



# City of San Antonio

## Agenda Memorandum

**File Number:**19-8806

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**Agenda Item Number:** 8.

**Agenda Date:** 12/2/2019

**In Control:** Board of Adjustment

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Case Number: BOA-19-10300142  
Applicant: Johnny Rodriguez  
Owner: Johnny Rodriguez  
Council District: 5  
Location: 131 Burke Avenue  
Legal: The East 40 feet of Lot 14, Block 14, NCB 9172  
Description:  
Zoning: "R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family  
Lackland Military Lighting Overlay Military Lighting  
Region 1 Airport Hazard Overlay District  
Case Manager: Rachel Smith, Planner

### **Request**

A request for 1) a 9' variance from the 10' front setback requirement, as described in Section 35-310.01, to allow an attached carport to be 1' from the front property line, 2) a 2' variance from the 5' side setback requirement, as described in Section 35-310.01, to allow 2 attached carports to be 3' from the side property line, 3) a 2' variance from the 5' side setback requirement, as described in Section 35-310.01, to allow an attached addition to be 3' from the side property line, 4) a 6' variance from the 20' rear setback requirement, as described in Section 35-310.01, to allow an attached addition to be 14' from the rear property line, and 5) a special exception, from Section 35-514, to allow a solid wood fence to be 6' tall within the front yard.

### **Executive Summary**

The subject property is located along the northern side of Burke Avenue near South Zarzamora. The applicant constructed a detached carport and front porch in the front of the property in September 2018. In the application, the applicant states that he wishes to build a fence in the front yard. In October 2018 the property owner was issued a citation for building without a permit. The applicant states contractors were hired to build the carport and placed it in line with the existing structures but did not take into consideration the required setbacks. The contractors measured the front property line from the street, which was inaccurate, as the right-of-way extends 11' from the street edge towards the house. In September 2019 the applicant applied for a permit for the newly constructed carport and was informed of the setback requirement and the required

variance.

Upon visit to the site, Staff noted that the applicant also constructed a 6' tall fence that is considered to be within the front yard as it is 4' from the front of the structure. The staff noticed that there was a second carport to the side/rear of the property that is attached to the home, and that it was attached to a rear accessory structure. The second carport being attached to both structures makes the rear accessory structure to be considered part of the main structure and beholden to the 20' rear setback requirement.

One stop incorrectly shows an alley at the rear of this property, but that alley is neither an easement nor a platted alley. The subject property extends 6.1' back from the rear fence into what is shown to be an alley, which is actually part of the subject property.

### **Zoning History**

The subject property is within the original 36 square miles of the City of San Antonio and was zoned "C" Apartment District. The property was rezoned to "R-1" Single-Family Residence District by Ordinance 87216 dated January 8, 1998. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "R-1" Residence District converted to the current "R-6" Single-Family District.

### **Code Enforcement History**

10/2/2018: Built without permit (front porch and detached carport to front of property)

### **Permit History**

There is no permit history on file related to the carports or fence.

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

Existing Zoning	Existing Use
"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single Family Residence

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

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single Family Residence
South	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single Family Residence
East	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single Family Residence

West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single Family Residence
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### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is designated as Low Density Residential in the future land use element of the Nogalitos/South Zarzamora plan. The property is in the Quintana Community Neighborhood Association boundaries and they were notified of the request.

### **Street Classification**

Burke Avenue is classified as a local street.

### **Criteria for Review of a Variance**

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 variances to allow a carport to be 1’ from the front property line and 2’ from the side property line and an attached accessory structure to be 14’ from the rear property line. The requested 1’ front setback fails to provide adequate distance from the right of way or provide public right of way access or access to maintain the property without trespassing. Staff finds that the carport, as proposed, is contrary to the public interest.

**Staff supports reducing the west side setback for the carport to 2’ and the rear building setback to 14’, which would provide adequate room for maintenance and would provide better separation for fire spread and rainwater runoff.**

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

Staff is unable to find special conditions that warrant reducing the front setback.

The applicant could meet the front setback. A literal enforcement of the side setback would not provide adequate width to house two cars. The accessory structure has been in place for years without complaint and a literal enforcement would require the property owner to move the structure which, being attached to the primary structure would be an unnecessary hardship.

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 code is to provide for consistent development and to establish room for maintenance and access to the public right of way. The requests to reduce the front setback do not observe the intent of the code.

**Staff supports a modified setback reduction to 2’ side setback and 14’ rear setback, as it addresses these concerns.**

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.*

**No uses other than those authorized by the zoning district will be granted with this request.**

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 other structures in the neighborhood enjoy reduced setbacks, staff cannot support a 1' front setback. It does not leave adequate room to maintain the subject property or public right of way.

**The carport could be modified to meet the front setback. The side setback is unlikely to injure adjacent property as the roof is pitched to drain water into the street.**

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 a unique circumstances existing on the site to warrant reducing the front setback.

**The carport should be designed in a manner that respects the intent of the code.**

#### **Criteria for Review - Special Exception for Fence Height**

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 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 privacy and security of the subject property. 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.**

- 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**

The alternative to the applicant's request is to conform to the setback and lot size limitations established by the Unified Development Code Section 35-310.01 and to the fencing height and clear vision standards described in Section 35-514.

### **Staff Recommendation**

Staff recommends **Denial** of ) a 9' variance from the 10' front setback requirement to allow an attached carport to be 1' from the front property line.

Staff recommends **Approval** of: 2) a 2' variance from the 5' side setback requirement to allow 2 attached carports to be 3' from the side property line, 3) a 2' variance from the 5' side setback requirement to allow an attached addition to be 3' from the side property line, 4) an 6' variance from the 20' rear setback requirement to allow an attached addition to be 14' from the rear property line, and 5) a special exception to allow a solid wood fence to be 6' tall within the front yard in **BOA-19-10300142**, based on the following findings of fact:

1. The accessory structure has been in place for years without complaint and provides adequate space to prevent water runoff onto adjacent property, prevent fire spread, and maintain the structure.
2. There is no special condition on the site to warrant reducing the front setback.
3. The fence provides privacy and does not encroach into the clear vision area.
4. There is adequate room on the side of the carport to provide for maintenance and reduce fire spread.