



# City of San Antonio

## Legislation Details (With Text)

**File #:** 21-3593

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 5/17/2021

**Title:** BOA-21-10300043 - A request for a 3' special exception to allow a front yard solid screen fence to be 6' tall, 2) a 3'4" variance to the minimum 10' front setback to allow a 6'8" front setback with a 2' overhang for a carport, 3) a 5' variance from the minimum 15' Clear Vision field requirement to allow the front yard fence to be 10' away from the street, located at 419 Queretaro Street. Staff recommends Denial with an Alternate Recommendation. (Council District 5). (Michael Pepe, Senior Planner, (210) 207-8208, Michael.Pepe@sanantonio.gov, Development Services Department)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachments

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

Case Number:	BOA-21-10300043
Applicant:	Rose Marie Ochoa
Owner:	Rose Marie Ochoa
Council District:	5
Location:	419 Queretaro Street
Legal Description:	Lot 23 and Lot 24, Block 4, NCB 7403
Zoning:	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager:	Michael Pepe, Senior Planner

### Request

A request for a 1) 3' special exception in Section 35- 514(c) to allow a front yard privacy fence to be 6' tall, 2) a 3'4" variance to the minimum 10' front setback as required in Table 310-1 to allow a 6'8" front setback with a 2' overhang for a carport, 3) a 5' variance from the minimum 15' Clear Vision field requirement to allow the front yard fence to be 10' away from the street.

### Executive Summary

The subject property is located mid-block along Queretaro Street. The applicant received a Stop Work Order for

building without a permit in March of 2021, which caused the submittal for a variance. Upon staff's field visit, the front yard fence on the side appears to be as much as 6 feet in height up until the front property line. Further, staff found the addition of an attached covered patio, built in 2018 without permits, is 6'8" from the front property line. The subject property is located within a neighborhood with varying setbacks to the property line, and along Queretaro, which has 10' of right of way between the curb and property lines.

### **Code Enforcement History**

There is an open code enforcement investigation case for building without a permit. A Stop Work Order was issued on January 26, 2021. Further, on March 10, 2021, there was an investigation performed for a Front-yard Fence height violation, and it was found there was a solid fence over 3 feet in the side of the front yard and within the clear vision area.

### **Permit History**

There are no relevant permits pulled for the property.

### **Zoning History**

The subject property was annexed into the City of San Antonio on July 2, 1945 by Ordinance 2381 and was originally zoned "C" Apartment District. The property was rezoned from "C" to "R-5" Single-Family Residence District by Ordinance 53245 dated January 15, 1981. The zoning converted from "R-5" to the current "R-5" Residential Single-Family District upon adoption of the 2001 Unified Development Code (Ordinance 93881, dated May 3, 2001).

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

<b>Existing Zoning</b>	<b>Existing Use</b>
"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling

### **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling
South	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling
East	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling
West	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is not located within a neighborhood plan. The property is within the El Charro Neighborhood Association and as such they were notified.

### **Street Classification**

Queretaro Street is classified as a Local Road.

### **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. In providing a special exception to the front yard fence height, the spirit of the ordinance would not be observed, which intentionally calls for open fencing within the front yard when over three feet. Allowing 6 foot solid screen fencing would be contrary to the aim of the fence ordinance which is safety and the consistency of neighborhood character.

*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. The 6 foot variance would substantially isolate the three properties along this block to an unreasonable degree.

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

The special exception would eliminate the visibility from the front yard of the neighboring properties.

*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 request for a special exception to the height of the front yard fence would be inconsistent with a commonly established pattern in the neighborhood of predominantly open 4-5 foot front yard fencing.

*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 special exception would create an aesthetic and security hardship and detract from the uniform character of the streetscape.

### **Criteria for Review - Clear Vision Standard 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. The request is to allow encroachment into the clear vision area by solid fencing, which present a hazard to the safety of the surrounding area.

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

Staff finds that any special conditions that, if enforced, would not result in unnecessary hardship. By imposing a literal enforcement, the owner would only need to comply with the clear vision standard through altering the fence.

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. The intent of the clear vision standard is to provide safe egress of vehicles and residents of nearby properties. Variance to this standard would not be consistent with the spirit of the ordinance.

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.*

The variance effects the safe egress of neighboring properties in a way that is out of character with the typical standard for the district.

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 does not find specific circumstances of the property that necessitate a variance to the clear vision standard.

### **Criteria for Review - Front Setback 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 variance being requested is for a building encroachment into the front setback. The request does not seem to be contrary to the public interest.

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

Staff finds that any special conditions that, if enforced, would result in an unnecessary hardship. By imposing a literal enforcement, the existing covered patio would need be overhauled structural to meet the 10' front setback.

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. The intent of the setbacks is to provide spacing between neighboring structures.

By reducing the front setback to 6'8", with a 3'4" variance to the front setback, the structure will not introduce encroachment near a neighboring structure, nor will it violate clear vision standards.

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.*

The request to reduce a portion of the front setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the district. This property is located within an older neighborhood where it is common to find small front yards. Further, additional distance from the street is maintained by the additional right of way in along the street side.

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 variance allows for the continued operation of a small front porch in an otherwise small front yard area, while not varying greatly from the typical blockface.

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

The alternative to the applicant's request is to conform to the Landscaping regulations regarding Fences in UDC Sec. 35-514, as well as the Lot & Setback Dimensions and Lot Layout Regulations of the UDC Sections 35-310.01 and 35-515.

### **Staff Recommendation**

Staff recommends Denial of request 1) to allow a front yard fence to be a 6' tall privacy fence and request 3) a 5' variance from the minimum 15' Clear Vision field requirement in BOA-21-10300043 based on the following findings of fact:

1. The front yard fence would be inconsistent with the established front yard fencing pattern of the surrounding area; and
2. The owner may still construct a front yard fence that is either 3' solid screen or 5' predominantly open; and
3. Would represent a visual obstruction atypical for the neighborhood.

Staff recommends Approval of request 2) to allow a 3'4" variance to the required 10' front setback in BOA-21-10300043 based on the following findings of fact:

1. The addition will remain 6'8" away from the front property line; and
2. There is 10' between the addition and street curb; and
3. The area has many variable front setbacks.