



# City of San Antonio

## Agenda Memorandum

**File Number:**19-4807

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**Agenda Item Number:** 1.

**Agenda Date:** 6/17/2019

**In Control:** Board of Adjustment

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**Case Number:** BOA-19-10300044  
**Applicant:** Vaneza M. Alvarado  
**Owner:** Vaneza M. Alvarado  
**Council District:** 1  
**Location:** 132 Rehmann Street  
**Legal:** Lot 12, Block 1, NCB 3558  
**Description:**  
**Zoning:** "R-6 RIO-7E MLOD-2 MLR-2 AHOD" Residential Single-Family River Improvement Overlay 7E Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District  
**Case Manager:** Debora Gonzalez, Senior Planner

### **Request**

A request for 1) a 4' variance from the 5' side setback requirement, as described in Section 35-310.01, to allow a detached structure to be 1' from the side property line, 2) a 4' variance from the 5' rear setback requirement, as described in Section 35-310.01, to allow a detached structure to be 1' from the rear property line, 3) a 12' variance from the 20' garage setback requirement, as described in Section 35-516(g), to allow a garage to be 8' from the side property line, 4) a special exception, as described in Section 35-514, to allow an 8' fence along the rear property line, 5) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, and 6) a special exception, as described in Section 35-514, to allow a 5' tall solid screen fence in the front yard of the property.

### **Executive Summary**

The subject property is located at the intersection of Rehmann Street and Adelaide Street surrounded by compact residential lots and KIPP public school. The applicant was originally only seeking to keep the detached addition to the rear of the home. During field visits, staff noted additional violations on the property including, unauthorized fence height along the front yard and the rear property line, and 1' clear vision encroachment. The property is within the RIO-7 overlay and it is exempt for the Office of Historic Preservation (OHP) review as the total number of units on the lot is less than 5. A Certificate of Appropriateness is not

required.

### **Code Enforcement History**

On 10.31.2018 the applicant received a code violation for no fence permit exceeding height and detached shed encroachment.

### **Permit History**

The property owner is seeking variances to allow for permits to be issued.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
“R-6 RIO-7E MLOD-2 MLR-2 AHOD” Residential Single-Family River Improvement Overlay 7E Lackland Military Lighting Overlay Military Lighting Region 2 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-6 RIO-7E MLOD-2 MLR-2 AHOD” Residential Single-Family River Improvement Overlay 7E Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	“R-6 RIO-7E MLOD-2 MLR-2 AHOD” Residential Single-Family River Improvement Overlay 7E Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	“R-6 RIO-7E MLOD-2 MLR-2 AHOD” Residential Single-Family River Improvement Overlay 7E Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	“R-6 RIO-7E MLOD-2 MLR-2 AHOD” Residential Single-Family River Improvement Overlay 7E Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

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

The subject property is within the boundaries of the Lone Star Community Plan and currently designated “Low Density Residential” in the future land use component of the plan. The subject property is within the Collins Garden Neighborhood Association. As such, they were notified and asked to comment.

### **Street Classification**

Rehmann 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 served by setbacks, which help to provide consistent development within the City of San Antonio. The applicant is seeking a variance to allow the detached structure to be 1’ from the side and rear property lines and also a 1’ of the fence is in violation of the Clear Vision field, which creates unsafe conditions. Staff finds that these requests are contrary to the public.

**Staff supports reducing the side and rear setbacks to 3’, which would provide adequate room for maintenance and would provide better separation for fire spread and rainwater runoff. Staff also supports the garage entry to be 8’ from the side property line as the structure provides room for maintenance from the side property line and is not different from the previous garage location.**

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

Staff is unable to establish any special condition that warrants reducing the side and rear setback to only 1’. The applicant could modify the detached structure to be 3’ from the side and rear property lines. One foot of the fence could also be modified to meet the 15’ the clear vision requirement.

**A 3’ side and rear setback would be more appropriate as it would address these concerns. The garage entry to be 8’ from the side property line provides enough access for maintenance.**

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 code is to provide for consistent development and to establish room for maintenance, and to reduce the threat of fire spread. The requests to reduce the side and rear setbacks do not observe the intent of the code. A 14’ setback instead of a 15’ clear vision requirement setback does not observe the intent of the code as it observes the view of oncoming motorists and pedestrians.

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

While other structures in the neighborhood have reduced setbacks, largely because they were built prior to 2001, staff cannot support a 1' side and rear setback. It poses immediate risk to adjacent property and leaves no room for maintenance of the structure. The fence obstructs view from the subject property driveway, which could harm the property owner, and the traveling public.

**Staff is supportive of variances to allow 3' side and rear setbacks and the garage entry to be 8' from the side property line.**

*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.*

There are no unique circumstances present in this case. Had the applicant sought permits prior to construction, they would have been advised of alternative designs that meet the code. The variance requests are very likely merely financial in nature, as the applicant has already spent the money to build the illegal structures and fences.

**Staff is supportive of the 3' side and rear setback and the 8' garage entry from the side property line.**

#### **Criteria for Review**

According to Section 35-482(h) of the UDC, in order for special exception to be granted, 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 a 5' tall solid screen fence in the front yard and the 8' tall solid screen fence in the rear of the property is in harmony with the spirit of the chapter.**

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

**The public welfare and convenience can be served by the added protection of higher front and rear yard fencing, allowing the owners to protect the subject property.**

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

**No adjacent property owner, nor the traveling public, will be harmed by the proposed fence heights.**

*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 fence will create enhanced privacy and security for subject property and is highly unlikely to injure**

**adjacent properties.**

*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 “R-6 RIO-7E MLOD-2 MLR-2 AHOD” Residential Single-Family River Improvement Overlay 7E Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District and 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 applicant would need to adhere to the setbacks, clear vision, and permitted fencing height as established by the Unified Development Code.

### **Staff Recommendation**

Staff recommends **APPROVAL** of 3) a 12’ variance from the 20’ garage setback requirement to allow a garage to be 8’ from the side property line, 4) a special exception to allow an 8’ fence along the rear property line, and 6) a special exception to allow a 5’ tall solid screen fence in the front yard of the property, and **DENIAL** of 1) a 4’ variance from the 5’ side setback requirement to allow a detached structure to be 1’ from the side property line, 2) a 4’ variance from the 5’ rear setback requirement to allow a detached structure to be 1’ from the rear property line, and 5) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, with an **ALTERNATE RECOMMENDATION** of 1) a 2’ variance from the 5’ side setback requirement to allow a detached structure to be 3’ from the side property line, 2) a 2’ variance from the 5’ rear setback requirement to allow a detached structure to be 3’ from the rear property line, in BOA-19-10300044, based on the following findings of fact:

1. The 3’ setbacks will provide room for adequate light, air, and maintenance,
2. The 2’ variances are unlikely to detract from the character of the district, and;
3. The 2’ variances are unlikely to have a negative impact on the adjacent properties.