



# City of San Antonio

## Agenda Memorandum

**File Number:** 19-5217

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**Agenda Item Number:** 7.

**Agenda Date:** 7/1/2019

**In Control:** Board of Adjustment

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**Case Number:** BOA-19-10300063

**Applicant:** Stephen Burton

**Owner:** Stephen Burton

**Council District:** 5

**Location:** 220 Helena Street

**Legal:** Lot 92, NCB 2590

**Description:**

**Zoning:** "R-6 AHOD" Residential-Single Family Airport Hazard  
Overlay District

**Case Manager:** Mercedes Rivas, Planner

### **Request**

A request for 1) a 3'11" variance from the Clear Vision standards to allow a fence to be within the Clear Vision field, as described in Section 35-514, 2) a variance from the restriction of corrugated metal as a fencing material, as described in Section 35-514, to allow for its use as fencing, and 3) special exception, as described in Section 35-514, to allow up to an 8' fence along the front and side property lines.

### **Executive Summary**

The applicant has 3 requests. The first is a request for a variance from the Clear Vision standards to allow a fence to encroach on the Clear Vision field. The second request is for a variance to allow the use of corrugated metal as fencing. The third request is for a special exception to allow up to an 8' fence along the front and side property lines. The applicant has constructed a 5' fence out of corrugated metal along the front and side property lines in order to provide more privacy, a safe space from stray cats and dogs, and a structurally sound enclosure for his dog. The only portion of the fence that is 8' high is the front gate along a portion of the front property line which has an 8' peak. The property is surrounded by residential properties.

### **Code Enforcement History**

No Code Enforcement history exists on the property.

### **Permit History**

The applicant is waiting for variances to be approved to obtain fence permit.

**Subject Property Zoning/Land Use**

<b>Existing Zoning</b>	<b>Existing Use</b>
“R-6 AHOD” Residential-Single Family Airport Hazard Overlay District	Single-Family Home

**Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“R-6 AHOD” Residential-Single Family Airport Hazard Overlay District	Single-Family Home
South	“R-6 AHOD” Residential-Single Family Airport Hazard Overlay District	Single-Family Home
East	“R-6 AHOD” Residential-Single Family Airport Hazard Overlay District	Single-Family Home
West	“R-6 AHOD” Residential-Single Family Airport Hazard Overlay District	Single-Family Home

**Comprehensive Plan Consistency/Neighborhood Association**

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

**Street Classification**

Helena Street is classified as a Local Street.

**Criteria for Review for Items 1 and 2 - Clear Vision and Use of Corrugated Metal**

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.*

Staff is unable to establish any special condition that warrants allowing a variance to the Clear Vision standards as requested.

**The public interest is defined as the general health, safety, and welfare of the public. Removal of a panel will result in a 13’11” clear vision field and could meet the general safety of the public.**

**Additionally, the fence was built with solid wood framing the corrugated metal. The fence enhances aesthetics towards public view and meets the permitted fence height. If granted, this request would be harmony with the spirit and purpose of the ordinance.**

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 a variance to the Clear Vision standards.

**Allowing the applicant to keep the 8' corrugated metal fence will help create a safe and private environment while enhancing aesthetics. Therefore, the public welfare and convenience will be substantially served.**

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. In this case, the intent is to provide enough room for the Clear Vision standards. The proposed reduction does not observe the spirit of the ordinance.

**Removal of a panel will result in a 13'11" clear vision field and could meet the spirit of the ordinance.**

**Granting the variance will not substantially injure the neighboring properties as the fence will enhance safety and privacy for the subject property and is highly unlikely to injure adjacent properties.**

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

The requested variance to Clear Vision standard is contrary to the essential character of the district.

**Removal of a panel will result in a 13'11" clear vision field and could meet the character of the district.**

**The 8' corrugated metal fence contributes to the character of the community. The fence will not impose any immediate threat to adjacent properties.**

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 is unable to establish any unique circumstances that warrants allowing a variance to the Clear Vision standards.

**The unique circumstance in this case is that the new fence was built with a combination of fence materials not exposing the corrugated metal. It is difficult to establish how the request could harm adjacent owners or detract from the character of the community.**

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

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 UDC states the Board of Adjustment can grant a special exception for a fence height modification up to 8'. The additional fence height is intended to provide a more secure and private front yard for the resident. If granted, this 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 maximum fence heights to protect residential property owners while still promoting a sense of community. The fence height will be built along the front and side property lines to provide a more secure and private front yard for the resident. This is not contrary to the public interest.**

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.**

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 8' fence along the front and side property lines would not significantly alter the overall appearance of the district and would provide added security and protection for the property owner.**

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

**The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow an 8' fence in order to provide a more secure and private front yard for the resident. Therefore, 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 clear vision, permitted fence height and materials as described in Section 35-514 and the applicant would need to adhere to the permitted fence heights as described in Section 35-514.

### **Staff Recommendation**

Staff recommends **DENIAL** of 1) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field **with an Alternate Recommendation of a 1'11" variance from the Clear Vision standards to allow the Clear Vision to be 13'11"** and **APPROVAL** of 2) a variance from the restriction of corrugated metal as a fencing material to allow for the use of fencing, and 3) special exception allow up to an 8' fence along the front and side property lines in **BOA-19-10300063**, based on the following findings of fact:

1. The applicant states the fence is necessary for privacy and security purposes, and;
2. The fence does not visually hinder the adjacent property's driveway or other motorists view.

