

Case Number:	BOA-22-10300155
Applicant:	Dolores Castaneda
Owner:	Dolores Castaneda
Council District:	3
Location:	831 Avant Avenue
Legal Description:	Lot 19, Block 4, NCB 6637
Zoning:	“R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay 3 Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Joseph E Leos, Planner

### **Request**

A request for a 4’ variance from the 5' minimum side setback, as described in Section 35-310, to allow a carport with gutters to be 1’ from the side property line.

### **Executive Summary**

The subject property is located along Avant Avenue near Highland Boulevard and contains a single- family dwelling. The applicant constructed an attached carport on the side of the existing residence without obtaining a permit and code investigation was initiated. During a site visit conducted by staff, it was observed that the carport only maintained 1’ from the side property line. A carport is required to maintain 5’ to the side property line.

### **Code Enforcement History**

March 2022- Overgrown Yard- Trash

June 2022- PMT Building Without A Permit

### **Permit History**

November 2021- Electrical General Permit

June 2022- Residential Fence Permit

The issuance of a building permit for the fence is pending the outcome from the Board of Adjustments.

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “B” Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B” Residence District converted to the current “R-4” Residential Single-Family District.

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

Existing Zoning	Existing Use
“R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay 3 Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

## Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 HS MLOD-3 MLR-2 AHOD” Residential Single-Family XXXXX	Single-Family Residence
South	“R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay 3 Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
East	“R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay 3 Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay 3 Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

## Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Highlands Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Highland Park neighborhood association, and they have been notified of the request.

## Street Classification

Avant Avenue is classified as a local road.

## Criteria for Review – Rear Setback 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 applicant is requesting a 4’ variance from the 5’ minimum side setback to allow a carport with gutters to be 1’ from the side property line. This distance does not provide adequate spacing between the carport and the neighboring property which is contrary to the public interest.

**Staff finds an alternate recommendation for the carport to be 3’ from the side property line to better serve the public interest as it will allow for more adequate space.**

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

A literal enforcement of the ordinance would result in the carport being reduced to maintain and 5’ side setback. This would decrease the square footage, depth, and width of the carport and would not allow for adequate spacing for a vehicle.

**The subject property has a 15' side setback on the eastern portion of the property. A 2' variance would allow a 9' width carport on the side of the home.**

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 proposed setbacks do not appear to observe the spirit of the ordinance as the structure is too close to the adjacent property.

**The spirit of the ordinance will be observed with a 3' side setback since it will allow adequate space and separation from the adjacent structure.**

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 structure will maintain 1' from the side property line. This will cause the carport to be too close to the property line and adjacent structure which is likely to alter the essential character of the district.

**The alternate recommendation for a 3' side setback for the carport does not appear to alter the essential character of the district nor will it injure adjacent 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 finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. The carport cannot be developed with the existing side setback requirements due to the size of the lot.

**The alternate recommendation will ease the hardship created due to unique circumstances on the property such as the size of the lot and limited spacing on the side.**

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

The alternative to the applicant's request is to conform to the Setbacks of the UDC Section 35-310.01

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

Staff recommends Denial **with an Alternate Recommendation of a 2' variance to allow a carport with gutters to be 3' from the side property line in BOA-22-10300155** based on the following findings of fact:

1. The structure is currently 1' from the side property line; and

2. The carport with gutters shall be relocated to be 3' from the side property to observe the spirit of the ordinance and allow ample space to access vehicles; and
3. The carport is not out of character for the neighborhood.