



# City of San Antonio

## Legislation Details (With Text)

**File #:** 17-4150  
**Type:** Zoning Case  
**In control:** Board of Adjustment  
**On agenda:** 7/17/2017  
**Title:** A-17-128: A request by James Lavender for a variance from the Beacon Hill Neighborhood Conservation District (NCD-5) design requirement to allow an 8 foot fence in the side and rear yard, located at 947 W. Agarita. Staff recommends Denial with Alternate Recommendation. (Council District 1)  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. BOA17-128 Attachments

Date	Ver.	Action By	Action	Result
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**Case Number:** A-17-128  
**Applicant:** James Lavender  
**Owner:** James Lavender  
**Council District:** 1  
**Location:** 947 W. Agarita  
**Legal:** Lot 25 & 26, Block 20, NCB 1792  
**Description:**  
**Zoning:** "R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District  
**Case Manager:** Shepard Beamon, Senior Planner

### Request

A request for a 2 foot variance from the Beacon Hill Neighborhood Conservation District requirement that a fence be no taller than six (6) feet in the rear and side yard to allow an 8 foot fence.

### Executive Summary

The subject property is in the Beacon Hill Neighborhood Conservation District. Under the updated NCD design requirements, no fence shall be constructed in the rear that exceeds six feet. The owner constructed an eight foot wooden privacy fence along one side and a portion of the rear property lines. The rear property line abuts an alley, and under the current zoning, an eight foot fence is allowed, however, NCD design requirements govern. The subject property is located on a corner lot, and side property line along the cross-street meets the required six foot height. The opposite side that abuts the adjacent residential property has the eight foot tall fence. The new fence replaced an existing compliant chain link fence. Also, since the construction of the fence, City Council approved updates to the Beacon Hill NCD requirements, including the height limitation of six foot fencing. Prior to this approval, the eight foot fencing abutting the alley along the rear property line would have

been permitted without a special exception.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
"R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwellings
South	"R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District; "RM-4 NCD-5 AHOD" Residential Mixed Beacon Hill Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwellings, Duplex
East	"R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwellings
West	"R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwellings

**Comprehensive Plan Consistency/Neighborhood Association**

The property is within the boundaries of the Midtown Neighborhoods Plan and is currently designated Low Density Residential under the future land use. The subject property is located within the boundaries of the Beacon Hill Area Neighborhood Association and they were 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.*

**As the property abuts an alley, an 8 foot fence along the alley would protect the property.**

The request for an 8 foot fence along the interior side lot line adjacent to the neighbor is contrary to the public interest as the fence reduces the adjacent property's access to quality light and air.

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

**The property abuts an alley in the rear which is a special condition related to the property. An 8 foot**

**fence to protect and secure the property from an accessible alley would not result in an unnecessary hardship.**

Literal enforcement of the ordinance would not result in unnecessary hardship as the applicant could construct a fence that meets the NCD requirement and provides adequate privacy and safety.

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

**At the time of the fence's construction, prior to the City Council approval of updated Beacon Hill NCD requirements, the eight foot fencing along the rear alley was permitted without a special exception. This would make the fence non-conforming. Granting a variance would permit the fence by right allow for repair and maintenance in the future without concern of replacement value.**

The request does not observe the spirit of the ordinance as the NCD requirements are to ensure the historically common site/building configurations are perpetuated in the future and to maintain the development patterns in the neighborhood. As the requested fence height along the interior lot line adjacent to the neighbor is not common and consistent with the development patterns, the request does not uphold the spirit of the ordinance.

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

**The variance will not authorize the operation of a use other than those uses specifically authorized in the "R-6 NCD-5 AHOD" Residential Single-Family Beacon Hill Neighborhood Conservation 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 portion of eight foot fencing along the alley is unlikely to go noticed and does not impact the adjacent properties.**

Though the requested fence has limited visibility from the street, the request is not within character of the surrounding neighborhood as no other properties have eight foot fencing. Further, such a tall structure built three feet from the neighboring property is restricting on the amount of natural light and air.

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 property is adjacent to the alley which is accessible by anyone. This is a unique circumstance not created by the owner.**

Staff could not identify any unique circumstances, such as changes in topography or high rates of criminal activity, warranting the granting of the variance request for the 8 foot fence along the interior side property line.

### **Alternative to Applicant's Request**

The applicant could construct a six foot privacy fence.

### **Staff Recommendation**

Staff recommends **DENIAL with an alternate recommendation of approval of an eight foot fence along the rear property line in A-17-128**, based on the following findings of fact:

1. The fence was installed along the rear alley and would not require a variance prior to the adoption of the updated NCD-5 requirements.
2. The request reduces the adjacent property's access to light and air along the side property line.
3. The fence does not have high visibility from the street.