

Case Number:	BOA-23-10300292
Applicant:	Paul Palacio
Owner:	Paul Palacio
Council District:	5
Location:	806 West Theo Avenue
Legal Description:	Lot 91, Block 22, NCB 3465
Zoning:	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

**Request**

A request for 1) a 4'-11" variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow a carport to be 1" from the side property line and 2) a 4'-11" variance from the minimum 5' rear setback requirement, as described in Section 35-310.01, to allow a carport to be 1" from the rear property line.

**Executive Summary**

The subject property is located at 806 West Theo Avenue, west of Carnot Street and runs abuts West Malone Street to the rear. Cited by Code Enforcement for a Permit Investigation, the applicant is requesting a variance to the side and rear setbacks to allow a partially built carport to be 1” from both property lines. The Board of Adjustment approved a variance on April 2, 2018, for a reduced rear setback to allow an addition/ attached garage with a 7’ rear setback.

**Code Enforcement History**

Permit Investigation (INV-PBP-23-3100003554)- October 2023

**Permit History**

The issuance of a carport permit is pending the outcome of the Board of Adjustment.  
Foundation Repair Permit (REP-FND-PMT21-35101648)- June 2021

**Zoning History**

The property was part of the original thirty-six (36) square miles of San Antonio and was originally zoned “C” Apartment District. The property was then rezoned by Ordinance 76368, dated August 27, 1992, from “C” Apartment District to “R-5” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-5” 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 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland 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
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North	“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	“R-5 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	“R-5 CD MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District with a Conditional Use for a Duplex	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Nogalitos/ South Zarzamora Neighborhood Community Perimeter Plan and is designated as “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Palm Heights Neighborhood Association, and they have been notified of the request.

**Street Classification**

West Theo Avenue is classified as a minor road.

**Criteria for Review – Side & Rear Setback Variances**

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 setback requirements to prevent storm water runoff and routine maintenance without trespass. The applicant is requesting a variance to the side and rear setback to allow a carport to be 1” from both property lines. These distances do not provide adequate spacing between properties, and water run off may impose on the ROW, which are both contrary to the public interest.

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

Staff was unable to establish any special conditions on the subject property to warrant the need for a reduced side and rear setbacks. A literal enforcement of the ordinance would not result in an unnecessary hardship, as the applicant could alter the carport to abide by the minimum distances required.

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 granting of these variances will not observe the spirit of the ordinance, as the carport too close the abutting property and water runoff may impose onto the ROW towards the rear of the property.

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 carport will be 1” from the side and rear property lines. This will injure the appropriate use of adjacent conforming properties. While staff does recognize other carports were seen in the immediate area, primarily because they are non-conforming, and that the applicant owns the directly affected properties, the requests cannot be supported.

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 carport is still in preliminary stages and appears to allow for alterations.

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

The alternative to the applicant’s request is to conform to the Setback requirements of the UDC Section 35-310.01.

### **Staff Recommendation – Side and Rear Setback Variance**

Staff recommends Denial in BOA-23-10300292 based on the following findings of fact:

1. These distances do not provide adequate spacing between properties, and water run off may impose on the Right of Way.