



# City of San Antonio

## Agenda Memorandum

**File Number:**15-3424

**Agenda Item Number:** 1.

**Agenda Date:** 6/1/2015

**In Control:** Board of Adjustment

**Case Number:** A-15-068  
**Applicant:** Roberto Gallardo  
**Owner:** Roberto Gallardo  
**Council District:** 5  
**Location:** 4939 Fortuna Street  
**Legal Description:** Lot 20, Block 4, NCB 7444  
**Zoning:** "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District  
**Prepared By:** Logan Sparrow, Planner

### Request

A request for 1) a four and a half foot variance from the five foot side setback requirement, as described in Section 35-310.01, to allow a carport with an eave overhang that is two and a half feet from the side property line and 2) a seven foot variance from the ten foot front setback requirement, also described in Section 35-310.01, to allow the carport three feet from front property line.

### Executive Summary

The subject property is located at 4939 Fortuna Drive approximately 100 feet east of Fortuna Place. The applicant constructed a wood carport, without a permit, and the eave overhang is located within six inches of the side property line. As the carport is attached to the dwelling, it also has to comply with the ten foot front building setback line triggered by the "R-5" Residential Single-Family base zoning district. Two variances are requested to keep the carport as constructed.

### Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
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North	“R-4 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-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

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

The property is not within the boundaries of any neighborhood plan. The subject property is not located within the boundaries of any registered neighborhood association.

### **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 reduce the threat of fire and to provide equal access to air and light. Staff finds that having a wooden structure only six inches from the side property line does create conditions by which fire could more rapidly spread to adjacent structures. The adjacent home is five feet from the side property line, making this carport within five feet and six inches of that adjacent home. Because of this reduced distance, and because the carport is mostly of wooden construction, staff finds that the request to reduce the side setback is contrary to the public interest because of the increased fire risk.

**Staff does not find that a reduced front setback is contrary to the public interest as the several homes in this community have carports very near the front property line.**

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

Staff is unable to determine any special conditions present on the subject property to grant variances to the side setback requirement. Had the applicant applied for a building permit, the setback issued could have been addressed prior to the construction of the carport.

**Within this community, many homes have carports that violate the front setback requirement. A literal enforcement of the ordinance (i.e. meeting the front setback requirement) would result in a carport that is too short to park a car under. Staff finds that granting the front setback variance would not grant a privilege not enjoyed by others. The applicant has also built the structure in a platted, ten foot building setback line. The applicant is aware that, should the Board grant the requested front yard setback variance, that they will be required to initiate a minor plat amendment to remove the platted building setback line.**

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

Granting the requested side setback variance would not result in substantial justice. As a result of its wood construction, the structure poses an increased risk of fire to adjacent properties. Staff finds that the first variance request will not result in substantial justice.

**Staff does find that, because they are very common within the community, granting the request for a reduced front setback will result in substantial justice.**

*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-4 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 could harm adjacent properties as the request eliminates nearly the whole side setback that is established to protect adjacent properties. As the carport is of a wooden material, the carport introduces a heightened fire threat.

**Because reduced front setbacks for carports are so common within this community, staff finds that granting the reduced front setback will not alter the essential character of the district.**

*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 to warrant the elimination of the majority of the side yard setback. 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.

**As many properties throughout the community have similar front carport setbacks, staff finds that granting the requested seven foot front setback variance is not contrary to the public interest.**

#### **Alternative to Applicant’s Request**

The applicant needs to remove two and a half feet of the carport to allow prevent fire risks to adjacent properties.

#### **Staff Recommendation**

Staff recommends **DENIAL of the first variance in A-15-068** based on the following findings of fact:

1. The existing carport compromises fair and equal access to air and light and poses an increased fire risk.

Staff recommends **APPROVAL of the second variance in A-15-068** based on the following findings of fact:

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### **Attachments**

Attachment 1 - Notification Plan (Aerial Map)  
Attachment 2 - Plot Plan (Aerial Map)  
Attachment 3 - Site Plan  
Attachment 4 - Site Photos