



City of San Antonio

Legislation Details (With Text)

File #: 18-6384

Type: Zoning Case

In control: Board of Adjustment

On agenda: 11/19/2018

Title: (Continued from 11/05/18) A-18-172: A request by Daniel C. Zertuche for 1) a special exception to allow a privacy fence to be as tall as 8'5" decreasing to 4'6" tall in the front yard and 2) a variance from the Clear Vision requirements to allow a solid screen fence within the Clear Vision field, located at 215 West Emerson Avenue. Staff recommends Denial. (Council District 5)

Sponsors:

Indexes:

Code sections:

Attachments: 1. A-18-172 Attachments

Date	Ver.	Action By	Action	Result
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Case Number: A-18-172

Applicant: Daniel C. Zertuche

Owner: Daniel C. Zertuche

Council District: 5

Location: 215 West Emerson Avenue

Legal: Lot 19, Block 11, NCB 7398

Description:

Zoning: "R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family
Lackland Military Lighting Overlay Military Lighting
Region 1 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 a privacy fence to be as tall as 8'5" decreasing to 4.5' tall in the front yard and 2) a variance from the Clear Vision requirements to allow a solid screen fence within the Clear Vision field.

Executive Summary

The subject property is located at 215 West Emerson Avenue, approximately 160 feet west of Brentwood Place. The applicant is seeking to keep a front yard privacy fence as tall as 8'5" decreasing to 4.5' built without permits. The fence is 12' away from the street curb instead of 15', in violation of the Clear Vision field. The

applicant had built a carport without any permits and received a citation from Code Enforcement in January 27th, 2016. On April 4th, 2016 the Board of Adjustment approved a 1' setback from the side property line to allow for a carport in the subject property. During visits to the site, staff was unable to identify any other fences within the community that are 8' tall.

Code Enforcement History:

On January 27th, 2016 Code Enforcement gave a citation to property owner for building a carport with no permits and within the side and front setbacks. On April 4th, 2016 the Board of Adjustment approved a 1' setback from the side property line to allow for a carport in the subject property.

No Code Enforcement history exists on the property regarding this request.

Permit History:

No permit history related to carport exists on the property.

No permit history related to this fence exists on the property.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling
South	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling
East	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling

West	"R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling
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Comprehensive Plan Consistency/Neighborhood Association

The subject property is within the boundaries of the Kelly-South San PUEBLO Community Plan and currently designated Low Density Residential in the future land use component of the plan. The subject property is located within the Thompson Neighborhood Association. As such, the neighborhood association was notified and asked to comment.

Street Classification

West Emerson Avenue is classified as a Local Street.

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 spirit of the chapter is intended to provide for reasonable protections to property owners and to establish a sense of community within our neighborhoods. Staff was unable to identify other properties benefiting from a fence in the front yard. Allowing the 8'5" foot tall fence decreasing to 4.5' on the front yard will create inconsistency and will differ from other properties in the neighborhood.

B. The public welfare and convenience will be substantially served.

Staff is unable to establish how the public would benefit from an 8'5" foot tall fence decreasing to 4.5' on the front yard. The applicant is permitted to have a 5' tall predominantly open fence.

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

Neighboring property may be harmed by the proposed fence especially considering that it is located within the Clear Vision field.

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 was unable to identify other 8'5" tall fences within the block. Allowing this one property to have an 8'5" tall fence alters the essential character of the community in which it is located.

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

The property is located within the "R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District. The fencing regulations are established to ensure consistency within our communities, and it is difficult to establish how granting the

requested special exception will not weaken that purpose.

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 12' 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 12' setback instead of a 15 foot setback does not observe the intent of the code as it observes the view of oncoming motorists and pedestrians.

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-6 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 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 view from the subject property driveway which could harm the property owner, and the traveling public.

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 12' away from the street curb instead of 15 feet. Had the applicant applied for a permit staff could have assisted with design that meets the applicant needs, as well as the requirements of the UDC.

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 **DENIAL** of special exception in **A-18-172** based on the following findings of fact:

1. The requested fence height detracts from the character of the community.

Staff recommends **DENIAL** of variance in **A-18-172** based on the following findings of fact:

1. Allowing the 12' distance from the curb obstructs a safe view to the street to and from the street.