

Case Number:	BOA-22-10300093
Applicant:	Luis Martinez
Owner:	Jennifer & Ramiro Martinez
Council District:	1
Location:	1307 West Lynwood Avenue
Legal Description:	Lot 23, Block 69, NCB 2764
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

Request

A request for 1) a 7’ 8” variance from the minimum 10’ front setback, as described in Section 35-310, to allow a carport with overhang to be 2’4” from the front property line, 2) a 4’ 7” variance from the minimum 5’ side setback, as described in Section 35-310, to allow a carport with overhang and gutters to be 5” from the side property line, 3) 5” special exception from the maximum 5’ fence height requirement, as described in Section 35-514, to allow a predominately open fence to be 5’5” tall in the front yard, and 4) 3’ 10” variance from the 15’ minimum clear vision standard, as described in Section 35-314(a)(2), to allow a front gate to be 11’ 2” from the curb.

Executive Summary

The subject property is located west of IH-10 along West Lynwood and contains a single-family residence. The applicant constructed a carport in front of the existing residence without obtaining a permit and a code investigation was initiated. During a site visit conducted by staff, it was observed that the carport only maintained 2’4” from the front property line and 5” from the side property line. A carport is required to maintain 10’ to the front property line and 5’ to the side property line. Staff also observed a wrought iron fence that measured at 5’5” in height. The maximum height permitted for a predominately open front fence is 5’. Additionally, the front gate is encroaching into the Clear Vision area as it is 11’2” from the curb.

Code Enforcement History

A Permit Investigation for Building Without a Permit was opened on April 14, 2022.

Permit History

A carport permit application was submitted on April 26, 2022. The issuance of the permit is pending the outcome of the Board of Adjustment Meeting.

Zoning History

The subject property is located within the original 36 square miles of the City of San Antonio and zoned “B” Local Retail 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
“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 Near Northwest Community Plan and is designated “Urban Low Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Keystone Neighborhood Association and they have been notified of the request.

Street Classification

West Lynwood is classified as a Local Road.

Criteria for Review – Front/Side Setback and Clear Vision 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 7’ 8” variance to the front setback and a 4’ 7” variance to the side setback to allow an attached carport to be 2’ 4” from the front property line and 5” from the side property line. This distance does not provide adequate spacing between the carport and the neighboring property and curb which is contrary to the public interest.

Staff finds that an alternate recommendation of a 5’ variance and a 3’ variance to allow the carport to be 5’ from the front property line and 2’ from the side property line would help with the reduction of water runoff without making the carport impractical. Additionally, the applicant is requesting a variance to the clear vision requirement. The fence is predominately open and will maintain 11’ 2” of clear vision therefore the variance 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 being reduced to maintain a 10’ front setback and 5’ side setback. This would decrease the square footage, depth, and width of the carport and would not allow for adequate spacing for a vehicle.

The alternate recommendation would allow for the development of a carport which alleviates the unnecessary hardship presented due to the size of the lot. To meet the clear

vision requirement, the applicant would have to move the gate 3' 10" inward which would reduce the size of the front yard and spacing for a carport causing an unnecessary hardship.

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 proposed setbacks do not appear to observe the spirit of the ordinance as it will cause the structure to be too close to the adjacent property and to the sidewalk.

Staff finds that the alternate recommendation will observe the spirit of the ordinance and substantial justice will be done. The alternate recommendation will provide sufficient spacing while still allowing the development of a sizable carport. In addition, the variance request of 3' 10" from the clear vision requirement of 15' observes the spirit of the ordinance as the fence is predominately open and has sufficient space between the fence and 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 addition will maintain 2'4" and 5" from the front and side property line, respectively. This will cause the carport to be too close to the property lines which may alter the essential character of the district and possibly affect adjacent conforming properties.

The alternate recommendation of a 5' variance to the front setback requirement and a 3' variance to the side setback requirement seems more fitting with the character of the neighborhood as there are other carports observed in the area. Staff also finds the request for a 3'10" variance to the clear vision field will not injure adjacent properties or alter the essential character of the district. The fence line is consistent with others in the immediate area.

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. The carport cannot be developed with the existing setback requirements.

The alternate recommendation will ease the hardship created due to unique circumstances on the property such as the limited spacing in the front to meet the carport setback requirements and the clear vision requirements.

Criteria for Review – Fence Height Special Exception

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 proposed fence being requested is predominately open, located along the front property lines and does not exceed 6' in height. 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. A 5' 5" fence in the front yard does not pose any adverse impacts to the public welfare.

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

The fence will add additional security to the subject property, and adjacent properties. Other predominately open fences were observed in the area therefore the request 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 fence height in the front yard of the subject property does not appear to alter the essential character of the district. Predominantly open fences can be found in the surrounding area, including properties adjacent to the subject property thus it is highly unlikely that the request will 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 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 requirements listed in Section 35-310 and the Fence Height listed under Section 35-314 of the UDC.

Staff Recommendation – Front and Side Setback Variance

Staff recommends Denial with an Alternate Recommendation for 1) a 5' variance from the minimum 10' front setback to allow a carport to be 5' from the front property line and 2) 3' variance from the minimum 5' side setback requirement to allow a carport to be 2' from the side property line in BOA-21-10300080 based on the following findings of fact:

1. A side setback of 2' would provide enough spacing between structures on the subject property and the neighboring property; and

2. Maintaining a 5' front setback and a 2' side setback will not significantly reduce the size of the carport; and
3. The carport width and length can be reduced and still accommodate the parking of vehicles; and
4. Carports are observed in the immediate area therefore the request does not appear to alter the essential character of the neighborhood.

Staff Recommendation – Clear Vision Variance

Staff recommends **Approval** in **BOA-22-10300093** based on the following findings of fact:

1. The predominately open fence and gate is 11'2" from the curb; and
2. The gate is on a rolling track and will not further impede into the clear vision field.

Staff Recommendation – Front Yard Fence Special Exception

Staff recommends **Approval** in **BOA-22-10300093** based on the following findings of fact:

1. The 5'5" fence will add additional security and privacy to the subject site and immediate area; and
2. Predominantly open front yard fences were observed within the surrounding area so it will not alter the essential character of the district.