

Case Number:	BOA-22-10300073
Applicant:	Fernando DeLeon
Owner:	Alberto G, Elizabeth M, and Ana M Arroyo
Council District:	2
Location:	822 North Cherry Street
Legal Description:	North 40' of the South 80' of Lot 1, and North 40' of the South 80' of the West 28.08' of Lot 2, Block 1, NCB 528
Zoning:	"R-5 H AHOD" Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

Request

A request for a 4' 7" variance from the minimum 5' side setback requirement, as described in 35-310, to allow a carport with 4" overhang and gutters to be 5" from the side property line.

Executive Summary

The subject property is located along 822 North Cherry Street and currently has an existing single-family residence. The resident was replacing an existing carport without pulling the required building permits. Code Enforcement issued a Building Without A Permit violation in March for the carport. The applicant tried applying for building permits and was informed the side setback requirement is not met, so a variance from the Board of Adjustment is required. Gutters are not currently on the carport but are required due to the proximity to the side property line. This property was reviewed by the HDR and a Certificate of Appropriateness was issued on March 10, 2022.

Code Enforcement History

March 2022 – Building Without A Permit

Permit History

A general electrical permit and a residential repair permit are on file. The existing permit on file can be amended to show the carport or a separate permit can be acquired pending the BOA Meeting.

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and was zoned "J" Commercial District. The property was rezoned from "J" to "B-2" Business District by Ordinance 70785, dated December 14, 1989. Upon adoption of the 2001 Unified Development Code, established by Ordinance 93881, dated May 3, 2001, the zoning converted from "B-2" to "C-2" Commercial District. The zoning changed from "C-2" to the current "R-5" on December 6, 2012, established by Ordinance 2012-12-06-0953.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-5 H AHOD" Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-6 H AHOD” Residential Mixed Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Residence
South	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Residence
East	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Residence
West	“D AHOD” Downtown District Airport Hazard Overlay District	Parks Open Space

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Dignowity Hill Community Plan and is designated “Low Density Mixed Use” in the future land use component of the plan. The subject property is located within the boundary of the Dignowity Hill Neighborhood Association, and they were notified of the case.

Street Classification

North Cherry Street is classified as a local road.

Criteria for Review – Side Setback Variance

According to Section 35-516 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 allow a carport with a 4” overhang and gutters to be 5” from the side property line, which 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 carport having to be moved to meet the 5’ minimum side setback requirement. Staff finds an unnecessary hardship due to the size of the lot and the small amount of driveway width available to fit 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 5” side setback requirement will observe the spirit of the ordinance. Due to the existing properties and locations of other carports this will 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.*

Staff does not find evidence that the requested variance would alter the essential character of the district. Properties located along Cherry Street all maintain carports within the distance from the side property line due to the size of the lots, therefore the request would not alter the essential character of the neighborhood.

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 limited size of the lot and the width available for a carport. The variance request is not merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Zoning District Setback Regulations of the UDC Section 35-310.

Staff Recommendation – Side Setback Variance

Staff recommends **Approval** in **BOA-22-10300073** based on the following findings of fact:

1. The carport is setback 5' and will include gutters; and
2. The carport was replacing and improving an existing structure and does not appear out of character for the area; and
3. Other properties in the surrounding area appear to have similar carports in place within the same distance.