

Case Number:	BOA-22-10300191
Applicant:	Ben De La Fuente
Owner:	Ralph De La Fuente
Council District:	6
Location:	5827 Magnes Lane
Legal Description:	Lot 13, Block 2, NCB 14270
Zoning:	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

**Request**

A request for a 1) 4’-4” variance from the minimum 5’ side setback requirement, as described in Section 35-310.01 to allow an attached carport with gutters to be 8” from the side property line, and 2) a 6’-8” variance from the minimum 10’ front setback requirement, as described in Section 35-310.01 to allow an attached carport with gutters to be 3’-4” from the front property line.

**Executive Summary**

The subject property is located along Magnes Lane near the intersection of South Callaghan Road and Enrique M. Barrera Parkway and currently has an existing single-family residence. Built without a permit, the applicant constructed an attached carport which encroaches into the side and front setback. Resulting, a Zoning UDC Investigation began on June 7<sup>th</sup>, 2022 for a property setback violation.

**Code Enforcement History**

A Zoning UDC Investigation began on June 28, 2022 for a property setback violation.

**Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustments.  
Re-Roof Permit- June 2022

**Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 3394, dated January 19, 1966, and zoned “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 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay 2 Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
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North	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Vacant Residential
South	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
East	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the West Sector Plan and is designated “Suburban Tier” in the future land use component of the plan. The subject property is located within the boundary of the Cable Westwood Association and have been notified.

**Street Classification**

Magnes Lane 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 variance to the side and front setback in order to allow a carport to be 8” from the side property line and 3’-4” from the front property line. The carport in its current location is too close to the front and side property lines, which 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 applicant having to alter the carport to be 10’ and 5’ away from the front and side property lines or removing the structure entirely.

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 is currently 8” and 3’4” from the side and front property lines, which does not 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.

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 request for an 8” and 3’4” variance from the side and front property lines are too close to the property line, which may injure adjacent conforming 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 not due to unique circumstances existing on the property. The circumstances do not appear to be the result of general conditions in the district in which the property is located.

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

The alternative to the applicant’s request is to conform to the Setbacks per 35-310.01 of the UDC.

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

Staff recommends Denial in BOA-22-10300191 based on the following findings of fact:

1. The carport was built without obtaining permits; and
2. The carport in its current location is too close to the front and side property lines.