



# City of San Antonio

## Legislation Details (With Text)

**File #:** 21-2065

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 3/15/2021

**Title:** BOA-20-10300140: A request by D. Scott Dye for the following: For the structure at 535 West Kings Highway: A request for 1) a 1' variance to the 5' minimum side setback requirement to allow the front structure facing W Kings Hwy to have an attached carport with 6" overhang to be 4' from the east side property line, 2) a special exception to allow a side yard fence to be 8' tall, 3) a variance from the Alta Vista Neighborhood Conservation District regarding carports to maintain the same roof line(s) as the primary structure; and, for the structure at 3500 block of North Flores Street: A request for 4) a 2' variance to the 5' minimum side setback requirement to allow a structure to be 3' from the north side property line, 5) a 6' 6" variance to the minimum 10' front setback to allow a structure to be 4' 6" from the front property line, 6) a special exception to allow a solid wood front yard fence to be 4' 2" tall, 7) a waiver from the Minimum Parking Standards, and 8) a variance from the Alta Vista Neighborhood Conservation District to allow a solid wood front yard fence to be 4' 2" tall. Staff recommends Denial with an Alternate Recommendation. (Council District 1) (Kayla Leal, Senior Planner (210) 207-0197, [kayla.leal@sanantonio.gov](mailto:kayla.leal@sanantonio.gov), Development Services Department)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachments

Date	Ver.	Action By	Action	Result
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Case Number:	BOA-20-10300140
Applicant:	D. Scott Dye
Owner:	Willow Brook Development LLC
Council District:	1
Location:	535 West Kings Highway and 3500 block of N. Flores Street
Legal Description:	Lot 20, 21 & W 20 FT OF 22, Block 12, NCB 6434
Zoning:	"R-3 NCD-2 AHOD" Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Kayla Leal, Senior Planner

### Request

For the structure at 535 West Kings Highway:

A request for 1) a 1' variance to the 5' minimum side setback requirement, as described in Section 35-310.01, to allow the front structure facing W Kings Hwy to have an attached carport with 6" overhang to be 4' from the east side property line, 2) a special exception to allow a side yard fence to be 8' tall, as described in Section 35-514, 3) a variance from the Alta Vista Neighborhood Conservation District, as described in Section 35-335, regarding carports to maintain the same roof line(s) as the primary structure;

For the structure at 3500 block of North Flores Street:

A request for 4) a 2' variance to the 5' minimum side setback requirement, as described in Section 35-310.01, to allow a structure to be 3' from the north side property line, 5) a 6' 6" variance to the minimum 10' front setback, as described in Section 35-310.01, to allow a structure to be 4' 6" from the front property line, 6) a special exception to allow a solid wood front yard fence to be 4' 2" tall, as described in Section 35-514, 7) a waiver from the Minimum Parking Standards, as described in Section 35-526, and 8) a variance from the Alta Vista Neighborhood Conservation District, as described in Section 35-335, to allow a solid wood front yard fence to be 4' 2" tall.

### **Executive Summary**

The subject property is located on the corner of West Kings Highway and North Flores Street. There are two structures on the subject property including one facing West Kings Highway and the second facing North Flores Street. The structure facing North Flores Street used to be a detached accessory dwelling, but the applicant is currently replatting the property, which would cause the structure to be a primary structure on its own lot. The request is for variances to the side yard setback for both structures. Upon the site visit conducted by BOA staff, other variances were observed including the side setback for the attached carport and a special exception to a side yard fence for the West Kings Highway structure. Also, a special exception for the front yard fence for the North Flores Street structure. Variances are also requested to the Alta Vista Neighborhood Conservation District.

### **Code Enforcement History**

There are no relevant Code Enforcement violations pending.

### **Permit History**

Permits have recently been pulled for the renovation of the structure.

### **Zoning History**

The subject property is located within the Original 36 square miles City Limits of San Antonio and was zoned "D" Apartment District. The zoning changed from "D" to "R-1" One Family Residence District, established by Ordinance 86704, dated September 25, 1997. The zoning converted from "R-1" to the "R-6" Residential Single-Family District upon adoption of the 2001 Unified Development Code (Ordinance 93881, dated May 3, 2001). The zoning changed from "R-6" to the current "R-3" Residential Single-Family District on December 3, 2020, established by Ordinance 2020-12-03-0862.

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

Existing Zoning	Existing Use
"R-3 NCD-2 AHOD" Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 NCD-2 AHOD” Residential Mixed Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
South	“RM-4 NCD-2 AHOD” Residential Mixed Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
East	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
West	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Midtown Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Alta Vista Neighborhood Association and were notified of the case.

**Street Classification**

West Kings Highway and North Flores Street are classified as a Local Roads

**Criteria for Review - Variances for Side Setbacks, Front Setback and NCD Requirements**

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. The applicant is requesting a variance to the side setback for an attached carport, which is not contrary to the public interest. The side setback for the structure facing N Flores Street is also requesting a reduction, which does not pose any adverse effects.**

The Alta Vista NCD carport and fence standards was adopted to maintain the character of the area. The variance to the NCD standards is for the roof line of the carport and over 3 feet of solid screen fencing in the front yard and is contrary to the public interest.

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

**The structure facing Flores was existing, so a literal enforcement of the ordinance would result in the applicant needing to relocate the building 2’.**

The Alta Vista NCD design standards are an additional layer of review and regulations to maintain the character of the neighborhood. Literal enforcement of the ordinance would not result in unnecessary hardship.

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 defined as the intent of the code, rather than the exact letter of the law. With the structure facing Flores St maintaining two feet from the side property line, the spirit of the ordinance will be observed and substantial justice will be done. The carport will maintain 4’ from the side property line as well, which observes the spirit of the ordinance.**

Variances to the NCD design standards do not observe the spirit of the ordinance as it strays away from design requirements.

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

**No uses other than those allowed within the district will be allowed with this variance.**

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.*

**If granted, the structure and attached carport will maintain three feet and four feet, respectively, from the northern and eastern side property lines which is not likely to alter the essential character of the district.**

The design of the carport should be in compliance with the Alta Vista NCD. The essential character of the district is maintained with the NCD design standards.

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 finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. The structure facing North Flores Street already existed and encroached into the northern side setback. The circumstances were not created by the owner and are not merely financial.**

The carport should abide by the Alta Vista NCD design standards. There are no unique circumstances existing on the property that would permit the absence of enforcement of the NCD standards.

### **Criteria for Review - Fence Height**

According to Section 35-482(h) of the UDC, in order for a special exception to be granted, the 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 UDC states the Board of Adjustment can grant a special exception for a fence height modification. The additional fence height is intended to provide safety and security of the applicant's property. If granted, this request would be in harmony with the spirit and purpose of the ordinance.**

For the property located on N. Flores street, the front yard fence is not in harmony with the spirit and purpose of the chapter as the applicant is able to reduce the solid-screen fencing to three feet or open up the fencing to allow the current height.

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

**In this case, these criteria are represented by fence heights to protect residential property owners while still promoting a sense of community. An 8' fence along a portion of the side yard will provide additional security for the applicant's property and the carport.**

There are no other front yard fences along N Flores St. and the Alta Vista NCD does not permit solid screened fencing taller than 3' in the front yard fence. This does not substantially serve the public welfare and convenience.

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

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

The neighboring properties are also in the Alta Vista NCD, which is why there are not solid-screened fences taller than 3' in the immediate area.

*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 additional height for the section of side yard fence will not alter the essential character of the district and will provide security of the district.**

The front yard fencing is not permitted by the Alta Vista NCD design standards because it is viewed to alter the essential character of the district. The property owner may trim the fencing to be 3' tall.

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

**The current zoning permits the current use of a single-family home. The requested special exception will not weaken the general purpose of the district.**

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

The alternative to the applicant's request is to conform to the Lot and Building Dimensions of the UDC

Sections 35-310.01, the Fence Height Regulations of Section 35-514, and the Minimum Parking Standards of Section 35-526.

**Staff Recommendation - Side Setback Variances & Parking Waiver**

Staff recommends **Approval** in **BOA-20-10300140** based on the following findings of fact:

1. The attached carport will be 4' away from the eastern side property line;
2. The structure facing North Flores Street will be 3' away from the northern side property line; and
3. On-street parking is available in the immediate area.

**Staff Recommendation - Side Yard Fence Special Exception on W. Kings Highway**

Staff recommends **Approval** in **BOA-20-10300140** based on the following findings of fact:

1. The additional 2' in height is requested for a portion of the eastern side yard fence; and
2. The additional 2' in height will provide more privacy and security which promotes health, safety, and welfare.

**Staff Recommendation - NCD Variances for Front Yard Fence and Carport Roof Line**

Staff recommends **Denial** in **BOA-20-10300140** based on the following findings of fact:

1. The front yard fence is 4' 2" tall;
2. The front yard fence has design aspects that are not consistent with the design regulations of the Alta Vista Neighborhood Conservation District; and
3. The carport has design aspects that are not consistent with the design regulations of the Alta Vista Neighborhood Conservation District.