

Case Number:	BOA-22-10300091
Applicant:	Fidel Contreras
Owner:	Fidel Contreras
Council District:	5
Location:	134 Carthage Court
Legal Description:	Lot 1, NCB 9296
Zoning:	"R-6 MLOD-2 MLR-1 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

### **Request**

A request for 1) a 4' 2" variance from the minimum 5' side setback requirement, as described in Section 35-310, to allow a carport with overhang and gutters to be 10" from the side property line and 2) a 4' 4" variance from the minimum 5' side setback requirement, as described in Section 35-310, to allow a structure with overhang and gutters to be 8" from the side property line, and 3) a 2' special exception from the maximum 6' fence height requirement, as described in Section 35-514, to allow a fence to be 8' tall along the side property line.

### **Executive Summary**

The subject property is located on 134 Carthage Court. The subject property is located on a lot along an elbow and has a unique configuration. The applicant has constructed a carport and an addition without proper permits. Upon the site visit, staff observed an 8' fence installed along the side property line. Both the carport and attached structure addition encroach into the side setback requirement. The posts of the carport measured to be 10" from the eastern side property line and the addition measured 8" from the western side property line. Additionally, it was observed that there is a single-family residence located on either side of the subject property.

### **Code Enforcement History**

A Code Investigation was created on 01/24/2022 for Building Without A Permit.

### **Permit History**

No permits have been issued. Building permits are pending the outcome of the BOA Meeting.

### **Zoning History**

The subject property was located within the Original City Limits of San Antonio and was zoned "B" Residence District. Ordinance 87216 dated January 8, 1998 rezoned the property to "R-1" Single Family Residence district. Upon adoption of the 2001 Unified Development Code, the zoning converted to the current "R-6" Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001.

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

Existing Zoning	Existing Use
"R-6 MLOD-2 MLR-1 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

## Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 MLOD-2 MLR-1 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	"R-6 MLOD-2 MLR-1 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	"R-4 MLOD-2 MLR-1 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	"R-6 MLOD-2 MLR-1 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

## Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the West/Southwest Sector Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Quintana Community Association and they were notified of the case.

## Street Classification

Carthage is classified as a local road.

## Criteria for Review - 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 variance request to allow a carport and an addition to encroach into the side yard setbacks may be contrary to the public’s interest and negatively affect the neighboring properties. As they are currently constructed, they appear too close to the property lines and adjacent structures.

**Staff finds an alternate recommendation for the carport and addition to be 3’ from the side property lines to better serve the public interest as it will allow for more adequate space.**

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

There do not appear to be special conditions on the property to specifically allow the carport and addition in its current placement on the property.

**The subject property certainly has a unique configuration which may prevent further development into the rear of the lot. A variance to allow the carport and addition to be 3' from the side property lines appears to avoid the hardship presented by the shape of the lot.**

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The requested variances will allow a carport and attached structure to be closer to the property line. The variances requested do not appear to observe the spirit of the ordinance as these are newly constructed structures and were built without permits and within the side setback.

**An alternate recommendation of a 2' variance for both structures would observe the spirit of the ordinance by allowing for more separation between structures.**

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 finds the requested variances may alter the essential character of the district as these are new build structures and could have been further away from the property lines.

**In order to mitigate any adverse effects on neighboring properties, it is recommended that the structures be moved 3' away from the side property lines.**

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.*

**It appears 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 unique configuration of the lot.**

### **Criteria for Review – Fence Height**

According to Section 35-482(h) of the UDC, in order for a special exception to be granted, the Board of Adjustment must find that the request meets each of the five following conditions:

- A. *The special exception will be in harmony with the spirit and purpose of the chapter.*

**The UDC states the Board of Adjustment can grant a special exception for a fence height modification. The additional fence height was observed upon the site visit and, if granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance.**

- B. *The public welfare and convenience will be substantially served.*

**In this case, these criteria are represented by fence heights to protect residential property**

**owners while still promoting a sense of community. The fence that is located along the side property line and is exceeding the maximum height requirement by 2". The fence will still serves the public welfare and convenience.**

*C. The neighboring property will not be substantially injured by such proposed use.*

**The fence will create enhanced security and privacy for the subject property and is unlikely to substantially injure any neighboring properties.**

*D. The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought.*

**The additional height for the section of side yard fence will not alter the essential character of the district.**

*E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*

**The current zoning permits the current use of a single-family home. The requested special exception will not weaken the general purpose of the district.**

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

The alternative to the applicant's request is to conform to the Setback Regulations per Section 35-310 and the Fence Height Regulations per Section 35-514 in the UDC.

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

Staff recommends Denial **with Alternate Recommendation for a 2' variance from the minimum 5' side setback requirement to allow a carport with overhang and gutters to be 3' from the eastern side property line and an addition to be 3' from the western side property line in BOA-22-10300091** based on the following findings of fact:

1. Reducing the width of the carport by 2' 2" will still allow adequate space for the parking of vehicles; and
2. With gutters installed, water runoff onto neighboring properties will be minimized; and
3. The addition appears to alter the essential character of the district with how close it is and will better serve the public welfare by being 3' from the western side property line.

### **Staff Recommendation – Side Yard Fence Special Exception**

Staff recommends **Approval** in **BOA-22-10300091** based on the following findings of fact:

1. The fence along the side property line is 8' and does not appear to alter the essential character of the district; and
2. The fence will provide additional security and privacy for the subject property which has a unique orientation.