

Case Number:	BOA-22-10300232
Applicant:	Felipe Lara
Owner:	Felipe Lara
Council District:	6
Location:	5704 Magnes Lane
Legal Description:	Lot 53, Block 1, NCB 14269
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 1) a 2'-9" variance from the minimum 5' side setback requirement, as described in Section 35-370(b)(1), to allow a detached carport to be 2'-3" from the side property line, and 2) a 4'-9" variance from the 15' minimum clear vision requirements, as described in Section 35-514(a)(2), to allow a predominately open fence to be 10'-3" from the front driveway.

### **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 a detached carport that encroaches into the side setback. Resulting, a Zoning UDC Investigation began on September 8<sup>th</sup> for a property setback violation. On site visits conducted by staff, it was observed that the subject property constructed a fence that violates the Clear Vision minimum requirements.

### **Code Enforcement History**

Zoning UDC Investigation- September 2022

The Issuance of a Building Permit is Pending the Outcome of the Board of Adjustment.

### **Permit History**

There are no relevant permits pulled for the subject property.

### **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 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	Single-Family Residence
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 – Side Setback and Clear Vision 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 front setback to allow a detached carport to be 2’-3” from the side property line. The carport its current location is too close to side property line, which is contrary to the public interest. The applicant is also requesting 4’-9” clear vision variance to allow a predominately open fence to be 10’-3” from the curb. This inflicts on the safety of vehicular traffic, which is also contrary to 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 5’ away from side property line, 3’ if there is no overhang. This would not result in an unnecessary hardship, as the carport is detached from the dwelling and could be altered. A literal enforcement of the Clear Vision Standards would not result in an unnecessary hardship as the applicant would just need to relocate the fence 15’ away from the curb.

*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 in its current location is too close to the side property line, which does not observe the spirit of the ordinance. Since it appears that the fence can be altered, it 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.

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 maintain 2'-3" distance from the side property line, which is likely to alter the essential character of the district and injure adjacent conforming properties. If the applicant had pulled permits for the construction of the fence, the Clear Vision standards would have been addressed. The requested variance alters the essential character of the district and injures 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 merely financial.

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

The alternative to the applicant's request is to conform to the Accessory Structure Side Setback per Section 35-370(b)(1) and the Clear Vision per Section 35-514(a)(2).

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

Staff recommends Denial in BOA-22-10300232 based on the following findings of fact:

1. The carport was built without obtaining the proper permits; and
2. The carport in its current location is too close the side property line.
3. The fence in its current location inflicts on the safety of vehicular traffic; and
4. The fence can be altered to meet the Clear Vision minimum requirements.