

Case Number:	BOA-23-10300064
Applicant:	Juan Montelongo
Owner:	Juan Montelongo
Council District:	2
Location:	1114 South Mesquite Street
Legal Description:	West 136.4 feet of Lot 4, Block 19, NCB 666
Zoning:	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for

1) a 4’-11” variance from the 5’ minimum side setback requirement, as described in Section 35-370(b)(1), to allow a carport with overhang to be 1” from the side property line, 2) a 2’-5” variance from the 5’ minimum side setback requirement, as described in Section 35-370(b)(1), to allow a structure with a 1’-8” overhang to be 2’-7” from the side property line, 3) a 2’ variance from the 5’ minimum rear setback requirement, as described in Section 35-370(b)(1), to allow an accessory structure with a 1’-5” overhang to be 3’ from the rear property line, 4) a variance from the permitted fence materials, as described in Section 35-514 (a)(6), to allow a corrugated metal fence along the side property line, 5) a 6’ variance from the maximum 6’ fence height requirement, as described in Section 35-514, to allow a 12’ solid screened fence in the rear yard, 6) a 2’-9” variance from the minimum 15’ clear vision requirement, as described in Section 35-514 (a)(2), to allow a predominately open fence to be 12’-3” from the front driveway curb, and 7) a variance from the maximum 50% impervious cover requirement, described in Section 35-515, to allow the front yard to exceed the 50% impervious cover.

Executive Summary

The subject property is located along S Mesquite Street near Delaware Street on the inner east side of San Antonio. The applicant was in the process of constructing a detached carport when cited by Code Enforcement for building without a permit. In its current location, the carport measured to be 1” from the side property line, with overhang included. Carports are required to maintain a minimum distance of 5’ and must obtain a variance if constructed closer. Upon site visits, staff observed other variances that needed to be addressed. Those of which include two accessory structures imposing into the side and rear setbacks, measuring 1’-8” from the side property line and 3’ from the rear property line. The minimum distance required is 5’ and 10’. Additionally, staff observed a 12’ solid screened fence constructed of prohibited fence material, corrugated metal, situated in the rear yard. Rear yard fences are allowed a maximum height of 6’ and must be constructed from the allowable fence materials, per the UDC. Furthermore, staff observed a front yard predominantly open fence impeding into the clear vision area. Staff measured an area of 12’-3” from the front driveway curb, and the minimum clear vision distance required is 15’. Additionally, the applicant will need to obtain a variance to exceed the 50% impervious cover in the front yard.

Code Enforcement History

Permit Investigation- January 2023

Permit History

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

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “D” Apartment District. The property rezoned under Ordinance 79329, dated May 21, 1993, from “D” Apartment District to “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-2” Two-Family Residence District converted to the current “RM-4” Residential Mixed District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
South	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
East	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
West	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Arena District/ Eastside Community 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 Denver Heights Neighborhood Association and they have been notified of the request.

Street Classification

S. Mesquite Street is classified as a local road.

Criteria for Review – Side, Rear, Corrugated Metal, Fence Height, Clear Vision, and Impervious Cover 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 restricted carport side setback to provide space between properties, fencing materials to allow for a safe environment, fence height for uniformity, and impervious cover requirements to allow water penetration into the soil. Staffs finds the requests to allow a carport to be 1” from the side property line, variance from the

fence materials and height, and deviation from the maximum 50% impervious coverage is contrary to the public interest.

Staff finds a 2'-5" variance to allow a structure to be 2'-7" from the side property line, a 7' variance to allow a structure to be 3' from the rear property, and a 2'-9" variance to allow a predominately open fence to be 12'-3" from the front curb is not contrary to the public interest, as staff found the distances are suitable for routine maintenance and safety of vehicular traffic for the clear vision.

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

There are no special conditions found on the subject property to warrant the applicant to deviate from the current Universal Development Code (UDC) standards. A literal enforcement of the ordinance would result in the applicant altering the already constructed carport, and 12' solid screened fence to meet current building standards. This would not result in an unnecessary hardship, as staff found allowable adjacent space for each of the structures to be altered.

A literal enforcement of the ordinance would result in an unnecessary hardship, as the structure leaves enough room for maintenance, and rear yard space is adjacently limited to abide by the current UDC standards. Additionally, altering the fence to meet the minimum 15' clear vision requirement will result in an unnecessary hardship, as front yard space would be reduced drastically.

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 position, additional fence height, corrugated fence material, and impervious cover do not observe the spirit of the ordinance. These ordinances are put into effect to allow for uniform and safe development.

The spirit of the ordinance will be observed with the requested 2'-7" side setback, 3' rear setback, and 12'-3" clear vision, as these distances provide adequate spacing between structures and clear vision allows for the safety of vehicular traffic.

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, staff finds these requests as no other properties in the immediate vicinity seemed to be violating the UDC building standards and would alter the essential character of the district.

The requested 2'-7" side setback, 3' rear setback, and 12'-3" clear vision will not injure the appropriate use of adjacent conforming properties, as other accessory structures and front yard fences were found in the immediate 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 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 Setback of the UDC Section 35-370-(b)(1), Fences of the UDC Section 35-514, and Lot and Layout Regulations of the UDC Section 35-515.

Staff Recommendation – Carport Side Setback, Corrugated Metal, Fence Height, and Impervious Cover Variances

Staff recommends Denial in BOA-23-10300064 based on the following findings of fact:

1. There are no special conditions found on the subject property to warrant the applicant to deviate from the current Universal Development Code (UDC) standards; and
2. The requested variances allow for inconsistent and unsafe development patterns.

Staff Recommendation – Accessory Structure Side and Rear Setback and Clear Vision Variances

Staff recommends **Approval** in **BOA-23-10300064** based on the following findings of fact:

1. Altering the fence to meet the minimum 15' clear vision requirement will result in an unnecessary hardship, as front yard space would be reduced drastically; and
2. The side and rear setback distances are suitable for routine maintenance without trespass onto neighboring properties.