



City of San Antonio

Agenda Memorandum

File Number:19-1450

Agenda Item Number: 8.

Agenda Date: 1/14/2019

In Control: Board of Adjustment

Case Number: BOA-18-900021
Applicant: Linda S. Peterson and Jay Pruski
Owner: Linda S. Peterson and Jay Pruski
Council District: 9
Location: 11402 Whisper Green Street
Legal: Lot 44 and 45, Block 23, NCB 15083
Description:
Zoning: "RM-4 NCD-4" Residential Mixed Whispering Oaks
Neighborhood Conservation District
Case Manager: Debora Gonzalez, Senior Planner

Request

A request for 1) a variance from the Whispering Oaks Neighborhood Conservation District to allow a front yard fence in a portion of the front yard, and 2) a special exception, as described in Section 35-514, to allow a 6' tall solid screen fence along a portion of the front yard.

Executive Summary

The subject property is located at 11402 Whisper Green Street at the intersection with Whisper Willow Street. On 5.19.2017, the applicant obtained a fence permit to replace a 6' wooden privacy fence along the rear and side. The applicant was later denied a 3' solid screen fence permit for a portion of the front yard and side due to the fact that Whispering Oaks Neighborhood Conservation District design requirements does not allow for front yard fencing. The 6' tall solid screen fence is made out of solid wood with stone columns not exceeding 6'. During field visits, staff did not notice any similar fences within immediate vicinity. However, it should be noted that the fence is located along a drainage channel that runs the length of the property.

Code Enforcement History

On 7.25.2018, a citation was given for 6' tall solid screen fence build on a portion of the front yard without a permit.

Permit History

On 5.19.2017, a fence permit was issued to replace a 6' wooden privacy fence along the rear and side.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“RM-4 NCD-4” Residential Mixed Whispering Oaks Neighborhood Conservation District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“RM-4 NCD-4” Residential Mixed Whispering Oaks Neighborhood Conservation District	Drainage Channel
South	“RM-4 NCD-4” Residential Mixed Whispering Oaks Neighborhood Conservation District	Single-Family Dwelling
East	“RM-4 NCD-4” Residential Mixed Whispering Oaks Neighborhood Conservation District	Single-Family Dwelling
West	“RM-4 NCD-4” Residential Mixed Whispering Oaks Neighborhood Conservation District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The subject property is within the boundaries of the North Sector Plan and currently designated “Suburban Tier” in the future land use component of the plan. The subject property is located within the Whispering Oaks Neighborhood Association. As such they were notified and asked to comment.

Street Classification

Whisper Green Street is classified as a Local Street.

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. The public interest is represented by preserving the unique character of this community. Staff did not see any similar fencing in the immediate vicinity. However the placement of the fence is minimal and is adjacent to a drainage easement.

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

The Board may find that the adjacent drainage channel is a special condition that warranting the requested fence. Staff can find no further special condition.

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 the intent of the code rather than the strict letter of the law. The intent of the NCD is to protect the integrity of 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.*

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

Staff cannot support the request to allow the fence in the front yard. This request is at odds with the intent of the NCD.

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.*

Other than the adjacent drainage channel, staff is unable to determine any unique circumstances to allow the requested fence to be in the front yard.

Criteria for Review

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 spirit of the chapter is intended to provide for reasonable protections to property owners and to establish a sense of community within our neighborhoods. The request for the fence in the front yard is out of character within the community in which it is located.

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

Staff is unable to establish a special condition that would allow for a 6' privacy fence along a portion of the front yard of the property.

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

The fence is not consistent with surrounding properties and allowing this one property owner to have a 6' privacy fence negatively affects the design consistency within the neighborhood.

- 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.*

This front yard fence is the only 6' tall fence on the intersection of Whisper Green Street and Whisper Willow Street that staff identified. The six foot eight fence also creates inconsistency and the fence does alter the

essential character of the community in which the property is located.

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

The property is located within the “RM-4 NCD-4” Residential Mixed Whispering Oaks Neighborhood Conservation District and permits the current use of a single-family home. The fencing regulations are established to ensure consistency within our communities, and it is difficult to establish how granting the requested special exceptions will not weaken that purpose.

Alternative to Applicant’s Request

The alternative to the applicant’s request would be to adhere to the requirements of both the Unified Development Code and the Neighborhood Conservation District.

Staff Recommendation

Staff recommends **DENIAL** of 1) a variance request from the Whispering Oaks Neighborhood Conservation District to allow a fence in a portion of the front yard, in BOA-18-900021, based on the following findings of fact:

1. The fence is uncharacteristic of the neighborhood as there are no other front yard fences within the immediate area staff inspected, and;
2. The requested variance detracts from the design standards set forth within the Whispering Oaks Neighborhood Conservation District.

Staff recommends **DENIAL** of 2) a special exception request to allow a 6’ tall solid screen fence along a portion of the front yard, in BOA-18-900021, based on the following findings of fact:

1. The request does not observe the spirit of the ordinance.