



# City of San Antonio

## Legislation Details (With Text)

**File #:** 19-5211  
**Type:** Zoning Case  
**In control:** Board of Adjustment  
**On agenda:** 7/1/2019  
**Title:** BOA-19-10300069: A request by Skyhawk424 8th Street for a 1) special exception to allow an 8' fence along the front yard, side yard and rear yard property lines, 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, and 3) special exception to allow 3 additional short term rental (Type 2) units, located at 424 8th Street. Staff recommends Denial with an Alternate Recommendation. (Council District 1) (Debora Gonzalez, Senior Planner (210) 207- 3074, debora.gonzalez@sanantonio.gov, Development Services Department)  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** 1. BOA-19-10300069 Attachments

| Date | Ver. | Action By | Action | Result |
|------|------|-----------|--------|--------|
|------|------|-----------|--------|--------|

**Case Number:** BOA-19-10300069  
**Applicant:** Skyhawk424 8th Street  
**Owner:** Skyhawk424 8th Street  
**Council District:** 1  
**Location:** 424 8<sup>th</sup> Street  
**Legal Description:** The Northwest Irregular 55 Feet of Lot 10, Block 30, NCB  
**Description:** 452  
**Zoning:** "FBZD T4-2AHOD" Form Based Zone Transect 4  
Calibrated (T4-2) Airport Hazard Overlay District  
**Case Manager:** Debora Gonzalez, Senior Planner

### Request

A request for a 1) special exception to allow an 8' fence along the front yard, side yard and rear yard property lines 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, and 3) special exception, as described in Section 35-374.01, to allow 3 additional short term rental (Type 2) units.

### Executive Summary

The subject property is located at 424 8<sup>th</sup> Street, approximately 140 feet west of Interstate Highway 37. The subject property consists of a quadruplex on a small blockface consisting of one single-family residential dwelling and a bar on a dead end street. The applicant is applying for the special exception to allow an

additional 3 short term rental (Type 2) units. During field visits staff noticed the 8' fence along the front yard, side yards and rear yard property lines and a fence encroachment of 5' into the Clear Vision standards. Additionally, the subject property is located in a commercial area with uses that include breweries and/or bars, offices, industrial uses such as a hardware shop and auto shops; zoned Form Based Zone Transect 4 Calibrated (T4-2).

On June 3, 2019 Development Services issued a short term rental (Type 2) to allow for one short term rental unit. The applicant is seeking a special exception to allow for the operation of 3 additional Type-2 short term rental unit(s) at a property with a total of four (4) dwelling units. A unit is defined as having its own distinct sleeping area, kitchen, and bathroom. Type-2 indicates that the owner/operator of the property does not occupy the site as their permanent legal residence. With the one (1) STR permit already issued, the applicant proposes to rent a total of 4 short term rental units within the subject property. Per the recently adopted code, Type 2 Short Term Rentals shall be limited to no more than one-eighth (12.5 percent) of the total number of single-family, duplex, triplex, or quadruplex units on the block face. At least one (1) Type 2 Short Term Rental shall be permitted per block face, regardless of the total number of units on the blockface.

In this case, the blockface is defined as the northeast side of 8<sup>th</sup> Street between IH 37 South and Union Street. There are three (3) lots on along this blockface, one commercial lot and two residential lots, and according to available records, there are five (5) units on this blockface, resulting in one (1) Type 2 Short Term Rental permitted by right. One (1) Type 2 Short Term Rental Permit has already been approved by right at this location. Any other Type 2 Short Term Rentals on this blockface must seek a Special Exception from the Board of Adjustment.

The subject property is located on a blockface where this is the second residential use; the adjacent properties are a single-family dwelling unit and bar. There are no other permitted short term rentals on any adjacent blockface, and the nearest permitted STR is two Type 2's located approximately 970 feet to the west of 6<sup>th</sup> Street and 1,700 feet to the west of 9<sup>th</sup> Street.

There are a total of four (4) units within this four family dwelling. As mentioned, the applicant has received a STR permit for one unit, permitted by right. The applicant is requesting the remaining three (3) units as Type 2 Short Term Rentals. If this special exception is approved for the additional three (3) units, there will be a total of four (4) Type 2 Short Term Rentals on this block face, resulting in 90% of the blockface.

### **Code Enforcement History**

No Code Enforcement history exists on the property.

### **Permit History**

The applicant initially wanted to apply for registration of four (4) short term rental units on the subject property and only one Type 2 was issued. The property owner is seeking variance and special exceptions to allow for permits to be issued and to then apply for the 3 STR permits.

### **Subject Property Zoning/Land Use**

| Existing Zoning | Existing Use |
|-----------------|--------------|
|-----------------|--------------|

|  |                    |
|--|--------------------|
| “FBZD T4-2AHOD” Form Based Zone<br>Transect 4 Calibrated (T4-2) Airport Hazard<br>Overlay District | Four-Plex Dwelling |
|--|--------------------|

### Surrounding Zoning/Land Use

| Orientation | Existing Zoning District(s)  | Existing Use           |
|-------------|--|------------------------|
| North       | “FBZD T4-2AHOD” Form Based Zone<br>Transect 4 Calibrated (T4-2) Airport Hazard<br>Overlay District | Single-Family Dwelling |
| South       | “FBZD T4-2AHOD” Form Based Zone<br>Transect 4 Calibrated (T4-2) Airport Hazard<br>Overlay District | Offices                |
| East        | “FBZD T4-2AHOD” Form Based Zone<br>Transect 4 Calibrated (T4-2) Airport Hazard<br>Overlay District | Single-Family Dwelling |
| West        | “FBZD T4-2AHOD” Form Based Zone<br>Transect 4 Calibrated (T4-2) Airport Hazard<br>Overlay District | Bar                    |

### Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Downtown Neighborhood Plan and currently designated as “Mixed Use” in the future land use component of the plan. The subject property is located within the boundaries of a Downtown Residents Association.

### Street Classification

8<sup>th</sup> Street is classified as a Local Street.

#### **1) Criteria for Review - Fence Height Special Exception**

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’ tall solid screen fence in the front yard, side yard and rear yard of the property is in harmony with the spirit of the chapter.**

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

**The public welfare and convenience can be served by the added protection of higher front and rear yard fencing, allowing the owners to protect the subject property.**

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

**No adjacent property owners, nor the traveling public, will be harmed by the proposed fence heights.**

*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 will create enhanced privacy and security for the subject property and is highly unlikely to injure adjacent properties.**

*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 “FBZD T4-2AHOD” Form Based Zone Transect 4 Calibrated (T4-2) Airport Hazard Overlay District and permits the current use of a single-family home. The requested special exception will not weaken the general purpose of the district.**

## **2) Criteria for Review - Clear Vision Variance**

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 fence was built with wrought iron and solid wood not imposing harm to the public and the fence is also, in harmony with the Clear Vision field which does not negatively impact any surrounding properties or the general public. Staff finds that the variance request is contrary to the public interest.**

*2. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship*  
**Allowing the applicant to keep the 8’ fence 10’ encroaching into the Clear Vision field will not harm the public right of way. Therefore, the public welfare and convenience will be substantially served.**

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

**Granting the 10’ encroaching into the Clear Vision field will not substantially injure the neighboring properties as the adjacent commercial property does not have an active driveway near the subject property.**

*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 fence design does not detract from the character of the community. The applicant updated an older 6’ private fence with an 8’ privacy fence encroaching into the Clear Vision field.**

*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 in this case is that the property is located one lot from a dead end street, minimizing any impact from traffic.**

### **3) Criteria for Review - Short Term Rental Special Exception**

According to Section 35-374.01 of the UDC, in order for a special exception to be granted, the applicant must demonstrate all of the following:

A. The special exception will not materially endanger the public health or safety.

The property appears to be well kept, and nothing about the quadruplex places it out of character with one more residential use in the immediate vicinity. The current zoning of the property exempts the property from meeting minimum parking standards. This area has a combination of mostly commercial and industrial uses. There is no record of previous Code Enforcement issues in this property.

B. The special exception does not create a public nuisance.

Approval of this special exception will result in three (3) additional Type 2 Short Term Rentals operating on a blockface resulting in 90% of the blockface operating as a short term rental, and may have the effect of saturating the blockface which may create a public nuisance. The applicant could provide data showing that occupancy rates for long-term rentals in the neighborhood will not be impacted which could mitigate this finding. It should be noted that if this structure was located on a typical blockface of 16 residential structures, two Type-2 STRs would be permitted by right.

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

The applicant could provide data showing that occupancy rates for long term rentals in the neighborhood and property valuations for the neighborhood will not be negatively impacted by the request, which could mitigate this finding.

D. Adequate utilities, access roads, storm drainage, recreation, open space, and other necessary faculties have been or are being provided.

During field visits to the site, staff noted that the structure already exists with adequate utilities.

E. The applicant or owner for the special exception does not have any previously revoked short term rental licenses, confirmed citations, or adjudicated offenses convictions for violations of Chapter 16, Article XXII of the City Code within one year prior to the date of the application.

The applicant is seeking their first permit for the operation of a total of four (4) Type-2 short term rentals for this property. As such, no previous permit has been revoked. However, approval of the remaining three (3) will result in 90% of the units permitted as Type-2 STRs on this blockface.

F. 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.

Essential character of the neighborhood may include potential impacts to occupancy rates and property valuations. The applicant could provide data showing that occupancy rates for long term rentals in the neighborhood and property valuations for the neighborhood will not be negatively impacted by the request, which could mitigate this finding.

The Board can also consider public input from the neighborhood regarding the character in which the property is located. Additionally, the Board can also consider the unique situation of the request. The unique situation

could be that this is property is at a dead end next to Interstate Highway 37, mostly surrounded by commercial and industrial uses.

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

The applicant would need to adhere to the permitted fence heights and distance as described in Section 35-514.

Denial of the requested special exception will result in the property owner not being able to operate the three additional short term rental units.

### **Staff Recommendation**

Staff recommends **APPROVAL** of 1) a special exception to allow an 8' fence along the front yard, side yard and rear yard property lines 2) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field in **BOA-19-10300069**.

1. The fence does not visually hinder the adjacent property's driveway or other motorists view.

Staff recommends **DENIAL** of 3) a special exception to allow a total of 3 short term rental (Type 2) units in **BOA-19-10300069**, based on the following findings of fact:

1. The approval of three additional Type 2 short term rental units on this blockface will result in 90% residential units on this blockface being utilized as Type 2 short term rentals.