

Case Number:	BOA-22-10300007
Applicant:	Jelynn L. Burley (Jamison)
Owner:	Jelynn L. Burley (Jamison)
Council District:	1
Location:	426 West Mariposa
Legal Description:	Lot 6, Block 10, NCB 9123
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

### **Request**

A request a for a 4’6” variance from the minimum 5’ side setback, as described in Section 35-310, to allow a carport with a 2” overhang and gutters to be 6” from the side property line.

### **Executive Summary**

The subject property is located along West Mariposa near San Pedro Avenue. The applicant constructed a carport, attached to the side of the existing residence without obtaining a building permit. Code Enforcement opened an investigation and instructed the property owner to obtain a building permit for the carport. Upon applying for the building permit, the applicant was advised to apply for a variance because the structure was encroaching into the side setback. Upon the site visit conducted by staff, the carport was observed to meet the minimum required front setback, however, only maintains 6” from the side property line. The UDC requires a carport to maintain a minimum front setback of 10’ from the front property line and 5’ to the side property lines.

### **Code Enforcement History**

An investigation was opened on September 3, 2021, for Building Without A Permit.

### **Permit History**

A carport permit application was submitted but has not been issued. Issuance of the permit is pending the outcome of the Board of Adjustment meeting.

### **Zoning History**

The property was annexed into the City of San Antonio by Ordinance 1941, dated May 31, 1940, 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 the current “R-4” Residential Single-Family District.

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

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

### **Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

South	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
East	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
West	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the North Central Neighborhood Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Northmoor Neighborhood Association. They have been notified of the request.

### **Street Classification**

West Mariposa is classified as a local road.

### **Criteria for Review – 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 defined as the general health, safety, and welfare of the public. The applicant is requesting a 4’6” variance to allow a carport to be 6” to the side property line.

**The alternate would be for the applicant to move the carport to be 1’ from the side property line. This would reduce water run off to adjacent properties. The carport is constructed out of a fire-rated material which reduces the potential of any fire hazards, so a 1’ setback does not appear to be 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 building the carport five feet from the side property line, which results in an impractical use of a carport since the driveway width is nine feet.

**Staff finds an unnecessary hardship can be avoided by relocating the structure 1’ from the side property line. This allows for adequate spacing for a vehicle.**

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 6” from the side property line, which does not observe the spirit of the ordinance.

**The spirit of the ordinance will be observed with a 1’ side setback since it will allow adequate space from adjacent structures and properties.**

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 6” from the side property line, which is likely to alter the essential character of the district.

**Staff recommends a 1’ side setback which does not appear to alter the essential character of the district, nor will it injure adjacent properties. A number of carports with a 1’ side setback were observed in close proximity to the subject site thus the alternate recommendation aligns closely with the existing 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.*

**Staff finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property such as the lot size and configuration of the existing residence. 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 Zoning District Design Regulations of the UDC Section 35-310.

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

Staff recommends Denial with **Alternate Recommendation of 4’ variance to allow a carport to be 1’ from the side property line in BOA-22-1030007** based on the following findings of fact:

1. The carport is 6” from the side property line presenting a safety risk to the public; and
2. The carport can maintain a 1’ side setback and still be functional with an adjusted width of 10’ 2”; and
3. Adjusting the carport to maintain a 1’ side setback aligns with the essential character of the district in which it is located.