

Case Number:	BOA-23-10300291
Applicant:	Andrea Faz Perez
Owner:	Andrea Faz Perez
Council District:	2
Location:	6315 Malaya
Legal Description:	Lot 3, Block 7, NCB 13853
Zoning:	“R-5 MLDO-3 MLR-2 AHOD” Residential Single-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

Request

A request for 1) a 1’-6” variance from the 5’ minimum side setback requirement, as described in Section 35-370(b)(1), to allow an accessory structure to be 3’-6” from the side property line, and 2) a request to allow an accessory structure, as described in Section 35-370(b)(6), in the front yard.

Executive Summary

The subject property is located in a single-family community, off of Rittiman Road, just west of the intersection with West Loop 410. The property has a carport built after April 2019, before February 2022 according to dated photography. No permits were found for the carport, however the current permit is for the carport and the additional of the balcony. The original carport abides by the standards of the Unified Development Code (UDC) setbacks however the addition of the stairs and the balcony went into the setbacks and changed the characteristic from a carport into an accessory structure deck.

Code Enforcement History

INV-PBP-23-3100001010 – Building without a Permit.

Permit History

RES-RBP-APP23-35501850 – For Carport with Balcony. Currently on “Additional Information Required” until the results of the Board of Adjustment.

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 18115, dated September 24, 1952. The property was rezoned by Ordinance 24621, dated March 7, 1957, to the “A” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “A” Single-Family Residence District converted to the current “R-5” Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-5 MLDO-3 MLR-2 AHOD” Residential Single-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-5 MLDO-3 MLR-2 AHOD” Residential Single-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	“R-5 MLDO-3 MLR-2 AHOD” Residential Single-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	“R-5 MLDO-3 MLR-2 AHOD” Residential Single-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	“PUD MF-33 MLDO-3 MLR-2 AHOD” Planned Unit Development Multi-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Multi-Family

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the San Antonio International Airport Vicinity Land Use Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is located within the East Terrel Neighborhood Association and Cambridge Village Neighborhood Association boundaries, and they have been notified of this request.

Street Classification

Malaya is classified as a local street.

Criteria for Review – Side Setback and Allowance of a Front Yard Accessory Structure Variance

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. The public interest is represented by minimum side setback requirements and location of an accessory structure behind the front façade of the home. Staff finds the reduced setback and location of an accessory structure in the front yard will deter from the general health of the public as it will create a standard of accessory structures in the front yard besides carports and/or garages.

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

Staff has found no special condition that would result in an unnecessary hardship. The proposed accessory structure can be relocated in the rear yard of the property.

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 setback and location of the accessory structure is to ensure accessory uses are not presented forward of the principal dwelling use and leave sufficient room between property line. The proposed variance will not observe the spirit of the ordinance as it creates irregular location of an accessory structure in front and too close to the side property line.

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.*

If granted, the addition will maintain a 3'-6" side setback and allow an accessory structure in the front yard. While staff would otherwise recommend approval for a 3'-6" side setback, the request is related to a use not permitted in the current location and the request would 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 finds the plight of the owner of the property for which the variance is sought is not due to unique circumstances existing on the property. The property provides proper room in the rear yard for an accessory structure to include the minimum side setback.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Accessory Structure Setback Regulations of the UDC Section 35-370(b)(1) and Accessory Structure Location Regulations of UDC Section 35-370(b)(6).

Staff Recommendation – Side Setback and Allowance of a Front Yard Accessory Structure Variance

Staff recommends Denial in BOA-23-10300291 based on the following findings of fact:

1. The request will not observe the spirit of the ordinance as accessory structures are designed to be located behind the front façade of the principal structure; and,
2. The proposed variance will allow an accessory use forward in front of the principal dwelling use which will alter the essential character of the district.