

Case Number:	BOA-22-10300257
Applicant:	Maria Gonzalez
Owner:	Maria Gonzalez
Council District:	7
Location:	338 Palm Drive
Legal Description:	Lot 130, Block H, NCB 8361
Zoning:	“R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a 3’-7” variance from the minimum 5’ side setback requirement, as described in Section 35-370 (b)(1), to allow a detached carport with overhang to be 1’-5” from the side property line, 2) a 5’ variance from the minimum 10’ front setback, as described in Section 35-516 (g), to allow a detached carport to have a 5’ front setback, 3) a 3’ special exception from the maximum 3’ front yard fence height requirement, as described in Section 35-514, to allow a 6’ solid screened fence along the eastern and western property lines, 4) a 11’ variance from the 15’ minimum clear vision requirement, as described in Section 35-514, to allow a solid screened privacy fence to be 4’ from the front curb, 5) a variance from the permitted fence materials, as described in Section 35-514(a)(6), to allow corrugated metal fence in the side and rear yards, and 6) a 9” special exception from the maximum 6’ side and rear yards fence height requirement, as described in Section 35-514, to allow a 6’-9” fence in the side and rear yards.

Executive Summary

The subject property is located along Palm Drive near Bandera Road. The applicant constructed a detached carport with overhang without pulling building permits, prompting a code investigation. In its current location, the carport is 1’-5” from the side property line and 5’ from the front property line. Carports are required to maintain 5’ from the side property line and 10’ from the front property line. Upon site visits, staff observed a 6’ solid screened fence passed the front façade of the home, violating clear vision requirements by being 4’ from the front curb. Additionally, the applicant constructed a 6’-9” fence in the side and rear yards using prohibited fence material, corrugated metal. If solid screeded, fences constructed in the front are not to exceed 3’ and would need to abide by the clear vision requirements of maintaining 15’ from the front curb. Additionally, side and rear yard fences are to not exceed 6’.

Code Enforcement History

Vehicle Investigation- January 2021
Zoning UDC Investigation- August 2021
Overgrown Yard- Trash- August 2021
Junk Vehicle- October 2021
Overgrown Yard- Trash- April 2022
Zoning UDC Investigation- April 2022
Overgrown Yard Trash- June 2022
PMT-Building Without a Permit- July 2022
PMT-building Without a Permit- August 2022

Permit History

Residential Fence Permit- September 2022

Zoning History

The subject property was annexed into the City of San Antonio by Ordinance 1450, dated October 11, 1944 and originally zoned “B” Single-Family 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 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

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

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Near Northwest 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 Donaldson Terrace Neighborhood Association, and they have been notified of the request.

Street Classification

Palm Drive is classified as a local road.

Criteria for Review – Side and Front Setback, Clear Vision, and Fence Material 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 public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance to the side setback in order to allow a detached carport with overhang to be 1' - 5" from the side property line. This distance does not provide adequate spacing between the carport and neighboring property, which is contrary to the public interest. Additionally, the applicant is requesting a variance from the permitted fence materials to allow corrugated metal fence in the side and rear yards. This is contrary to the public interest as restrictions in fence materials are put into place for safety.

Staff finds that an alternate recommendation of a 2' variance to allow the carport to be 3' from the side property line would help with mitigating distance between abutting properties. Additionally, the applicant is requesting a variance to the front setback and clear vision. The distance is 5' from the front property line and 11'-6" from the front curb, which staff finds is a suitable amount of space.

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 and 5' side setback and 10' front setback, which would decrease the square footage of the carport. The additional variance request to allow corrugated metal would not result in the unnecessary hardship.

Staff finds an unnecessary hardship can be avoided by relocating the structure 3' from the side property line. Additionally, altering the carport to meet the 10' minimum front setback requirement would result in an unnecessary hardship, as this would result in the carport being reduced in square footage, thus not allowing adequate spacing for vehicles. Further, altering the fence to meet the clear vision distance requirement of 15' would result in an unnecessary hardship by reducing the size of the front yard.

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 side setback does not appear to observe the spirit of the ordinance as the current distance is too close to the adjacent property. The corrugated metal fence will not observe the spirit of the ordinance, as this fence material is not allowable.

The spirit of the ordinance will be observed with a 3' side setback since it will allow adequate space from the adjacent property. This alternate recommendation will still allow for suitable space for vehicles. Additionally, the spirit of the ordinance will be observed with the current request for the front setback to be 5' by providing enough space between the carport and front sidewalk. Further, the clear vision request to allow a fence to be 11'-6" from the front curb will observe the spirit of the ordinance by providing a safe distance between the two points, allowing vehicular traffic to not be obstructed.

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 1' 5" from the side property line, which is likely to alter the essential character of the district or injure neighboring conforming properties. Additionally, no other properties in the immediate area did not have corrugated fence material, thus will likely injure appropriate use of adjacent conforming properties.

A 3' side setback for the carport does not appear to alter the essential character of the district nor will it injure adjacent properties. The front setback request will still provide adequate spacing between the structure and sidewalk, while allowing for sufficient vehicular protection. Additionally, the clear vision request will not injure adjacent properties, as other front yard fences were observed in the immediate vicinity.

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 and is not merely financial.

Criteria for Review – Special Exception for Fence Height Modification

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. Upon the site visit, a 6' solid screened privacy fence was observed in the front yard that deviates from the 3' maximum height requirement and a 6'-9" fence was observed in the side and rear yards that deviates from the 6' maximum height requirement. If granted, staff does not find the request to be harmonious 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. Staff did not observe any significant topographical changes on the subject property or adjacent properties. The fences at their current height does not appear to serve the public welfare and convenience.

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

Solid screened fences were not observed in the surrounding neighborhood; therefore, the additional height could adversely injure 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 and along the side and rear property lines will alter the essential character of the district, as there is no established precedence for solid screened fences in the immediate area.

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 allows for the use of a single-family dwelling. The requested special exception will likely 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 35-310.01 and the Fence Height listed under Section 35-514 of the UDC.

Staff Recommendation – Side Setback Variance

Staff recommends Denial **with an alternate recommendation of a 2' variance from the minimum 5' side setback requirement, to allow a detached carport to be 3' from the side property line** in BOA-22-10300257 based on the following findings of fact:

1. The carport in its current location does not provide adequate spacing, which is injuring the neighboring conforming property; and
2. The alternate recommendation will observe the spirit of the ordinance by providing a suitable distance while allowing for a sizeable carport.

Staff Recommendation- Clear Vision and Front Setback Variance

Staff recommends **Approval** in BOA-22-10300257 based on the following findings of fact:

1. The carport distance is 5' from the front property line and 11'-6" from the front curb, which staff finds is a suitable amount of space; and
2. The current distance from the fence to the front curb will obstruct vehicular traffic.

Staff Recommendation – Fence Material Variance

Staff recommends Denial in BOA-22-10300257 based on the following findings of fact:

1. Corrugated metal is a prohibited fence material; and
2. It will injure neighboring conforming properties.

Staff Recommendation – Fence Height Special Exception

Staff recommends Denial in BOA-22-10300257 based on the following findings of fact:

1. Solid screened fences were not observed in the surrounding neighborhood; therefore, the additional height for the front, side, a rear yard could adversely injure neighboring properties; and
2. There is no established precedence for solid screened fences in the immediate area.