

Case Number:	BOA-22-10300163
Applicant:	Margarito Gallegos
Owner:	Margarito Gallegos
Council District:	1
Location:	1410 Hermine Boulevard
Legal Description:	Lot 8, Block 163, NCB 7118
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a 4’-11” variance from the 5' minimum side setback requirement, as described in Section 35-370(b)(1), to allow a detached carport with gutters to be 1" from the side property line and 2) a 4’-6” variance from the 5’ minimum side setback requirement, as described in Section 35-370(b)(1), to allow an accessory structure to be 6” from the side property line.

Executive Summary

The subject property is located along Hermine Boulevard and is situated east from the intersection of West Avenue and Interstate Highway 10. The applicant constructed a detached carport with gutters that encroaches into the side setback. Although the applicant did pull building permits, the carport did not abide by the setback minimum distance requirements, resulting in a Zoning UDC Investigation. Permit indicated the carport would have a 5’ setback. Upon site visits, staff observed an accessory structure in the rear yard that also encroached into the side setback. Carports and accessory structures are required to be setback 5’ from the side property line, and the existing structures are currently 1” and 6” away from the side property line.

Code Enforcement History

An investigation was opened on April 1st, 2021 for a Zoning UDC Investigation

Permit History

RES-CRT-PMT21-32201946 - Carport Permit- October 2021

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 1845 dated May 5, 1940, and originally 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
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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 Greater Dellview Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is not located within a boundary of a neighborhood association.

Street Classification

Hermine Boulevard 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 variance to the side setback to allow a detached carport and accessory structure to be 1’ and 6’ from the side property line. These distances do not provide adequate spacing from the neighboring property which is contrary to the public interest.

Staff finds that an alternate recommendation of a 2’ variance to allow the carport and accessory structure to be 3’ from the side property line would allow a suitable distance between properties, which is not 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 reconstructing the carport and accessory structure 5’ from the side property line.

Staff finds an unnecessary hardship can be avoided by relocating the carport and accessory structure 3’ from the side property line, as this will allow the applicant to have a sizable carport and accessory structure.

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 for the carport and accessory structure do not appear to observe the spirit of the ordinance as they will be too close to the neighboring property.

Staff finds that the spirit of the ordinance will be observed with the alternate recommendation. This will provide adequate spacing while providing sufficient square footage for a sizable carport.

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 and structure will maintain 1” and 6” from the side property line, which is likely to alter the essential character of the district and affect adjacent conforming properties.

A 3’ side setback for the accessory structure and carport does not appear to alter the essential character of the district nor will it injure adjacent properties.

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 will not be able to fit a vehicle with the current setback requirements.

Alternative to Applicant’s Request

The alternative to the applicant’s request is to conform to the setback requirements of the UDC Section 35-370(b)(1).

Staff Recommendation – Side Setback Variance

Staff recommends Denial **with an Alternate Recommendation for a 1) 2’ variance from the minimum 5’ side setback requirement to allow a detached carport with gutters to be 3’ from the side property line and 2) a 2’ variance from the minimum 5’ side setback requirement to allow an accessory structure to be 3’ from the side property line in BOA-22-10300163** based on the following findings of fact:

1. A 2’ variance would provide enough spacing between structures on the subject property and the adjacent property; and
2. Maintaining 3’ from the side property line will not significantly reduce the size of the carport and accessory structure.
3. The 3’ setback will allow a vehicle to fit in the carport.