



City of San Antonio

Agenda Memorandum

File Number:20-6405

Agenda Item Number: 5.

Agenda Date: 11/2/2020

In Control: Board of Adjustment

| | |
|--------------------|--|
| Case Number: | BOA-20-10300095 |
| Applicant: | Adriana Orozco |
| Owner: | Adriana & Victor Orozco |
| Council District: | 7 |
| Location: | 2412 Cincinnati Avenue |
| Legal Description: | East 28' of Lot 15, West 53' of Lot 16, Block 14, NCB 9234 |
| Zoning: | "R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District |
| Case Manager: | Kayla Leal, Senior Planner |

Request

A request for 1) a 4' 5" variance to the 5' minimum side setback requirement, as described in Section 35-310.01, to allow a carport and accessory structure to be 7" from the side property line, 2) a 19' variance to allow an attached accessory structure to be 1' from the rear property line, as described in Section 35-516, 3) a special exception to allow a solid-screened front yard fence to be 5' tall, as described in Section 35-514, and 4) a special exception to allow the side yard fence to be 8' tall, as described in Section 35-514.

Executive Summary

The subject property is located to the west of the Cincinnati Avenue and North General McMullen intersection. The applicant received a citation for building without a permit, so the property owner visited with Development Services to apply for the necessary variances. Upon visiting the site, multiple code violations were observed and addressed during this process. The subject property had an existing accessory structure with a small porch cover, all of which was built into the side setback. The property owner expanded the front cover into a full-size carport, which is encroaching into the side setback at most by 4' 5". The measurements to the fence vary, with the smallest measurement at 7" and the largest at 1' 3". The property owner has stated that the fence is not an accurate representation of their property line, due to it being constructed within their property line. Upon closer inspection, the carport is attached to the primary structure and the accessory structure, so a variance to the rear setback is also required. The rear setback variance request is for 19' to allow the structure to be 1' from the rear

property line, however there is a 16' alleyway behind the subject property. With half of the width of the alleyway contributing to the rear setback, the variance could actually be considered as 11'.

Additionally, there is a section of solid-screen fencing that extends past the front façade of the home and is 5' tall. There is also a section of side yard fencing that is 8' tall. A special exception is required to allow the height of these fences. Last item to note, is the property owner had corrugated metal as a fencing material, however, they have stated they will no longer use the metal and, if the special exception shall be granted, it will be replaced with wood.

Code Enforcement History

There is an open code enforcement violation case for building without a permit.

Permit History

There are no relevant permits pulled for the property.

Zoning History

The subject property was annexed into San Antonio City Limits on June 5, 1947, established by Ordinance 5257, and was zoned "B" Residence District. The zoning converted from "B" to the current "R-4" Residential Single-Family District upon adoption of the 2001 Unified Development Code (Ordinance 93881, dated May 3, 2001).

Subject Property Zoning/Land Use

| Existing Zoning | Existing Use |
|--|---------------------------|
| "R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District | Single family residential |

Surrounding Zoning/Land Use

| Orientation | Existing Zoning District(s) | Existing Use |
|-------------|--|---------------------------|
| North | "R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District | Single family residential |
| South | "R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District | Single family residential |

| | | |
|------|--|---------------------------|
| East | “R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District | Single family residential |
| West | “R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District | Single family residential |

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the West Sector Plan and is designated “General Urban Tier” in the future land use component of the plan. The subject property is in the boundaries of the University Park Neighborhood Association and as such, they were notified of the case.

Street Classification

Cincinnati Avenue is classified as a Minor Arterial.

Criteria for Review - Variance for Setbacks

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 requested for the side setback encroachment of the carport is contrary to the public interest as the applicant has extra space to bring the carport inward. The variance requested for the rear setback is not contrary to the public interest, being as there is an alleyway behind the property and half of the alleyway can contribute toward the rear setback, which provides adequate space.

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

Staff finds that any special conditions that, if enforced, would result in an unnecessary hardship. The accessory structure was existing prior to the addition of the carport. However, if permits had been pulled, the carport could have been constructed while abiding by the setback regulations. The carport is more than 15’ in width, so there is room to adjust the width.

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 defined as the intent of the code, rather than the exact letter of the law. The intent of the side and rear setbacks is to provide spacing between neighboring structures. The applicant will still maintain some space between structures.

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 allowed within the district will be allowed with this variance.

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 request to reduce the side and rear setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the district. However, the carport has more than adequate space to fit a vehicle and is able to be adjusted to be farther from the property line.

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 finds that the location of the carport for the lot shall warrant the granting of a lesser request. The current request is for a 4' 5" variance, but staff recommends a 2' variance to allow the carport to be 3' from the side property line.

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. The additional fence height 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 fence heights to protect residential property owners while still promoting a sense of community. A 5' tall solid-screened fence within the front yard and an 8' fence along the side yard will provide additional security for the applicant's property. This is not contrary to the public interest.

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

The fence will create enhanced security and privacy for the subject property and is highly unlikely to injure adjacent properties. The material and style of the fence is similar to other fences and is not noticeable from the right-of-way.

- 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 fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material.

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

The current zoning permits the current use of a single-family home. 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 Lot & Setback Dimensions, Fences, and Setback & Frontage Regulations of the UDC Sections 35-310.01, 35-514, and 35-516, respectively.

Staff Recommendation - Variance

Staff recommends **Denial with an Alternate Recommendation** of the requested "a 4' 5" variance to the 5' minimum side setback requirement to allow a carport to be 7" from the side property line" zoning variance **with the Alternate Recommendation of a 2' variance to allow a carport to be 3' away from the side property line** in **BOA-20-10300095** based on the following findings of fact:

1. The carport has a width of 15' 8"; and
2. There is 1' of space between the post and the driveway; and
3. The adjusted width of the carport will be 13' 3".

Staff Recommendation - Special Exception

Staff recommends **APPROVAL of BOA-10300095** of the requested "2) a 19' variance to allow an attached accessory structure to be 1' from the rear property line, 3) a special exception to allow a solid-screened front yard fence to be 5' tall, and 4) a special exception to allow the side yard fence to be 8' tall", based on the following findings of fact:

1. The front yard solid-screen fence does not interfere with Clear Vision regulation; and
2. The additional height to the front yard and side yard fencing will offer additional security; and
3. There is an alleyway behind the subject property which contributes 8' to the rear setback and provides adequate space between structures.