



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** May 20, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon

**CASE NUMBER:** BOA-24-10300061

**APPLICANT:** Philip Kraemer

**OWNER:** Philip Kraemer

**COUNCIL DISTRICT IMPACTED:** District 1

**LOCATION:** 723 West Elsmere Place

**LEGAL DESCRIPTION:** Lot 41 and 42, Block 15, NCB 6414

**ZONING:** “R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

1) A fencing material variance to allow corrugated metal on the side and rear yard.

Section 35-514(a)(6)

2) A 4’-11” variance from the minimum 5’ setback to allow a structure with a 1” side setback.

Section 35-310.01

3) A 2’ special exception from the maximum 6’ height to allow an 8’ privacy fence on the side and rear yards.

Section 35-514

4) A variance from the Beacon Hill Area Neighborhood Conservation District carport vertical support or structure elements to match principal structure materials.

Section 35-335(c)(E)

5) A 4’-11” variance from the minimum Beacon Hill Area Neighborhood Conservation District 5’ carport recess standard to allow a 1” carport recess from the front façade.

Section 35-335(c)(E)

### **Executive Summary**

The subject property is located east of Interstate 10, west of Highway 281, within approximately 50' of the North Fulton Court and West Elsmere Place intersection. On October 7, 2023, the previous property owner was cited by Code Enforcement for building a fence and carport without a permit. The applicant, being the current property owner, was cited by Code Enforcement on March 7, 2024, for noncompliance of carport side setback, use of corrugated metal and fence height. On March 26, 2024, the applicant applied for a side setback, corrugated metal, and fence height exception variance to allow the fence and carport to remain on the property. According to BCAD files, the applicant acquired the property on October 5, 2023, with Google images reflecting the carport and fence were constructed between February 2019 and March 2022. The applicant stated that they were unaware of the property being noncompliant as construction on the property occurred with previous owner. Furthermore, additional restrictions apply as the property is in the Beacon Hill Area Neighborhood Conservation District. According to the NCD-5 Design Standards (2017) the carport gate is within compliance as it aligns with the front façade of the property however, carport standards will need to comply with NCD-5 (2017) as the materials do not match principal structure, and attached materials are not recessed 5 feet behind the façade.

### **Code Enforcement History**

INV-PBP-23-3100003395-Investigation for Building without a permit.  
INV-ZRD-24-3170000674-Zoning-Residential District/Corrugated Metal  
INV-ZPS-24-3160000673- Zoning-Setback/Carport  
INV-PBP-24-3100001188- Investigation for Building without a permit

### **Permit History**

The applicant has not yet applied for the building permit.

### **Zoning History**

The subject property was part of the original 36 square miles of the City of San Antonio. The property was rezoned by Ordinance 86704, dated September 25, 1997, to the “R-1” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-1” Single-Family Residence District converted to the current “R-6” Residential Single-Family District.

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

#### **Existing Zoning**

“R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District

#### **Existing Use**

Single-Family Residence

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

#### **North**

#### **Existing Zoning**

“R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**South**

**Existing Zoning**

“R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**East**

**Existing Zoning**

“R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**West**

**Existing Zoning**

“RM-4 NCD-5 AHOD” Residential Mixed Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District

**Existing Use**

Garage

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is currently located in the Midtown Neighborhoods Neighborhood Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is located within the Beacon Hill Area Neighborhood Association, and they were notified of the case.

**Street Classification**

West Elsmere Place is classified as a local road.

**Criteria for Review – Fence Height Special Exception**

According to Section 35-482(h) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

*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 fence height being requested is 8’ for privacy fence located along the side and rear of the property. If granted, staff finds the request would not be in harmony with the spirit and purpose of the ordinance, as the request well exceeds the maximum height requirements for a side and rear yard fence on a residential property.

*B. The public welfare and convenience will be substantially served.*

In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The proposed fence does not appear to serve the public welfare and convenience, as there were no fences exceptions approved like the proposed design in the immediate surrounding area.

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

The special exception will substantially injure the neighboring properties as it will create a disproportionate fence height and composition for neighboring properties.

*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 additional fence height in the side and rear property lines appear to alter the location for which the special exception is sought, as no similar styled fences were observed to be in the immediate surrounding area.

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

The requested special exception will weaken the general purpose of the district as it goes against the established Unified Development Code fence standards.

### **Criteria for Review – Fence Materials, Carport Side Setback, NCD-5 Carport Standards**

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 the required materials for constructing a fence. The applicant is requesting an exception to the approved fence materials as defined in the Unified Development Code Section 35-514 and the Beacon Hill Area Neighborhood Conservation District Guidance and Standards, 2017 to allow a carport without matching elements to the principal structure, to include a corrugated metal structure. The request is contrary to the public interest, as corrugated metal is a prohibited material for fence construction, and the carport does not match the materials of the original structure and would be uncharacteristic of the surrounding area if allowed. The Beacon Hill Area Neighborhood Conservation District Guidance also established a carport recess from the front façade, which a deviation from that would be contrary to the public interest as the standards were specifically established to maintain the general welfare of the public.

Additionally, the applicant is requesting a setback variance to allow an attached carport to be 1” from the side setback. Staff finds this distance unsuitable, as it does not provide sufficient room for proper maintenance, or an adequate distance from neighboring property causing increased risk for fire spread and water runoff onto the neighboring property.

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

Staff found no special conditions on the subject property that would permit an exception to the approved fence materials or side setback requirements as defined in the Unified Development Code. Staff found no special conditions on the subject property that warrant the need for any deviation from the Neighborhood Conservation District standards for a carport.

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 side and rear fence along with the carport does not appear to observe the spirit of the ordinance, as it is constructed from prohibited fencing and does not match the materials of the original structure nor abides by the carport recess standard.

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.*

Staff finds the granting of the variances will substantially injure the appropriate use of adjacent conforming properties and alter the essential character of the district in which the property is located, as the fence is constructed of prohibited fencing materials as defined in the Unified Development Code Section 35-514(a)(6).

The carport will alter the essential character of the district by being too close to side setback as well as the use of materials that do not match principal structure building material as directed by the Beacon Hill Area Neighborhood Conservation District Guidance and Standards, 2017.

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, as there are approved fence materials for

constructing a fence Section 35-514(a)(6) and the carport can be reconstructed to meet setback requirements Unified Development Code and the Beacon Hill Area Neighborhood Conservation District.

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

The alternative to the applicant's request is to conform to the fence material and height requirements in Section 35-514, the setback requirements in Section 35-310.01, and the NCB standards in Section 35-335(c)(E) of the UDC.

### **Staff Recommendation – Fence Height Special Exception**

Staff recommends Denial in BOA-24-10300061 based on the following findings of fact:

1. The request will alter the essential character of the district as no other properties in the immediate area have fences exceeding the regulations of the Unified Development Code in height and privacy.
2. The request will injure the appropriate use of the surrounding properties.

### **Staff Recommendation – Side Setback, NCD-5 Standards and Corrugated Metal Variance**

Staff recommends Denial in BOA-24-10300061 based on the following findings of fact:

1. The side and rear corrugated metal fence, along with the unauthorized carport material, appears to alter the essential character of the district as the fence is constructed with prohibited fence material and does not match with the original structure.
2. The distant of the carport from the side setback is not suitable, as it does not provide sufficient room for proper maintenance, or an adequate distance from neighboring property causing increased risk for fire spread and water runoff onto the neighboring property.