

Case Number:	BOA-23-10300193
Applicant:	Martin Parra
Owner:	Martin M & Oralia Parra
Council District:	5
Location:	3839 Motes Drive
Legal Description:	Lot 14, Block 1, NCB 12809
Zoning:	“R-5 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 4’-11” variance from the minimum 5’ side setback requirement, as described in Section 35-370(b)(1), to allow a detached carport to be 1” from the side property line, 2) a 3’-2” variance from the minimum 10’ front setback, as described in Section 35-516(g), to allow a detached carport with a 6’-10” front setback, and 3) a 5’-4” variance from the minimum 15’ clear vision requirement, as described in 35-514(a)(2), to allow a fence to be 9’-8” from the front yard driveway curb.

### **Executive Summary**

The subject property is located along Motes Drive near SW 34<sup>th</sup> Street. The applicant constructed a detached carport without obtaining the necessary permits. The completed carport currently measures 1” from the side property line and 6’-10” from the front property line. Upon site visits, staff observed a fence (combined) that imposed into the clear vision field. The fence measured to be 9’-8” from the driveway curb.

### **Code Enforcement History**

INV-PBP-23-3100001592 (Building Without a Permit)- June 2023

### **Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 1258, dated August 2, 1944, and originally zoned “C” Apartment District. The property rezoned under Ordinance 72510, dated October 18, 1990, from “C” Apartment District to “R-5” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-5” Single-Family Residence District converted to the current “R-5” Residential Single-Family District.

### **Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-5 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
North	“R-5 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-4 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-5 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-5 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/Southwest Sector Plan and is designated as “General Urban Tier” in the future land use component of the plan. The subject property is located within the boundary of the Los Jardines Neighborhood Association, and they have been notified of the request.

### **Street Classification**

Motes Drive is classified as a local road.

### **Criteria for Review – Front, Side, and Clear Vision 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 setback requirements to prevent storm water runoff and routine maintenance without trespass. The applicant is requesting a variance to the side and front setback to allow a detached carport to be 1” from the side property line and 6’-10” from the front property line. These distances do not provide adequate spacing, and water runoff may impose on the adjacent neighbor, which are both 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 the required 15’ clear vision on a driveway. The 5’-4” variance would leave 9’-8” clear vision which will not be contrary to the public interest as it leaves suitable room for backing out into a local street.**

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

Staff found no special conditions on the subject property that would warrant the need for deviance from the UDC regulations. A literal enforcement of the ordinance would result in the carport being reduced to maintain and 5' side and 10' front setback. The applicant could shift the carport to maintain the required distance, as there was abundant front yard space.

**Staff found special conditions on the subject property that would warrant the need for a reduced clear vision on the driveway. The fence line on the property and surrounding area have established the current clear vision distance and the property owner would have to move the fence back further then the established line in the area.**

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 side and front setback do not appear to observe the spirit of the ordinance as the current distances are too close to the adjacent property and shared property lines. Additionally, the fence is currently 9'-8" from the front driveway. Staff finds the spirit of the ordinance will not be observed and substantial justice will not be done with the requested variances as adequate distance are not presented.

**The spirit of the ordinance is defined as the intent of the code, rather than the exact letter of the law. The clear vision variance will observe the spirit of the ordinance as there remains suitable space to safely back up into a residential local street.**

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 its current side and front setback distances, which is likely to alter the essential character of the district or injure neighboring conforming properties. Upon site visits, staff did not observe other carports imposing into both setbacks in the immediate area.

**The clear vision variance will not alter the essential character of the district as the established front yard fence line is established with the current clear vision measurement.**

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. Had the applicant obtained permits, the information would have been given regarding carport side and front setback regulations.

**Staff finds the plight of the owner of the property for which the clear vision variance is sought is due to unique circumstances existing on the property. The location of the front yard fence is where it has been historically on the lot and surrounding area.**

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

The alternative to the applicant's request is to conform to the Carport Setbacks listed in Section 35-370(b)(1) and Section 35-516(g) and Clear Vision listed in Section 35-514(a)(2) of the UDC.

### **Staff Recommendation – Clear Vision Variance**

Staff recommends **Approval** in **BOA-23-10300193** based on the following findings of fact:

1. The clear vision leaves space for safely backing out into a local residential street; and
2. The fence is located on the established neighborhood fence line and will not alter the essential character of the district.

### **Staff Recommendation – Side and Front Setbacks**

Staff recommends **Denial** in **BOA-23-10300193** based on the following findings of fact:

1. The carport in its current location does not provide adequate spacing, which may injure the neighboring property; and
2. The property owner has the ability to rebuild the carport and meet the required setbacks.