



# City of San Antonio

## Legislation Details (With Text)

**File #:** 15-4483

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 8/17/2015

**Title:** A-15-133: A request by Tony Gradney for 1) a 1 foot and 2 inch variance from the 4 foot maximum front yard predominately open fence height limitation to allow a 5 foot and 2 inch wrought iron fence and 2) a 1 foot 8 inch variance to allow a 5 foot 8 inch gate in the front yard of the property, located at 821 North Pine. (Council District 2)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Exhibits

Date	Ver.	Action By	Action	Result
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**Case Number:** A-15-133

**Applicant:** Tony Gradney

**Owner:** Tony Gradney

**Council District:** 2

**Location:** 821 North Pine Street

**Legal Description:** 4.2 feet of B, all of Lot C and the North 46.5 feet of Lot D, Block 11, NCB 540

**Zoning:** "R-5 H AHOD" Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District

**Case Manager:** Kristin Flores, Planner

### Request

A request for 1) a 1 foot and 2 inch variance from the 4 foot maximum front yard predominately open fence height limitation, as described in Section 35-514 (d), to allow a 5 foot and 2 inch wrought iron fence and 2) a 1 foot 8 inch variance to allow a 5 foot 8 inch gate in the front yard of the property.

### Executive Summary

The subject property is located at 821 North Pine Street approximately 163 feet south of Hays Street. The applicant has begun the restoration of a historically significant home located in the Dignowity Hill Historic District and wishes to continue construction of a 4'2" predominately open front fence. The applicant and owner have taken this request to the Historic Design and Review Commission (HDRC) for a Certificate of Appropriateness. The Design and Review Commission granted approval contingent on the Board of Adjustment's approval. The applicant has begun construction a five foot and two inch tall fence and has plans for a five foot and eight inch gate in the front yard of the property. The applicant is constructing the fence to ensure adequate protection of his home and property. Staff found several other homes within the community

with similar front yard fences. However, a gate height, at five feet eight inches, is not common within the neighborhood and is not in keeping with the character of the community.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling
South	“RM-6 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling
East	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling
West	“R-5 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The property is within the boundaries of the Dignotwity Hill Neighborhood Plan and currently designated Low Density Residential in the future land use component of the plan. The subject property is located within the boundaries of the Dignowitty Hill neighborhood association. As such, the neighborhood association was notified and asked to comment.

**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, these criteria are represented by fence height limitations to protect home owners, and also to provide for a sense of community. The applicant is constructing a fence five feet and two inches tall in the front yard of the property. The five foot two inch tall fence is being built to deter thefts and home burglaries. Staff finds that the additional one foot and two inches is not contrary to the public interest.**

However, the gate, at five feet eight inches, is not a common feature within the neighborhood and is not in keeping with the character of the community.

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

**The special condition present in this case is the protection of property from criminal activity within the community. The applicant is having the fence built to protect the home from such crime. The additional one foot and two inches of height will serve to protect the home more adequately from such activity.**

However, the gate at five feet eight inches does not provide additional protection as the remainder of the fence is only proposed to be five feet and two inches in height. The front fence, which is proposed to stand at five feet two inches, would help to mitigate any potential crime.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

**Granting the requested variance would result in substantial justice as the variance would allow the applicant to adequately protect his home from crime in the community.**

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 “R-5 H AHOD” Residential Single-Family Dignowity Hill Historic 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.*

**Staff noted that several homes in this community which have fences constructed of the same material and height. Staff does not find that the request detracts from the character of the community. In addition, the Historic Design and Review Commission supports the construction and design of the fence.**

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.*

**The unique circumstance present in this case is the protection of home and property. Staff finds that the request for one additional foot and two inches of fence height to protect the home is a legitimate request that is not merely financial in nature, nor the fault of the owner of the property.**

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

1) Denial of the variance would require the applicant to remove one foot and two inches of the fence height and one foot and eight inches of the gate height to come into compliance with the four foot front yard height limitation, as described in Section 35-514 (d).

2) A one foot two inch variance to the permitted fence height, as described in Section 35-514 (d), to allow a gate and fence to built five feet and two inches high.

#### **Staff Recommendation**

Staff recommends **APPROVAL of Variance 1 (fence height) A-15-133** based on the following findings of fact:

1. The fence has been given a Certificate of Appropriateness by the Historic Design and Review Commission;
2. The fence will serve to protect the applicant from criminal activity in the community;
3. The fence is in keeping with the character of the community.

**Staff recommends DENIAL of Variance 2 (gate height) A-15-133** based on the following findings of fact:

1. The proposed gate will not increase security of the property from crime in the community
2. Staff finds the gate, at the proposed 5 feet and eight inches, is not in keeping with the character of the community.

### **Attachments**

Attachment 1 - Notification Plan (Aerial Map)  
Attachment 2 - Plot Plan (Aerial Map)  
Attachment 3 - Site Plan  
Attachment 4 - Site Photos