

Case Number:	BOA-23-10300060
Applicant:	Alberto Cubillos
Owner:	Alberto Cubillos
Council District:	2
Location:	924 Iowa Street
Legal Description:	Lot 3, NCB 1409
Zoning:	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a 3’-4” variance from the minimum 5’ side setback, as described in Section 35-370(b)(1), to allow a carport to have a 1’-8” side setback, 2) a 5’-11” variance from the minimum 10’ front setback, as described in Section 35-516(g), to allow a carport to have a 4’-1” front setback, 3) a variance from the fence materials, as described in Section 35-514(a)(6), to allow a corrugated metal fence along the western property line, 4) a 3’ special exception from the maximum 3’ front yard fence height, as described in Section 35-514, to allow a 6’ solid screened fence along the western property line, 5) an 8” special exception from the maximum 5’ front yard fence, as described in Section 35-514, to allow a 5’-8” predominately open fence along the northern property line, and 6) a 7’-3” variance from the minimum 15’ driveway clear vision, as described in Section 35-514(a)(2), to allow a fence to be 7’-9” from the front curb.

Executive Summary

The subject property is located along Iowa Street near Martin Luther King Drive in the east side of San Antonio. The applicant was in the process of constructing a carport in the front yard when they were cited by Code Enforcement for building without a permit (INV-PBP-23-3100001062). The carport is anticipated to be 1’-8” from the side property line and minimum distance required is 5’. Additionally, the carport is anticipated to be 4’-1” from the front property line and the minimum distance required is 10’. Upon site visits, staff observed other requests that needed to be addressed. Those of which include a solid screeded corrugated metal fence, a prohibited fence material, exceeding height requirements along the western property line, passed the front façade of the home. Staff measured the fence to be 6’ and the maximum height required by code is 3’, for solid screened. Furthermore, staff observed a second fence along the northern property line that was predominantly open and measured 5’-8” in height. Predominantly open front yard fences are allowed a 5’ maximum. Due to the northern property line fence being close to the curb, the applicant also violated the minimum clear vision distance of 15’, if located near a driveway. Staff measured the fence to be 7’-9” from the front curb.

Code Enforcement History

Overgrown Yard Investigation (INV-OYT-23-2550001062)-March 2023

Permit Investigation (INV-PBP-23-3100001062)- March 2023

Overgrown Yard Investigation (INV-OYT-23-2550003689)- January 2023

Permit History

There are no relevant permits pulled for the subject property.

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “C” Apartment District. The property rezoned under Ordinance 79329, dated December 16, 1993, from “C” Apartment District to “R-2” Two Family Residence District.

Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-2” Two-Family Residence District converted to the current “RM-4” Residential Mixed District

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 HL AHOD” Residential Mixed Historic Landmark Airport Hazard Overlay District	Church
South	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
East	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence
West	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Arena District/Eastside Community Plan and is designated “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Denver Heights Neighborhood Association, and they have been notified of the request.

Street Classification

Iowa Street is classified as a Secondary Arterial Type B.

Criteria for Review – Side and Front Setback, Clear Vision, and Corrugated Metal 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 and front setback to allow a carport to be to be 1’-8” from the side property line and 4’-1” from the front property line. These distances do not provide adequate spacing between the carport and neighboring property/city right of way, which is contrary to the public interest. Additionally, the applicant is requesting a 7’-3" variance from the minimum 15’ clear vision requirement to allow a fence to be 7’-9" from the front driveway. In this case, the public interest is represented by sight distances for driveways to assure vehicular traffic protection. Staff finds that this request is contrary as this distance proposes on the safety of a public. Lastly, the applicant is requesting a variance from the

permitted fence materials to allow corrugated metal fence along the western property line. This is contrary to the public interest as restrictions in fence materials are put into place for safety.

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

Staff found no special conditions on the subject property that would warrant the need for deviance from the UDC regulations. 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. Additionally, a literal enforcement of the ordinance would result in the applicant altering the fence to meet the minimum 15' distance requirement. No unnecessary hardship is presented in this, as the applicant would only need to alter the fence location to meet clear vision.

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 and front setback do not appear to observe the spirit of the ordinance as the current distances are too close to the adjacent property and shared property lines. The corrugated metal fence will not observe the spirit of the ordinance, as this fence material is not allowable. Additionally, the fence is currently 7'-9" from the front driveway. Staff finds the spirit of the ordinance will not be observed and substantial justice will not be done with the requested variance as adequate sight distance are not presented.

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'-8" from the side property line and 4'-1" from the front property line, which is likely to alter the essential character of the district or injure neighboring conforming properties. Additionally, properties in the immediate area did not have corrugated fence material, thus will likely injure appropriate use of adjacent conforming properties. Furthermore, the clear vision distance will maintain 7'-9" from the front driveway which is likely to alter the essential character of the district.

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 not due to unique circumstances existing on the property. Had the applicant obtained permits, the information would have been given regarding building regulations.

Criteria for Review – Special Exception for Northern and Western Property Lines Fence Height Modifications

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 along the western property line, passed the front façade of the home that deviates from the 3' maximum height requirement. Additionally, a 5'-8" predominantly open fence was observed along the northern property line that deviates from the 5' 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 properties 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 do not appear to serve the public welfare and convenience.

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

Solid screened and predominantly open fences passed the front façade of the home and exceeding the height requirement 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 along the western and northern property lines will alter the essential character of the district, as there is no established precedence for front yard fence height deviation 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 exceptions 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 Side Carport Setback listed in section 35-370(b)(1), Front Carport Setback listed in Section 35-516(g), Fence Height and Materials and Clear Vision listed in Section 35-514 of the UDC.

Staff Recommendation – Side and Front Setback, Clear Vision, and Corrugated Metal Variances Variance

Staff recommends Denial in BOA-23-10300060 based on the following findings of fact:

1. The carport in its current location does not provide adequate spacing, which may injure the neighboring property; and
2. The request is contrary as this distance proposes on the safety of the vehicular traffic; and
3. Corrugated metal is a prohibited fence material.

**Staff Recommendation - Special Exception for Northern and Western Property Lines
Fence Height Modifications**

Staff recommends Denial in BOA-23-10300060 based on the following findings of fact:

1. Front yard solid screened fences that deviate from the maximum 3' were not seen in the immediate vicinity; and
2. The applicant could alter the predominately open fence to meet the maximum 5' requirement for front yard fences.