



City of San Antonio

Agenda Memorandum

File Number:20-2227

Agenda Item Number: 5.

Agenda Date: 3/2/2020

In Control: Board of Adjustment

Case Number: BOA-20-10300006
Applicant: Magaly Fernandez Cera
Owner: Magaly Fernandez Cera
Council District: 4
Location: 223 Zabra Drive
Legal: Lot 6, Block 18, NCB 15427
Description:
Zoning: "R-6 MLOD-2 MLR-1 AHOD" Residential Single-Family
Lackland Military Lighting Overlay Military Lighting
Region 2 Airport Hazard Overlay District
Case Manager: Dominic Silva, Senior Planner

Request

A request for 1) a special exception, as described in Section 35-514, to allow a solid screen fence to be 6' tall within the front property and 2) a variance from the Clear Vision standards, also described in Section 35-514, to allow a fence to be within the Clear Vision field.

Executive Summary

The subject property is located at 223 Zabra Drive, approximately 786' west of Southwest Loop 410. The applicant is requesting to keep a 6' tall solid screen fence within the front yard along the side property lines on both the east and west sides. During site visits, staff noted there are no other fences of similar design and placement located on Zabra Street between Tarasco Drive and Horal Drive.

Code Enforcement History

No code enforcement history exists on this property.

Permit History

A residential fence permit was approved on April 19, 2018 for a 6' wood privacy along the rear and side

property lines behind the front façade of the primary residence and a 3' wood privacy along the front property lines in front of the front façade of the primary residence.

Zoning History

The area was annexed under Ordinance 79035 dated December 31, 1993 and was originally zoned as “R-1” Residential District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property converted from “R-1” Residential District to the current “R-6” Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Residential

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Residential
South	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Residential
East	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Residential
West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Residential

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the West Sector Plan and designated Suburban Tier. The subject property is within the boundaries of the Rainbow Hills registered neighborhood association.

Street Classification

Zabra Street is classified as a local street.

Criteria for Review - 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 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 portion of the fence in the front yard on the side property lines, as built, tower over other nearby fences, and is out of character within the community in which it is located. Staff finds that these requests are not in harmony with the spirit and purpose of the chapter and it differs from other properties in the neighborhood.

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 within the front yard along the side property lines.

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' tall 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.

The 6' solid screen privacy fence creates an inconsistency as it alters the essential character of the community in which the property is located. Further, no other properties within the immediate vicinity have a similar fence.

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" Single-Family Residential 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.

Criteria for Review - Variance for Clear Vision

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, given fence placement, the variance to Clear Vision is contrary to the general health and safety of passersby as vision is limited when exiting the property.

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

There are no special conditions that would result in unnecessary hardship. The property owner was aware of the fencing requirement, and did obtain a fence permit with a 3' solid screen fence within the front property, which was approved. If the property owner came in to amend the permit prior to increasing the height of the fence, Staff could have advised on alternate designs which did not violate Clear Vision.

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 Clear Vision is to increase visibility when entering/exiting properties and limit harm to passersby. Approving the placement of the fence as is within the Clear Vision would decrease visibility and increase harm to passersby.

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 requested variance will not permit a use not authorized within the “R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 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.*

The variance would substantially injure the appropriate use of adjacent properties as the placement of the 6’ solid screen fence within the Clear Vision limits visibility for not only the owner of the property but also adjacent property owners as well.

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 could not find any unique circumstances that warrant the granting of the requested variance. Had the applicant applied for a permit, staff could have assisted with an alternative design that benefits the applicant and the community.

Alternative to Applicant’s Request

Denial of the variance request and special exception would result in the owner having to meet the required fence height regulations in Section 35-514.

Staff Recommendation

Staff recommends **DENIAL** of **BOA-20-10300006**, based on the following findings of fact:

1. The constructed fence is entirely out of character within the neighborhood, and;
2. The permitting process was known to the applicant based upon a previously applied fence permit in 2018, and;
3. Relaxing Clear Vision standards could result in a negative impact.