



# City of San Antonio

## Agenda Memorandum

**File Number:**19-8808

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**Agenda Item Number:** 7.

**Agenda Date:** 12/2/2019

**In Control:** Board of Adjustment

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**Case Number:** BOA-19-10300141

**Applicant:** Maria Muniz

**Owner:** Maria Muniz

**Council District:** 5

**Location:** 208 Gould St

**Legal:** The West 30 feet of Lot 9, Block 6, NCB 2248

**Description:**

**Zoning:** "MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland  
Military Lighting Overlay Military Lighting Region 2 Airport  
Hazard Overlay District

**Case Manager:** Rachel Smith, Planner

### **Request**

A request for 1) a 14.5' variance from the 20' rear setback requirement, as described in Section 35-510.01, to allow an attached addition to be 5.5' from the rear property line, 2) a special exception of the allowable fence height, as described in Section 35-514, to allow a fence to be 6' tall with 4' solid screen within the front yard, 3) a request for a variance from the Clear Vision standards described in Section 35-514 to allow a fence to be within the Clear Vision field.

### **Executive Summary**

The subject property is a 640 square foot home on the south side of Gould Street near N Murray Street within the Prospect Hill Neighborhood. The property was constructed in 2014 by a previous owner up to the rear building setback and 3 feet from both sides of the property, leaving little room for additions. The applicant wishes to add 266 square feet to the rear of the home by way of an inline addition across the rear of the dwelling. The addition will extend the structure to be 5.5 feet from the rear property line to provide additional living space.

Upon visit to the site, staff noticed a 6 feet tall fence within the front yard that was solid and more than 3 feet tall and a portion of the fence extended into the clear vision area (7' from the curb to the fence). According to the UDC, no fence more than 3' tall may be within the clear vision field area, a 15 feet triangle extending from either sides of the driveway in this case. Staff noted that both the side and front fence are in the clear vision

area, as the wood fence is 7' from the curb and 6' tall and the front fence is more than 3' tall. The UDC also requires a special exception for solid fences constructed in the front yard that are greater than 3 feet tall. Staff added the fencing variance and special exception to the application. The applicant does not recall when the fence was built, but Google Earth shows it was built between 2014 and 2016. The applicant states the fence was constructed to provide a safe play space for her children and pets. The property owner hired a contractor to build the fences and was under the impression that what they constructed was permissible.

### **Zoning History**

The subject property is within the original 36 square miles of the City of San Antonio and was zoned "C" Apartment District. Under the 2001 Unified Development Code, established by Ordinance #93881, dated May 3, 2001, the property zoned "C" Apartment District was converted to "MF-33" Multi-Family Residential District.

### **Code Enforcement History**

8/29/19 Work on addition without permit

### **Permit History**

3/27/2014: (#1944152) Residential building permit for single family structure

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

Existing Zoning	Existing Use
"MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Residence

### **Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	"MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Residence
South	"MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Residence
East	"MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Residence

West	“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single Family Residence
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### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is not within any sector or subarea plan. The property is in the Prospect Hill Neighborhood Association boundaries and they were notified of the request.

### **Street Classification**

Gould Street is classified as a local street.

### **Criteria for Review of a Variance**

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 represented by setbacks that maintain neighborhood character and clear vision field area that enhances pedestrian safety. The 5.5' rear and side setback variances is not contrary to the public interest. The encroachment into the clear vision area is not contrary to the public interest. Specifically, the fence is only solid along the west side property line, is 7' from the curb into the clear vision field and the entire front portion of the fence is open.

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

The special condition is that the lot is small and the home was already constructed up to the rear and side building setback. The addition is partially constructed and a literal enforcement would require the destruction of a portion of the home. The requirement to reduce the fence height would have placed the home owner's children and pets at risk.

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 establish cohesive development that preserves the public interest. The request to reduce the rear setback observes the intent of the code as the property complies with other requirements. The solid portion of the fence is 7' from the curb along West property line and the front fence is more than 3' tall but is not solid. Staff finds it still observes the spirit of the code.

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 authorized by the zoning district will be granted with this request.**

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 request will not injure adjacent properties as there is still adequate distance between structures and the home will not create fire safety or stormwater management issues.**

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 circumstances existing here are that the lot is small and the house is already built up to the rear and side building setback lines. These are not the fault of the property owner and are not the result of the general conditions in the community.**

### **Criteria for Review of a Special Exception for Fence Height**

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 additional fence height in the front yard is intended to provide safety and security of the applicant's property. 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. A 6 foot tall fence in the front yard is not contrary to the public interest.**

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

**The fence enhances the privacy and security of the subject property and is unlikely to injure neighboring properties.**

*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 provides a safe environment for the property owner and her children and does not alter the essential character of the district.**

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

**The requested special exception will not weaken the general purpose of the district.**

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

The alternative to the applicant's request is to conform to the setback and lot size limitations established by the Unified Development Code Section 35-310.01 and to the fencing height and clear vision standards described in Section 35-514.

### **Staff Recommendation**

Staff recommends **APPROVAL** of the variance and special exception in **BOA-19-10300141**, based on the following findings of fact:

1. The lot is very small and that is no fault of the owner.
2. The request still leaves adequate space to prevent water runoff onto adjacent property, fire spread, and allow for long term maintenance without trespassing.

3. The additional fence height provides safety and security for the property owner's family.