



City of San Antonio

Agenda Memorandum

File Number:15-5867

Agenda Item Number: 3.

Agenda Date: 11/16/2015

In Control: Board of Adjustment

Case Number: A-16-006
Applicant: Juan Pablo De La Rosa
Owner: Juan Pablo De La Rosa
Council District: 6
Location: 5411 Joslyn Lane
Legal Description: Lot 44, Block 4, NCB 13955
Zoning: "R-6 MAOZ-1 AHOD" Residential Single-Family Military Airport
Overlay Airport Hazard Overlay District
Case Manager: Margaret Pahl AICP, Senior Planner

Request

A request for a 1.5 foot variance from the 4 foot maximum fence height, as described in Section 35-514 (d), to allow a 5.5 foot predominately open fence in the front yard.

Executive Summary

The subject property is located in the triangular neighborhood between Enrique Barrera Parkway and US Highway 90, adjacent to Wolff Baseball Stadium. The lot is owned by a neighboring property owner who is in the process of building the house himself. The lot is located directly west of Van de Walle Park, a small pocket park with 4 basketball hoops, 2 picnic tables and a playground. According to the applicant, the basketballs sometimes land in his yard and he does not want the kids climbing the fence to retrieve them. A construction site can be dangerous for unsupervised children. The applicant constructed a 5.5 foot fence, thinking it could be included in the building permit. After calling for an inspection, the applicant was informed that the fence exceeded the maximum allowable height for front yard fencing and applied for a variance.

During the staff site visit, several other iron fences exceeding the maximum height were seen along Joslyn. None of these had variances.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-6 MAOZ-1 AHOD" Residential Single-Family Military Airport Overlay Airport Hazard Overlay District	Construction site

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 MAOZ-1 AHOD” Residential Single-Family Military Airport Overlay Airport Hazard Overlay District	Single-Family Residential
South	“R-6 MAOZ-1 AHOD” Residential Single-Family Military Airport Overlay Airport Hazard Overlay District	Single-Family Residential
East	“C-3NA MAOZ-1 AHOD” General Commercial Non-Alcoholic Sales Military Airport Overlay Airport Hazard Overlay District	Van de Walle Park
West	“R-6 MAOZ-1 AHOD” Residential Single-Family Military Airport Overlay Airport Hazard Overlay District	Single-Family Residential

Comprehensive Plan Consistency/Neighborhood Association

The property is located within the boundaries of the West Sector Plan and currently designated as Suburban Tier in the future land use component of the plan. The subject property is not located within the boundaries of a registered neighborhood association.

Criteria for Review

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 public interest is defined as keeping children away from a construction site.

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

The special circumstance present on the subject property is its proximity to a park. The owner wants to control trespass. Therefore this unique circumstance makes literal enforcement an 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 letter of the law. The intent of the fence regulations is to allow control of access while providing visibility into the property for casual surveillance. Since the fence is open, the spirit of the code is observed.

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

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-6 AHOD” Single-Family Residential Airport Hazard Overlay 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.

According to the applicant and verified by staff, the neighborhood has several fences taller than 4 feet. Therefore, if the variance is granted, the fence will not alter the 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.

The unique circumstance on this property is it is adjacent to a pocket park with basketball hoops. This proximity results in errant balls landing in the applicant's property. The applicant does not want unsupervised children retrieving balls from his yard.

Alternative to Applicant's Request

The applicant could reduce the fence height.

Staff Recommendation

Staff recommends **APPROVAL of A-16-006** based on the following findings of fact:

1. The additional fence height is warranted by the proximity to the park.