



# City of San Antonio

## Agenda Memorandum

**File Number:**20-1469

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**Agenda Item Number:** 8.

**Agenda Date:** 2/3/2020

**In Control:** Board of Adjustment

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Case Number: BOA-19-10300171  
Applicant: Javier Salas  
Owner: Javier Salas  
Council District: 4  
Location: 8419 Big Creek Street  
Legal: Lot 32, Block 13, NCB 15986  
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: Dominic Silva, Senior Planner

### **Request**

A request for 1) a 4'11" variance from the 5' side setback requirement, as described in Section 35-370 and 35-371, to allow an attached addition and carport to be 1" from the side property line and 2) a 3' variance from the 5' side setback requirement, also described in Section 35-370, to allow a detached carport to be 2' from the side property line.

### **Executive Summary**

The subject property is located at 8419 Big Creek Drive, approximately 1,000' west of Pearsall Park and War Horse Drive. Code Enforcement initiated this case on December 18, 2019 due to work without a permit.

The applicant is requesting to keep a two-story structure consisting of a lower level carport and dwelling unit on top within the side setback. The applicant also has a second detached carport measuring approximately 930 square feet in the rear that also within the side setback. Both structures were built without permits.

The general character of the neighborhood consists of single-family residences and few carports. There are no properties within the area that has two-story structures. Both carports and the second level dwelling unit are noticeably out of character within the community.

### **Zoning History**

The property was originally zoned Temporary "R-1" Residential District. The Temporary "R-1" converted to

the current “R-6” Residential Single-Family District with the adoption of the 2001 Unified Development Code (UDC), established by Ordinance 93881, on May 3, 2001.

### **Code Enforcement History**

Code enforcement initiated this case December 18, 2019 due to work being done without a permit.

### **Permit History**

No permits have been applied for yet.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling

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

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
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 Dwelling
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 Dwelling
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 Dwelling
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 Dwelling

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

The property is not located within the boundaries of any plan. The subject property is within the Southwest Community 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 variance is contrary to the public interest. The two-story attached carport and dwelling unit fails to adequately mitigate storm water runoff through installation of proper controls. During site visits Staff noted considerable sagging in the middle of the structure. Staff finds that the carport, as designed, could present a negative impact on the adjacent property as well as the subject property.

The detached carport in the rear also fails to mitigate storm water runoff through installation of proper controls. Further, with such considerable size of the detached carport, there is adequate room available to adhere to the 3' side setback requirement of the zoning district.

1. *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. No condition is present to warrant the two-story attached carport and addition to be within the side setback. If a permit was sought, staff could have advised on an alternate approach that would be beneficial to the applicant as well as the community.

Staff also cannot find any special conditions that warrant the detached rear carport to be within the setback considering the size of the structure and room in the rear property to be modified to meet the 3' side setback requirement with no overhang.

2. *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 no storm water controls present, the attached carport and dwelling unit fails to meet conditions that would allow maintenance and storm water controls. Further, at less than 6' spacing between the attached structure of the subject property and the adjacent property's principal structure, fire spread is a concern.

Likewise, the detached carport in the rear has no adequate storm water controls present and leaves little room for maintenance of the structure without trespass. The posts of the carport can be modified to meet the 3' setback requirement with no overhang that doesn't require Board approval.

3. *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-6" Residential Single-Family District.

4. *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 attached two-story carport and dwelling unit is noticeably out of character within this district. There are no other carports of similar design or placement within the immediate vicinity. The structure is a fire concern considering the space of the structure to the adjacent property. Staff finds the carport detracts from the essential character of the district.

The detached carport is also out of character within this district measuring approximately 930 square feet. Staff notes that, while a carport can be permitted within the district, the location of the structure and availability of space within the rear property does not warrant a variance, rather, the applicant can modify the carport to meet requirements without Board approval.

5. *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 could not find any unique circumstances that warrant the granting of the requested variance. Had the applicant applied for a permit, staff could have assisted with an alternative design that benefits the applicant and the community. Although staff recommends denial, there are other options available to the applicant that doesn't require a variance: the two-story carport and dwelling unit can be modified to meet setback requirement and the detached carport's posts can be modified to meet the 3' side setback requirement allowed by code.

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

Denial of the variance request would result in the owner having to meet the required side setback and adhere to Sections 35-370 and 35-371.

### **Staff Recommendation**

Staff recommends **DENIAL** of **BOA-19-10300171**, based on the following findings of fact:

1. The two-story attached carport and dwelling unit built is uncharacteristic of the neighborhood as there is no other structures of this design within the immediate area staff inspected, and;
2. The two-story attached structure fails to prevent fire spread, allow adequate space for maintenance, and encourage proper storm water drainage, and;
3. With a large rear yard present, there are no unique circumstances present that warrant the request for the detached carport to be within the side setback, and;
4. The posts of the rear carport can be modified to meet the 3' side setback requirement without Board approval.