



City of San Antonio

Agenda Memorandum

File Number:15-4894

Agenda Item Number: 8.

Agenda Date: 9/21/2015

In Control: Board of Adjustment

Case Number: A-15-140
Applicant: Guadalupe & Juana Mendoza
Owner: Guadalupe & Juana Mendoza
Council District: 4
Location: 1118 King Avenue
Legal Description: Lot 5, Block 42, NCB 8929
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Logan Sparrow, Senior Planner

Request

A request for 1) a four foot variance from the four foot maximum predominately open fence height limit, as described in Section 35-514, to allow a wrought iron fence up to eight feet tall in the front yard of the property and 2) a four foot variance from the five foot side setback requirement, as described in Section 35-310.01, to allow an attached carport to remain one foot from the side property line and 3) a one foot variance from the three foot setback, as described in Section 35-370, to allow an accessory structure to be located two feet from the side property line.

Executive Summary

The subject property is located at 1118 King Avenue, approximately 300 feet east of Quintana Road. The applicant was cited by Code Enforcement for construction of an eight foot tall wrought iron fence in the front yard of the property. Code Enforcement also issued a stop work order on an accessory structure in the rear yard of the property for building without required permits and for being in violation of the side setback. During field visits, staff noted that a large, attached carport was constructed one foot from the property line without permits, too. As such, the applicant is seeking a total of three variances to allow for the fence and structures completed without building permits to remain.

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 within the boundaries of the Kelly/South San PUEBLO Neighborhood Plan and currently designated Low-Density Residential in the future land use component of the plan. The subject property is located within the boundaries of the Quintana Community 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, the public interest is represented by fence height limitations to protect property owners and to contribute to a sense of community. The public interest is further represented by minimum setbacks to provide for privacy and to established safe distances between structures in the event of a fire.

During visits to the site, staff noted that the eight foot fence was the only fence of its kind within the community. The scale of the fence is noticeably out of character. As such, staff finds that the fence is contrary to the public interest, especially considering that it is twice the height of what the Unified Development Code permits.

The attached carport was also built without a permit and currently extends to one foot from the side property line. The carport is designed with a roof pitch that does not drain water onto the adjacent property. Staff finds that, based upon the unique development of the property to the east, which has a home set back from the street 91 feet, the existing attached, carport does not introduce a threat of fire, either. The distance from the carport to the neighbors home is 15 feet, more than what code generally requires. As such, staff finds that granting a four foot variance from the five foot required side yard setback to allow the carport to remain one foot from the property line is not contrary to the public interest.

Lastly, staff finds that the accessory structure in the rear yard is also not contrary to the public interest. Accessory structures need only a three foot side and rear setback. The existing, unfinished structure is located two feet from the side property line. The neighboring home, set back 91 feet from the street, is located eight feet from the property line. Thus, the neighbors eight foot setback coupled with the accessory structures two foot setback, provides the same separation distance generally required by code, being five feet from each side, and thus provides adequate separation for fire safety. It should be noted

that, because the structure is less than the required three foot setback, the applicant will need to establish a fire-rated wall to pass inspection. Staff finds that a one foot reduction in the side yard setback for the accessory structure is not contrary to the public interest.

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

Staff is unable to determine any special condition to warrant an eight foot tall front yard fence. Staff does find that, although the carport and accessory structures are in violation of the side setback requirements, that the distance from those structures to the neighboring development still provide for safe fire separation distances. As such, the special condition present in this case is the distance from adjacent development.

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 represented by limiting those inconsistent designs within this community. The existing fence is twice the permitted height and is noticeably out of character within this community. Staff finds that a five foot tall, wrought iron fence could effectively deter theft on the property while maintaining a more consistent design within the community.

Granting the requested setback variances will result in substantial justice as the carport, although they are in violation, still provide safe separation distances in the event of a fire. Both structures will be required to install a fire-rated wall to pass inspection because they are within the required minimum setbacks.

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.

The existing fence in contrary to the scale and design of other fences within the community. At twice the permitted height, the fence is noticeably out of character within the district in which it is located.

Staff finds that, as the carport and accessory structure both maintain more than the distance required by code for separation, that they do not substantially injure appropriate use of adjacent, conforming properties.

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 circumstances that warrant the granting of an eight foot tall fence in the front yard of the property.

Staff finds that because the carport and accessory structure maintain a 15 and a ten foot distance from the neighboring home, respectively, that they should be granted the variance as safe separation is present in both cases.

Alternative to Applicant’s Request

The applicant could reduce the height of the fence to five feet, a height which still protects the property and maintains a more consistent design within this community.

Staff Recommendation

Staff recommends **APPROVAL** of variance requests two and three in A-15-140 based on the following findings of fact:

1. Both the carport and accessory structure maintain safe distances for fire safety and; 2. Both structures will be fire rated to pass inspection.

Staff recommends **DENIAL** of variance request one in A-15-140 based on the following findings of fact:

1. The eight foot tall fence is noticeably out of character within the community and; 2. A five foot tall fence could protect the property and remain consistent with the community.