

Case Number:	BOA-22-10300194
Applicant:	Rachel Flores Jacinto
Owner:	Rachel Flores Jacinto
Council District:	3
Location:	126 Adelpia
Legal Description:	Lot 7, Block 14, NCB 11918
Zoning:	"R-6 MC-1 MPOD AHOD" Residential Single-Family Roosevelt Avenue Metropolitan Corridor Overlay Mission San Jose Mission Protection Overlay Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

Request

A request for 1) a 1'-3" variance from the maximum 3' solid screened fence requirement, as described in Section 35-514, to allow a solid screened fence to be 4'-3" tall along the front yard, 2) a 3'-11" variance from the minimum 15' clear vision requirement, as described in Section 35-514(a)(2), to allow a solid screened fence to be 11'-1" from the front curb, 3) a 16' variance from the minimum 25' clear vision requirement, as described in Section 35-514(a)(2), to allow a fence to be 9' from the side curb, and 4) a 1'-4" variance from the minimum 5' side setback requirement, Section 35-310.01, to allow a carport to be 3'-8" from the side property line.

Executive Summary

The subject property is located south central of San Antonio near Mission San Jose and contains a single-family residence. The applicant constructed a 4' 3" wood privacy fence along the left side property line past the front façade of the existing residence. The erection of the fence was completed without obtaining a permit and a code investigation was opened in August 2022. The maximum fence height permitted for a solid screened fence along the side property line is 3'. During the site visit, staff also observed a new carport that was constructed circa 2017 that does not meet the minimum side setback of 5'. The carport only maintains 3' 8" from the side property line. Additionally, staff observed that both the new fence along the side and an existing fence located along the rear side property line are encroaching into the Clear Vision area.

Code Enforcement History

A Permit Investigation for Building Without a Permit was opened on August 4, 2022.

Permit History

There are no permits on file for the subject property. The issuance of the carport and fence permit is pending the outcome of the Board of Adjustment Meeting.

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 1391, dated September 23, 1944, and zoned "D" Apartment District. The property was rezoned by Ordinance 60953, dated April 25, 1985 to "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	Existing Use
"R-6 MC-1 MPOD AHOD" Residential Single-Family Roosevelt Avenue Metropolitan Corridor Overlay Mission San Jose Mission Protection Overlay Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 MC-1 MPOD AHOD" Residential Single-Family Roosevelt Avenue Metropolitan Corridor Overlay Mission San Jose Mission Protection Overlay Airport Hazard Overlay District	Single-Family Residence
South	"R-6 MC-1 MPOD AHOD" Residential Single-Family Roosevelt Avenue Metropolitan Corridor Overlay Mission San Jose Mission Protection Overlay Airport Hazard Overlay District	Single-Family Residence
East	"C-1 H MC-1 MPOD AHOD" Light Commercial Roosevelt Avenue Metropolitan Corridor Overlay Historic Mission Mission San Jose Mission Protection Overlay Airport Hazard Overlay District	Auto Repair Shop
West	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the South Central San Antonio 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 Mission San Jose Neighborhood Association and they have been notified of the request.

Street Classification

Adelphia is classified as a Local Road.

Criteria for Review – Side Setback, Clear Vision, and Fence Height 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 1’-4” variance to the side setback to allow an attached carport to be 3’-8” from the side property line. This distance provides adequate spacing between the carport and the neighboring property which is not contrary to the public interest. Additionally, the applicant is requesting a variance to the clear vision requirement. The

rear fence is predominately open and will maintain 9' of clear vision which also does not appear to be contrary to the public interest.

The new fence is past the front façade of the existing residence and is 4' 3" tall. If granted, staff finds that the variance is contrary to the public interest.

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 a 5' side setback. This would decrease the square footage and width of the carport and would not allow for adequate spacing for a vehicle. In addition, the rear fence would need to comply with the 25' clear vision requirements which cannot be achieved due to the size of the lot.

Staff does not find an unnecessary hardship that requires a 4'-3" wood privacy fence. The fence can be made of predominantly open materials by right without obtaining a variance.

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 carport meets all other requirements including the minimum front setback requirement thus appears to observe the spirit of the ordinance. A 16' variance from the clear vision requirement of 25' observes the spirit of the ordinance as the rear fence is predominately open and has sufficient space between the fence and street.

Staff did not observe any elevation changes, slopes, or similar fences in the area thus the front yard fence variance does not appear to observe the spirit of the ordinance.

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.

The requested front yard fence variance could weaken the general purpose of the district by allowing a fence that is not permitted within this zoning 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.*

A side setback of 3'-8" is fitting with the character of the neighborhood as there are other carports observed in the area with similar side setbacks. Staff also finds the request for a 16' variance to the clear vision field will not injure adjacent properties or alter the essential character of the district. The fence line is consistent with others in the immediate area.

The additional height in fence in the front yard of the subject property does appear to alter the essential character of the district. Most surrounding properties contain a predominantly open fence that follow height regulations. The requested fence could alter the essential character of the district as no similar fences were observed in the area.

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, such as the size and location of the property. The request setback and clear vision variances will ease the hardship by allowing the development of a carport and a rear fence.

There did not appear to be any unique circumstances on the property that require the development of a 4'-3" solid screened fence along the front yard. The request could be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the setback requirements listed in Section 35-310.01, Clear Vision requirements listed under Section 35-514(a)(2), and the Fence Height requirements listed under Section 35-514 of the UDC.

Staff Recommendation – Side Setback and Clear Vision Variance

Staff recommends **Approval** in **BOA-22-10300194** based on the following findings of fact:

1. A side setback of 3'-8" would provide enough spacing between the subject property and the neighboring property; and
2. The subject property does not have a garage for parking; and
3. The carport is in line with the existing residence; and
4. Similar carports are observed in the immediate area therefore the request does not appear to alter the essential character of the neighborhood.

Staff Recommendation –Fence Height Variance

Staff recommends **Denial** in **BOA-22-10300194** based on the following findings of fact:

1. The fence can be reduced to 3'; and
2. A 3' fence will impede in the Clear Vision requirements; and
3. The fence is uncharacteristic in the neighborhood therefore the request appears to alter the essential character of the district.