



City of San Antonio

Legislation Details (With Text)

File #: 19-8516

Type: Zoning Case

In control: Board of Adjustment

On agenda: 11/18/2019

Title: BOA-19-10300131: A request by Justin Kim for 1) a special exception to allow a privacy fence to be up to 6’ tall in the front yard, and 2) a variance from the restriction of corrugated metal as a fencing material to allow for its use as fencing, located at 1226 Wyoming Street. Staff recommends Approval of the special exception and Denial of the variance. (Council District 2) (Rachel Smith, Planner (210) 207- 5407, rachel.smith@sanantonio.gov, Development Services Department)

Sponsors:

Indexes:

Code sections:

Attachments: 1. 19-10300131 Attachments

Date	Ver.	Action By	Action	Result
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Case Number: BOA-19-10300131

Applicant: Justin Kim

Owner: EHA Holdings LLC

Council District: 2

Location: 1226 Wyoming Street

Legal: Lot A12 & W 8 ft of A 13, NCB 45

Description:

Zoning: “RM-4 AHOD” Residential Mixed Airport Hazard Overlay District

Case Manager: Rachel Smith, Planner

Request

A request for 1) a special exception to the fence height limitation, as described in Section 35-514, to allow a privacy fence to be up to 6’ tall in the front yard, and 2) a variance from the restriction of corrugated metal, as described in Section 35-514, as a fencing material to allow for its use as fencing.

Executive Summary

The subject property is on Wyoming Street at the intersection with Dreiss Street. The property is being developed as three-story duplexes in two separate buildings. They obtained a Certificate of Determination on March 15, 2017 and began construction that year. The property fronts to Wyoming Street but both buildings face East to the side property line, creating spaces that function as rear yards along the West side of the buildings. The applicant states that the 6-foot tall front fence was on the building plans submitted to

Development Services as part of the site review, however, it was not included in the issued permit due to the needed special exception. The applicant constructed the metal on the shorter front fence as a last-minute addition and states he was unaware that it was a restricted material. The addition of the material also changed the fencing from a predominantly open to more than 70% solid and with the height ranging from 3-4 feet, contribute to the height request. The second fence is made entirely of wood material and is constructed six feet tall.

The applicant is requesting a variance for the fence height and a special exception for the use of corrugated metal sheeting as fencing material. Upon visit to the site, staff noted that the metal’s edges were very sharp and not protected. Staff also noticed that the front yard slopes downward creating uneven elevation for fencing and that no portion of the fence obstructs the clear vision area around the driveway.

Code Enforcement History

There is no code enforcement history on file for this property.

Permit History

7/5/17: Fencing permit to include 6 ft side and rear fence and 3ft solid or 5 ft predominantly open front fence.

Zoning History

The subject property is within the original 36 square miles of the City of San Antonio and was zoned “D” Apartment district. The property was rezoned by Ordinance 79329 dated December 16, 1993 from “D” Apartment district to “R-2” Two-family residential district. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 3, 2001, the property zoned “R-2” Two-family residential district was converted to “RM-4” Residential Mixed district.

Subject Property Zoning/Land Use

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

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 AHOD” Residential Mixed Use Airport Hazard Overlay District	Duplex
South	“RM-4 AHOD” Residential Mixed Use Airport Hazard Overlay District	Single Family Residence
East	“RM-4 AHOD” Residential Mixed Use Airport Hazard Overlay District	Single Family Residence
West	“MF-33 AHOD” Residential Mixed Use Airport Hazard Overlay District	Apartments

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Downtown Sub Area Plan and designated as “Residential” in the future land use

component of the plan. The subject property is in the boundaries of the Denver Heights Neighborhood Association and as such, they were notified of the case.

Street Classification

Wyoming Street is classified as a local street.

Criteria for Review - Special Exception for Fence Height

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 up to eight feet. A six foot fence is allowed by right along the side property line adjacent to the multifamily zoned property. The special exception request would allow a consistent fence height pattern within the front yard, parallel to but setback from the front property line. The additional fence height in the front yard is intended to provide the safety and security of the applicant's property. The area behind the fence while technically a front yard is functioning as a side/rear yard due to the orientation of the buildings. 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. A 6' tall predominantly open fence in the front yard is not contrary to the public interest.

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

A six foot fence is allowed by right along the side property line adjacent to the multifamily zoned property. The special exception request would allow a consistent fence height pattern within the front yard, parallel to but setback from the front property line. The fence enhances the privacy and security of the subject. Further, the fencing does not violate Clear Vision standards.

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 fence provides a safe environment for the property owner while enhancing aesthetics in the neighborhood.

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

The requested special exception will not weaken the general purpose of the district.

Criteria for Review - Variance Request for Fencing Material

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, the variance is contrary to the public interest as the fence was built partially with restricted material. The corrugated metal fence is inconsistent with the neighborhood design and is immediately noticeable from the street. Additionally, the metal was very sharp and not installed with safety in mind.

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

Staff cannot find any special conditions that, if enforced, would result in an unnecessary hardship. If the material was disclosed at the time of the permit request, staff could have advised the applicant of other approaches to achieve a similar effect.

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 intent of the material limitation is to preserve appropriate design consistent with the surrounding community, which is not observed by the current design of the fence.

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 “RM-4 AHOD” Residential Mixed-Use 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.*

The fence is noticeably out of character within the community. The material as applied is also very unsafe due to sharp edges.

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 does not find any unique circumstances that warrant the granting of this request. Had the applicant applied for the permit including the metal material, staff could have assisted with the alternative design.

Alternative to Applicant’s Request

The alternative to the applicant’s request is to conform to the fencing materials and fence height limitations established by the Unified Development Code Section 35-514.

Staff Recommendation

Staff recommends **APPROVAL** of the special exception in **BOA-19-10300131** based on the following findings of fact:

1. The fence in the front yard is providing privacy and security.
2. The fence does not obstruct the clear vision standards.
3. The granting of the special exception will not injure the public safety or welfare of the neighboring properties.

Staff recommends **DENIAL** of the variance in **BOA-19-10300131** based on the following findings of fact:

1. The material was not used with safety in mind.
2. The material is out of character with the surrounding community.