



# City of San Antonio

## Legislation Details (With Text)

**File #:** 21-4746

**Type:** Staff Briefing - Without Ordinance

**In control:** Board of Adjustment

**On agenda:** 7/19/2021

**Title:** BOA-21-10300066: A request by Luis Reyes for 1) a 19' 11" variance for the 20' rear setback to allow a 1" rear setback, 2) a fence material variance to allow a Corrugated Metal fence, 3) a 9' variance for the 15' Clear vision area to allow a solid screen fence with a 6' clear vision area, 4) a 4' 2" variance from the 10' front setback to allow a 5' 10" front setback, 5) a 45% variance from the 50% limitation for front yard impervious cover to allow a 95% front yard impervious cover; 6) a 4' 5" variance for the 5' side setback to allow a 7" side setback with a 1' overhang in the southern side, and 7) a request for a special exception to allow a back, side and front yard fence to be 7'6" tall, located at 716 Naylor. Staff recommends Denial. (Council District 3) (Mirko Maravi, Senior Planner, 210-207-0107, Mirko.Maravi@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-21-10300066
Applicant:	Luis Reyes
Owner:	Luis Reyes
Council District:	3
Location:	716 NAYLOR
Legal Description:	Lot north IRR 42.23 of west 19.93 of 10 and north IRR 32.5 feet of 11, Block 13, NCB 3219
Zoning:	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager:	Mirko Maravi, Senior Planner

### Request

For 1) a 19' 11" variance from the 20' rear setback as described in Table 310-1, to allow a 1" rear setback, 2) a fence material variance as described in Sec 35-541(a)(6)(d), to allow a Corrugated Metal fence, 3) a 9' variance from the 15' Clear vision area as described in Sec 35-514(a)(2)(b), to allow a solid screen fence with a 6' clear vision area, 4) a 4' 2" variance from the 10' front setback as described in Table 310-1, to allow a 5' 10" front setback, 5) a 45% variance from the 50% limit front yard impervious cover as described in Table 515-1 to allow a 95% front yard impervious cover; 6) a 4' 5" variance from the 5' side setback as described in Table 310-1, to

allow a 7" side setback with a 1' overhang in the southern side, and 7) a request for a special exception to allow a back, side and front yard fence to be 7'6" tall, as described in Section 35-514.

### **Executive Summary**

The subject property is located off South Presa Street and the applicant initially requested a rear setback variance for a new attached garage. Upon the staff site visit, staff noticed the fence material, clear vision, front and side carport setback, over 50% impervious cover in the front yard and a 7'6" front yard fence, which were added to the application. The lot is a 2,310 square foot lot in an "R-4" base zoning district which requires at a minimum 4,000 square feet. Dwelling appears to have been built in 1922 per Bexar County records. Applicant indicated that no commercial use is conducted in the new garage.

### **Code Enforcement History**

INV-PBP-21-3100001688 - Building without a Permit - May 12, 2021 - Pending the conclusion of this application.

### **Permit History**

There are no relevant permits pulled for the property.

### **Zoning History**

The property was part of the original 36 square miles of the City of San Antonio and zoned "B" Residence District. The zoning converted from "B" Residence District to the current "R-4" 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-4 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-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling
South	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-family dwelling
West	"I-1 AHOD" General Industrial Airport Hazard Overlay District	Single-family dwelling

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

The subject property is located in the South Central San Antonio Community Plan and is designated "Low

Density Residential” in the future land use component of the plan. The subject property is not located within any registered Neighborhood Association.

### **Street Classification**

Naylor is classified as a Local Street.

### **Criteria for Review - 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. Adequate space is not maintained in the rear of the property, which abuts a residential side yard. Top of corrugated metal fence presents a hazard to the public. The front setback and clear vision does not allow for a safe exit into the local street.

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

Staff does not find that any special conditions that, if enforced, would result in an unnecessary hardship. The applicant built the front carport and rear attached garage inside the permitted setbacks.

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 rear setback is set to ensure distance between structure and abutting yard, however a 1” rear setback will not observe the spirit of the ordinance. An alley exists on the side yard, behind the dwelling to have a detached garage and be within the letter and the spirit of the ordinance and also would eliminate the additional front setback and impervious cover variance. The corrugated fence material presents a restricted and hazardous material in the neighborhood.

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 to reduce the rear setback to 1” will substantially injure the adjacent conforming property along with the front clear vision reduction. The impervious cover along with the corrugated metal fence will 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 no unique circumstances existing on the property. The applicant is presented with enough room to have a detached garage in the rear of the property facing an alley, which would not only eliminate the rear setback intrusion, but the need for the front setback and clear vision variance.

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

The alternative to the applicant's request is to conform to the Lot & Setback Dimensions of the UDC Sections 35-310.01, Fences of the UCD Section 35-514(2) and (6) and Impervious Cover Table 515-1.

### **Staff Recommendation - Variances**

Staff recommends Denial in BOA-21-10300066 for 1) a 19' 11" variance for the 20' rear setback as described in Table 310-1, to allow a 1" rear setback, 2) a fence material variance as described in Sec 35-541(a)(6)(d), to allow a Corrugated Metal fence, 3) a 9' variance for the 15' Clear vision area as described in Sec 35-514(a)(2) (b), to allow a driveway with a 6' clear vision area, 4) a 4' 2" variance for the 10' front setback as described in Table 310-1, to allow a 5' 10" front setback, 5) a variance for the 50% limit front yard impervious cover as described in Table 515-1 to allow front yard impervious cover of over 50%, and 6) a 4' 5" variance for the 5' side setback as described in Table 310-1, to allow a 7" front side setback in the southern side to include a 1' overhang, based on the following findings of fact:

1. The corrugated metal fence is unprotected and out of character with the character of the district; and
2. The rear setback will leave no room for maintenance of the structure; and
3. The welfare of the neighborhood will not be protected with the clear vision variance.
4. The impervious cover leaves almost no pervious area in the front yard

### **Criteria for Review - Special Exception**

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 privacy of the applicant's property. If granted, this request would not be in harmony with the spirit and purpose of the ordinance. The fence will create a clear vision issue.

*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 7'6" fence along the front yard is made in such a manner that has the capability of inflicting significant physical injury to the general public.

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

The proposed fence is abutting the neighboring property and will cause substantial injury.

*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 front yard fence will alter the essential character of the district where no other front yard fences exist past the permitted height.

*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 a 5' predominantly open fence in the front yard, the 7'6" fence will weaken the general purpose of the district.

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

The alternative to the applicant's request is to conform to the fence regulations of the UDC Sections 35-514.

### **Staff Recommendation - Special Exception**

Staff recommends Denial in BOA-21-10300066 based on the following findings of fact:

1. The 7'6" fence will substantially injure the neighboring property; and
2. The fence will alter the essential character of the district.