed use.

The fence enhances the security of the subject property and has been in place for more than 2 years. Further, the fencing does not violate Clear Vision standards.

D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.

The fence provides a safe environment for the property owner while enhancing aesthesis in the neighborhood.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The requested special exception will not weaken the general purpose of the district.

Alternative to Applicant's Request for Special Exception

Denial of the variance request and special exception would result in the owner having to meet the required fence height regulations in Section 35-514.

Staff Recommendation

Staff recommends **DENIAL** of 1) a 4'11" variance from the 5' side setback requirement to allow an attached carport to be 1" from the east property line and an **Alternate Recommendation** of a 3' variance from the side setback of the requested variance in **BOA-19-10300109**, based on the following finding of fact:

1. There are no special conditions present to warrant the granting of the requested variance of a 1" side setback, and;
2. Staff recommends an alternate of the carport setback variance to be 3' from the side property line to mitigate storm water runoff and adequately prevent fire spread.

Staff recommends **APPROVAL** of 2) a 2' variance from the 10' front setback requirement to allow an attached carport to be 8' from the north property line, and 3) a special exception to allow a wrought iron fence to be 6' tall on the front yard in **BOA-19-10300109**, based on the following finding of fact:

1. The requested variance is unlikely to harm adjacent properties, and;
2. Clear Vision standards are not in violation.