



City of San Antonio

Legislation Details (With Text)

File #: 18-6609

Type: Zoning Case

In control: Board of Adjustment

On agenda: 12/3/2018

Title: BOA-18-900010: A request by Eloy Rosales for 1) a special exception to allow a privacy fence to be 8 feet tall on both side property lines and on the rear property line and, 2) a variance from the restriction against corrugated metal as a fencing material to allow for the use of corrugated metal fencing, and 3) a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, located at 235 Dashiell Street. Staff recommends Denial. (Council District 2)

Sponsors:

Indexes:

Code sections:

Attachments: 1. BOA-18-900010 Attachments

Date	Ver.	Action By	Action	Result
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Case Number: BOA-18-00010

Applicant: Eloy Rosales

Owner: Andrew W. McCurdy

Council District: 2

Location: 235 Dashiell Street

Legal: Lot 18, Block 20, NCB 617

Description:

Zoning: "RM-4 AHOD" Residential Mixed 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 8' tall on both side property lines and on the rear property line and, 2) a variance from the restriction against corrugated metal as a fencing material, as described in Section 35-514, to allow for the use of corrugated metal fencing, and 3) a request for a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field.

Executive Summary

The subject property is located at the intersection of Dashiell Street and South Hackberry Street. The applicant is requesting to keep corrugated metal fencing on both sides of the property and in the rear yard. The property

had a 6' solid wood fence since May 2014. During field visits staff noted that the corrugated metal fence is exposed and was installed on the inside and the outside of the east side fence. The applicant states that the surrounding area experiences heavy pedestrian and vehicular traffic due to its proximity to the Alamodome.

Code Enforcement History

No Code Enforcement history exists on the property.

Permit History

No permit history related to this fence exists on the property. The property owner is seeking a variance to allow for permit to be issued.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"RM-4 AHOD" Residential Mixed Single-Family Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"RM-4 AHOD" Residential Mixed Single-Family Airport Hazard Overlay District	Vacant Land
South	"RM-4 AHOD" Residential Mixed Single-Family Airport Hazard Overlay District	Vacant
East	"RM-4 AHOD" Residential Mixed Single-Family Airport Hazard Overlay District	Vacant Land
West	"RM-4 AHOD" Residential Mixed Single-Family Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Downtown Neighborhood Plan and is currently designated "Residential" in the future land use component of the plan. The subject property is located within Alamodome Gardens Neighborhood Association. As such they were notified and asked to comment.

Street Classification

Dashiell Street 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. The request for an 8 foot tall fence in both sides and the rear yard will create inconsistency. There were no other similar fence heights observed within the immediate vicinity. Staff finds that this request is not in harmony with the spirit and purpose of the chapter.

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

Staff is unable to establish a special condition that would allow for an 8' tall privacy fence along the both sides and rear property lines.

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

The fence is not consistent with surrounding properties and allowing this one property owner to have an eight foot 8' tall privacy fence negatively affects the design consistency within the neighborhood.

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 8' fence creates inconsistency and alters the essential character of the community in which the property 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 "RM-4 AHOD" Residential Mixed Single-Family Airport Hazard Overlay District and permits the current use of a single-family home. The fencing regulations are established to ensure consistency within our communities, and it is difficult to establish how granting the requested special exceptions 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, the variance is contrary to the public interest as the fence was built with corrugated metal a prohibited material, also a portion of the fence is in violation of the Clear Vision field, which creates unsafe conditions. The corrugated metal fence edges are exposed and the material is immediately noticeable from the street. Further, this type of material can be dangerous. Staff finds that these requests are contrary to the public.

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 literally, would result in any unnecessary hardship. 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 6 foot setback instead of a 15 foot setback from the Clear Vision area does not observe the intent of the code. If a permit was sought, staff could have advised on other approaches to achieve a similar result.

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. The intent of the permitted materials for fencing is to create a consistent community character. A 6' setback instead of a 15' setback does not observe the intent of the code as it observes the view of oncoming motorists and pedestrians. Granting the requested variances for the fence will not result in substantial justice because the fence, as designed and built, is out of place within this residential community.

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 by the zoning 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 corrugated metal fence is noticeably out of character within this community and imposes harm to the public. 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 did not find any unique circumstances that warrant the granting of the requested variances. Had the applicant have applied for a permit, staff could have assisted with an alternative design that benefits the applicant and the community.

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 the variance in **BOA-18-900010**, based on the following findings of fact:

1. There are no special conditions present to warrant the granting of the requested variance for the corrugated metal fence material,
2. The exposed corrugated fence can create harm to the community.
3. Allowing the 6 feet distance from the curb obstructs a safe view to the street to and from the street.