



# City of San Antonio

## Agenda Memorandum

**File Number:**15-2933

**Agenda Item Number:** 5.

**Agenda Date:** 5/4/2015

**In Control:** Board of Adjustment

**Case Number:** A-15-067  
**Applicant:** Gilbert & Terri Landa  
**Owner:** Gilbert & Terri Landa  
**Council District:** 6  
**Location:** 230 Bemis Drive  
**Legal Description:** Lot 3, Block 5, NCB 11786  
**Zoning:** "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District  
**Case Manager:** Logan Sparrow, Planner

### **Request**

A request for a five foot variance from the five foot side setback requirement, as detailed in Table 35-310-1, to allow a carport to remain on the side property line.

### **Executive Summary**

The subject property is located at 230 Bemis Drive approximately 127 feet east of S. Acme Road. The applicant constructed a metal carport on the side property line without a permit. They were cited by code enforcement officers. The existing carport leaves no room for maintenance of the structure without trespassing onto adjacent properties. The requested variance seeks an elimination of the required five foot side yard setback.

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

Existing Zoning	Existing Use
"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

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

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
South	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

East	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

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

The property is not within the boundaries of the any neighborhood plan. The subject property is located within the boundaries of the Community Workers Council registered neighborhood association. As such, the neighborhood association was 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, these criteria are represented by setback requirements to ensure that there is equal access to air and light and that enough separation has been provided to prevent the spread of fire. The request to eliminate the side yard setback is inconsistent with measures to protect the public interest. Additionally, in order to maintain the structure, the applicant would be required to trespass onto neighboring properties. This, too, is contrary to the public interest. Staff finds that removing two feet of the existing carport would leave enough space to park a car and leave enough separation for maintenance of the structure.

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

Staff was unable to establish a special condition on the property that would warrant an elimination of the side yard setback. Staff finds that a reduced setback, which would allow for two feet between the edge of the carport and the property line would be more appropriate.

*3. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Granting the requested variance would not result in substantial justice. The variance would trigger the need for trespass to maintain the structure, and would reduce fair access to air and light.

*4. The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-6 AHOD" Residential Single-Family Airport Hazard Overlay 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.*

Is it likely that granting the requested variance will harm adjacent properties as the request eliminates the setback designed to protect property owners. To maintain the structure, the applicant, or future owner, would have to be in the neighbor's yard to maintain the carport.

*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 present on the subject property. The variance is requested as the carport was built without a building permit. As such, the plight of the owner was caused by the owner of the property.

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

The applicant needs to remove two feet of the carport to allow adequate room for maintenance of the structure.

### **Staff Recommendation**

Staff recommends **DENIAL of A-15-067** based on the following findings of fact:

1. The existing carport requires trespass to maintain;
2. The existing carport compromises fair and equal access to air and light.