



# City of San Antonio

## Legislation Details (With Text)

**File #:** 21-4330

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 6/21/2021

**Title:** BOA-21-10300060: A request by Robert Alvarado for 1) a 2' variance from the minimum 5' side setback requirement to allow a second dwelling unit to be 3' from the side property line, 2) a 5' variance to the minimum 10' rear setback to allow a dwelling unit to be 5' from the rear property, and 3) a special exception from the maximum fence height to allow a side and rear yard fence to be 8' tall, located at 401 Grove Avenue. Staff recommends Approval. (Council District 5) (Kayla Leal, Senior Planner (210) 207-0197, 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-21-10300060
Applicant:	Robert Alvarado
Owner:	Robert Alvarado
Council District:	5
Location:	401 Grove Avenue
Legal Description:	Lot 12 except SE IRR 7.03 ft, Block 7, NCB 2981
Zoning:	"MF-33 AHOD" Multi-Family Airport Hazard Overlay District
Case Manager:	Kayla Leal, Senior Planner

### Request

A request for 1) a 2' variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow a second dwelling unit to be 3' from the side property line, 2) a 5' variance to the minimum 10' rear setback, as described in Section 35-310.01, to allow a dwelling unit to be 5' from the rear property, and 3) a special exception from the maximum fence height, as described in Section 35-514, to allow a side and rear yard solid fence to be 8' tall.

### Executive Summary

The subject property is located along Grove Avenue near Roosevelt Avenue. The subject property currently has

a single-family residence constructed on the property and is zoned multi-family. The applicant is proposing to build a second residence in the rear of the property and is requesting variances to the side and rear property line in order to better-accommodate the new construction. Upon staff's site visit, it was observed that the side and rear yard fence currently has a lattice that exceeds the maximum fence height by 2'.

### **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 mile City Limits of San Antonio and was zoned "D" Apartment District. Upon adoption of the 2001 Unified Development Code, the zoning converted from "D" to the current "MF-33" Multi-Family District, established by Ordinance 93881 dated May 3, 2001.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
"MF-33 AHOD" Multi-Family Airport Hazard Overlay District	Single-Family Residence

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

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	"MF-33 AHOD" Multi-Family Airport Hazard Overlay District	Single-Family Residence
South	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
East	"MF-33 AHOD" Multi-Family Airport Hazard Overlay District	Single-Family Residence
West	"MF-33 AHOD" Multi-Family Airport Hazard Overlay District	Single-Family Residence

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

The subject property is in the Downtown Area Regional Center Plan and is designated "Urban Low Density Residential" in the future land use component of the plan. The subject property is located within the Roosevelt Park Neighborhood Association and were notified of the case.

### **Street Classification**

Grove Avenue is classified as a local road.

### **Criteria for Review - Side and Rear Setback Variances**

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 and rear setbacks in order to allow a secondary unit on the property.**

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

**A literal enforcement of the ordinance would result in the applicant building five feet from the side property line and ten feet from the rear. There are other non-conforming structures in the area that are already built closer to the property lines than required.**

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 secondary unit will maintain 3' of space and will have gutters installed, which observes 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.*

**If granted, the structure will maintain three feet from the side property line and five feet from the rear property line, which is not likely to alter the essential character of 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 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 rear yard of the lot is small and the variances will accommodate a larger living area. The circumstances were not created by the owner and are not merely financial.**

### **Criteria for Review - Side and Rear 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 was observed upon the site visit and, if granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance.**

*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' tall fence along the side and rear yard on the does not pose any adverse effects to the public welfare.**

*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 unlikely to substantially injure any 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 additional height for the side and rear yard fencing will not alter the essential character of the district.**

*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 and the Fence Height Regulations of Section 35-514.

### **Staff Recommendation - Side and Rear Setback Variance**

Staff recommends **Approval** in **BOA-21-10300060** based on the following findings of fact:

1. The secondary structure will contain gutters to reduce water runoff onto neighboring properties; and
2. The secondary structure will be three feet from the side property lines; and
3. The secondary structure will be five feet from the rear property line.

### **Staff Recommendation - Side and Rear Yard Fence Special Exception**

Staff recommends **Approval** in **BOA-21-10300060** based on the following findings of fact:

1. The additional two feet in height is installed using an open-style lattice; and
2. The additional two feet in height will provide additional safety and security to the property.