

Case Number:	BOA-21-10300193
Applicant:	Maria Elena Luna
Owner:	Maria Elena and Martin S. Luna
Council District:	5
Location:	222 Madero Street
Legal Description:	Lot 6, NCB 6881
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:	Rebecca Rodriguez, Planner

Request

A request for 1) a 4’ 11” variance from the minimum 5’ side setback requirement, as described in Section 35-310, to allow a carport to be 1” from the side property line, 2) a 8’ 5” variance from the minimum 10’ front setback requirement, as described in Section 35-310, to allow a patio structure with 1’ 6” overhang to be 1’ 7” from the front property line, and 3) a 2’ 9” variance from the minimum 5’ side setback requirement, as described in Section 35-310, to allow a patio structure with 2’ overhang to be 2’ 3” from the side property line.

Executive Summary

The subject property is located along Madero Street near Frio City Road. The applicant constructed a front porch and carport, attached to the front and side of the existing residence without obtaining building permits. Code Enforcement did investigate the front porch structure to ensure a building permit was pulled, and instructed the property owner to pull a building permit for the front porch. Upon applying for the building permit, the applicant was advised to apply for a variance because the structure was encroaching into the side and front setbacks. The structure is required to maintain a minimum front setback of 10’ from the front property line and 5’ to the side property lines. Upon the site visit conducted by staff, a new carport was also observed to be built on the side of the residential dwelling.

Code Enforcement History

An investigation was opened on November 10, 2021 for Building Without A Permit.

Permit History

There are no relevant permits pulled for the subject property. A building permit is pending the outcome of the BOA Meeting.

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “C” Apartment District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “C” Apartment District converted to “MF-33” Multi-Family District. The property rezoned under Ordinance 96343, dated September 12, 2002, from “MF-33” Multi-Family District to the current “R-4” Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
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“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
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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 EP-1 MLOD-3 MLR-2 AHOD” Multi-Family Martindale Army Air Field 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 Guadalupe Westside Community 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 San Juan Gardens Neighborhood Association and Collins Garden Neighborhood Association. They have been notified of the request.

Street Classification

Madero Street is classified as a local road.

Criteria for Review – Front and 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 4’ 11” variance to allow a carport to be 1” to the side property line, an 8’ 5” variance to allow a front porch to be 1’ 7” to the front property line, and a 2’ 9” variance to allow the porch to be 2’ 3” to the side property line. The requests appear to be contrary to the public interest as there are not other structures in the surrounding area that encroach that far into the setbacks.

The alternate would be for the applicant to move the porch cover structure to be 6’ from the front property line and 3’ from the side property line. Alternate for the carport is to move the structure to be 3’ from the side property line. This would reduce water run off

to adjacent properties. Additionally, maintaining both the carport and porch cover away from neighboring properties could help reduce the potential of a fire spreading to those properties.

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 building the carport five feet from the side property line and the patio cover five feet from the side property line and ten feet from the front property line, which results in an impractical use of a carport and patio cover.

Staff finds an unnecessary hardship can be avoided by relocating the structures 3' from the side property line and 6' from the front property line. This will provide for adequate space and will accommodate the small size of the lot.

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 carport is currently 1" from the side property line while the porch cover is currently 1' 7" from the front property line, which does not observe the spirit of the ordinance.

The spirit of the ordinance will be observed with a 3' side setback and a 6' front setback since it will allow adequate space from the adjacent structures.

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" from the side property line, and the porch cover will maintain 1' 7" from the front property line along with 2' 3" from the side property line, which is likely to alter the essential character of the district.

The alternate of a 3' side setback for both structures and 6' front setback does not appear to alter the essential character of the district, nor will it injure adjacent properties. Numerous porch covers and carports were observed in close proximity to the subject site and the alternate recommendation appears to align more closely with the existing 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 due to unique circumstances existing on the property such as the lot size and close proximity

of the primary structure to the front property line. The circumstances do not appear to be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Zoning District Design Regulations of the UDC Section 35-310.

Staff Recommendation – Side Setback Variance for Carport

Staff recommends Denial with **Alternate Recommendation of 2' variance to allow a carport to be 3' from the side property line in BOA-21-10300193** based on the following findings of fact:

1. The carport is currently 1" from the side property line; and
2. The carport may alter the essential character of the district in which it is located; and
3. The carport can maintain a 3' side setback and still be functional with an adjusted width of 9'.

Staff Recommendation – Front and Side Setback Variance for Porch Cover

Staff recommends Denial with **Alternate Recommendation of 1) 4' variance from the minimum 10' front setback requirement to allow a porch cover to be 6' from the front property line and 2) 2' variance from the minimum 5' side setback requirement to allow a porch cover to be 3' from the side property line in BOA-21-10300193** based on the following findings of fact:

1. The property is small in size and was not created by the owner; and
2. The patio cover is currently 1' 7" from the front property line which can alter the essential character of the neighborhood; and
3. The sizable patio cover structure can be reduced to maintain 6' from the front property line; and
4. The structure is currently 2' 3" from the side property line and can be relocated to be 3' from the side property line to allow for adequate space from the adjacent property