

Case Number:	BOA-23-10300132
Applicant:	Linda Kelley
Owner:	Linda Kelley
Council District:	3
Location:	735 Hammond Avenue
Legal Description:	Lot 23, Block 25, NCB 3293
Zoning:	“R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Air Field Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a variance from the permitted fence materials, as described in Section 35-514 (a)(6), to allow a corrugated metal fence along the side and rear property line, 2) a 2’-4” variance from the maximum 6’ fence height requirement, as described in Section 35-514, to allow an 8’-4” solid screened fence in the side and rear yard, and 3) a 4’-11” variance from the minimum 5’ side setback requirement, as described in Section 35-310.01, to allow a detached carport to be 1” from the side property line.

Executive Summary

The subject property is located at 735 Hammond Avenue, near South Gevers Street. The applicant seeking to keep a solid screened fence that was built along the side and rear property lines, measuring at 8’-4”. Variances for fence heights above 8’ are no longer special exceptions. The fence along the eastern, northern, and a small portion of the western property lines are corrugated metal. The remaining portion of the fence on the western property line is comprised of wood beams. The fence in its current location encloses the rear yard of the subject property for privacy and security concerns for the applicant. Upon site visits, staff observed a detached carport in the side yard. Due to property inaccessibility, staff was unable to conduct measurements, but the carport appeared to be 1” from the side property line. Both the fence and carport were constructed without obtaining proper permits or variances. Resulting, code enforcement cited the subject property.

Code Enforcement History

Permit Investigation- December 2022

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 “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 “R-4” Residential Single-Family District.

Subject Property Zoning/Land Use

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

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

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Highlands Neighborhood Community Plan and is designated as “Urban 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

Hammond Avenue is classified as a local road.

Criteria for Review – Fence Height, Corrugated Metal, and Side 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 represented by restrictions in fence height to provide uniformity within an established neighborhood, prohibited fence materials to prevent injury, and setbacks, which are important for a well-designed built environment. The applicant is requesting a variance to allow a fence to exceed the maximum 6’ height requirement, the incorporation of corrugated metal in fence design, and a carport to be 1” from the side property line. The fence can be seen from the public right of way, which may impose of the safety of the public. Additionally, the height appears to detract from the architectural integrity of the principal dwelling. Moreover, the carport in its current location cannot be seen from the public right of way, however, due to the closeness it is to the property line does not allow for adequate natural light, ventilation, and

access without trespass for maintenance. While staff acknowledges corrugated metal fences exceeding the fence height requirement were seen in the immediate area, staff cannot support the request, as both factors are unsafe for the environment.

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

Staff has found no special conditions on the subject property to authorize the support of the requested variances. The literal enforcement of the ordinances would not result in an unnecessary hardship for the applicant, as 6' in fence height and the incorporation of a prohibited fence material is suitable for the subject property. The fence in its current form appears to be unsafe to the public. Staff recognizes the home was constructed prior to current building setback regulations. With that, it will be nearly impossible to construct a detached carport without imposing into the side setback however, it can be relocated to the rear yard.

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 requested variances appear to not adhere to the spirit of the ordinance, as the fence and carport provide for unsafe building conditions and inconsistency in an established neighborhood. Substantial justice will not be served.

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.*

Upon site visits and research conducted by staff, it does appear that the neighborhood has an established precedence of deviated fence heights, prohibited fence materials, and reduced setbacks. Many of the homes were constructed prior to 2001, where different building regulations were enforced. Staff cannot support these requests, as the structures in their current form and locations pose a risk to the adjacent property owners, which can alter the essential character of the district.

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.*

No unique circumstances were observed to warrant the need for the deviated structures. Had the applicant consulted with Development Services, the advisement of current building regulations could have been thoroughly communicated.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to Fences of the UDC Section 35-514 and 35-514 (a)(6) and the "R-4" Design Regulations of Section 35-310.

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

Staff recommends Denial in BOA-23-10300132 based on the following findings of fact:

1. The fence in its current form can be seen from the public right of way, which may impose on the safety of the public; and
2. The closeness of the carport to the side property line does not allow for adequate natural light, ventilation, and access for routine maintenance.