

Case Number:	BOA-21-10300169
Applicant:	Vicente Torres-Leiva
Owner:	Vicente Torres-Leiva
Council District:	7
Location:	2946 West Ashby Place
Legal Description:	Lot 1 & West 12.63 Feet of Lot 2, Block 22, NCB 2010
Zoning:	“R-4 NCD-8 MLOD-2 MLR-2 AHOD” Residential Single-Family Woodlawn Lake Neighborhood Conservation Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

Request

A request for 1) a 2’ 9” variance from the 5’ minimum setback requirement, as described in Section 35-310, to allow a carport to be 2’ 3” from the side property line and 2) a 7” variance from the 15’ minimum clear vision requirement, as described in Section 35-514, to allow a gate to be 14’ 5” from the curb.

Executive Summary

The subject property is located on the corner of Emory Street and West Ashby Place. The applicant has constructed a carport without permits that encroaches into the side setback.

They are requesting a 2’ 9” variance from the 5’ minimum setback requirement to allow a carport to be 2’ 3” from the side property line and a 7” variance from the 15’ minimum clear vision requirement to allow a gate to be 14’ 5” from the curb.

Code Enforcement History

A Permit Investigation was opened on September 16, 2021 for Building Without A Permit and resolution is pending.

Permit History

No permits have been issued. A permit is 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. Upon adoption of the 2001 Unified Development Code, the zoning converted from “B” Residence District to the current “R-4” Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-4 NCD-8 MLOD-2 MLR-2 AHOD” Residential Single-Family Woodlawn Lake Neighborhood Conservation Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 NCD-8 MLOD-2 MLR-2 AHOD” Residential Single-Family Woodlawn Lake Neighborhood Conservation Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling
South	“R-4 NCD-8 MLOD-2 MLR-2 AHOD” Residential Single-Family Woodlawn Lake Neighborhood Conservation Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling
East	“R-4 NCD-8 MLOD-2 MLR-2 AHOD” Residential Single-Family Woodlawn Lake Neighborhood Conservation Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling
West	“R-4 NCD-8 MLOD-2 MLR-2 AHOD” Residential Single-Family Woodlawn Lake Neighborhood Conservation Lackland Military Lighting Overlay Military Lighting Region Airport Hazard Overlay District	Single-Family Dwelling

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 Woodlawn Lake Neighborhood Association and were notified of the case.

Street Classification

West Ashby Place 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 public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance to the side setback for a carport detached from the existing structure as well as a 7” clear vision variance for an existing gate.

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 having to move the post of the structure to 5’ away from side property lines which would require a possible demolition of the carport to build. The fence is currently located on the property line so a literal enforcement of the clear vision code would result in relocating the fence 7” inside the property line.

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 requested 2' 9" variance from the 5' minimum setback requirement will observe the spirit of the ordinance as the access of the carport is located off Emory Street. The gate is installed 7" too close to the curb, which still observes the spirit of the ordinance.

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 request for a variance from the side setback requirement is enough space away from the adjacent property line and is not likely to negatively affect the adjacent neighboring property. Staff finds that the 7" variance from the 15' minimum clear vision requirement to allow a gate to be 14' 5" from the curb will not impact the safety and vision of the residents.

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 such as the small amount of available space.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Setbacks per 35-310 and the accessory structure regulations in 35-370 in the UDC Code.

Staff Recommendation – Side Setback and Clear Vision Variance

Staff recommends **Approval** in **BOA-21-10300169** based on the following findings of fact:

1. The carport is an accessory structure in the rear yard and is accessed from Emory Street ; and
2. There is no issue for water runoff in that there is plenty of space between the carport and the neighboring property; and
3. The structure will not negatively affect neighboring properties; and
4. The gate is encroaching 7" into the clear vision field; and
5. There do not appear to be adverse effects from the 7" encroachment.