



# City of San Antonio

## Legislation Details (With Text)

**File #:** 18-4320

**Type:** Zoning Case

**In control:** Board of Adjustment

**On agenda:** 7/16/2018

**Title:** (Continued from 06/04/18) A-18-092: A request by Jason Tyson for 1) a special exception to allow an 8' tall solid screen fence along the side property lines and 2) a request for a variance from the Clear Vision standards to allow a fence within the Clear Vision field, located at 2922 Albin Drive. Staff recommends Denial with Alternate Recommendation.(Council District 10)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A-18-092 Attachments

Date	Ver.	Action By	Action	Result
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**Case Number:** A-18-092

**Applicant:** Jason Tyson

**Owner:** Carol and Steve Spears

**Council District:** 10

**Location:** 2922 Albin Drive

**Legal Description:** Lots 3, 6, 18 & the West 70 Feet of Lot 4, Block 2, NCB

**Description:** 11838

**Zoning:** "NP-8 AHOD" Neighborhood Preservation Airport Hazard Overlay District

**Case Manager:** Debora Gonzalez, Senior Planner

### Request

A request for 1) a special exception, as described in Section 35-514, to allow an 8' tall solid screen fence along the side property lines and 2) a request for a variance from the Clear Vision standards, as described in Section 35-514, to allow a fence within the Clear Vision field.

### Executive Summary

The subject property is located at 2922 Albin Drive, approximately 280 feet east of Seidel Road. The applicant is seeking a special exception to allow a fence to be as tall as 8 feet along the side property lines. The subject property has had similar fence height since 1983 on both sides of the subject property. During field visits, the staff noted that the fence is in violation of the Clear Vision field and there is one nearby property with similar

fencing height. The fence Clear Vision Area must be free of obstruction for the first 15 feet; the applicant’s fence is 9 feet away from the street curb. It was also noted a fence on the opposite side from the subject property, for which a replace fence permit was issued in September 2017 but built at approximately 8’, over the height limitations.

Existing Zoning	Existing Use
“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling
South	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling
East	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling
West	“NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is within the boundaries of the Northeast Inner Loop Neighborhood Plan and is currently designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the boundaries of the Oak Park Northwood Neighborhood Association. As such, they were notified and asked to comment.

**Criteria for Review**

According to Section 35-482(h) of the UDC, in order for special exception to be granted, 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 up to 8'. The additional fence height is intended to provide privacy and security of the applicant's property. If granted, this request would be in harmony 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 maximum fence heights to protect residential property owners while still promoting a sense of community. An 8' tall solid screen fence was built along the side property lines to provide additional privacy for the property. This is not contrary to the public interest.

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

The fence will create enhanced privacy for the subject property and is highly unlikely to injure adjacent 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.*

Staff finds that an 8' solid screen fence on the side of the property will give privacy to both neighbors. The previous side yard fence existed since 1983 but it lost its non-conforming status when it was removed.

*E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.*

Staff is supportive of an 8' solid screen fence along the side property line as it creates privacy with adjacent property.

### **Criteria for Review**

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. In this case, a portion of the fence is in violation of the Clear Vision field, which creates unsafe conditions. Staff finds that the variance request is contrary to the public.

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

Staff is unable to establish a special condition that will allow the fence to be 9 feet away from the street curb instead of 15 feet, in violation of the Clear Vision field.

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 the intent of the code, rather than the strict letter of the law. In this case the intent of the code is to allow property owners to secure their property while still proving for safe conditions for motorist and pedestrians. A 9 foot setback instead of a 15 foot setback does not observe the intent of the code.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “NP-8 AHOD” Neighborhood Preservation Airport Hazard Overlay District.

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.*

The fence obstructs views from both adjacent driveways which is likely to harm adjacent property.

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 cannot identify any unique circumstance that warrants the fence to be 9 feet away from the street curb instead of 15 feet.

### **Alternative to Applicant’s Request**

The applicant would need to adhere to the permitted fence heights and distance as described in Section 35-514.

### **Staff Recommendation**

Staff recommends **APPROVAL** of the special exception in **A-18-092** based on the following findings of fact:

1. Allowing the 8 feet solid tall fence will provide privacy to the applicant.

Staff recommends **DENIAL** of the variance in **A-18-092** based on the following findings of fact:

1. Allowing the 9 feet distance from the curb will harm adjacent property owner from a safe view to the street.