



City of San Antonio

Agenda Memorandum

File Number:20-3371

Agenda Item Number: 2.

Agenda Date: 6/1/2020

In Control: Board of Adjustment

Case Number: BOA-10300038
Applicant: Fernando Simon Garcia Sr.
Owner: Fernando Simon Garcia Sr.
Council District: 1
Location: 139 Valdez
Legal: Lot 7, NCB 9582
Description:
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard
Overlay District
Case Manager: Azadeh Sagheb, Planner

Request

A request for 1) a special exception, as described in Section 35-514, to allow a privacy fence to be up to 8' tall within the rear yard and 2) an 5' variance, also described in Section 35-514, to allow a privacy fence to be up to 8' tall along the side property line within the front yard and 3) 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 139 Valdez Avenue, west of Brackenridge Golf Course. The applicant has constructed an 8' tall privacy wood fence along the side property line within the front yard without a permit and is proposing an 8' tall privacy fence along the rear-side property lines. The applicant states concerns of distractions caused by customers of the North Saint Mary's Strip.

The characteristic of the Valdez Avenue is a narrow two-way street made up of single-family residences and commercial uses. There is a vacant lot located behind this property that zoned commercial. Therefore, 35-514 (b) (2) allows the owner to build up to 8' tall fence along the very back of property line. At the end of Valdez Street where it crosses St. Mary's Street, there is a bar and a club. Two neighboring houses have built 6' tall solid fence within their front yard that are not in compliance with the code but the majority have 5' tall chain link fence located in front yard.

Code Enforcement History

Code violation notices were given to homeowner on March 03, 2020 for fence height.

Permit History

No permit history exists on this property.

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “C” Apartment District. The property was rezoned by Ordinance 83331, dated December 22, 1995 from “C” Apartment District to “R-1” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May, 03, 2001, the property zoned “R-1” Single-Family Residence District converted to the current “R-6” Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“C-2P UC-4 AHOD” Commercial Pedestrian North Saint Mary’s Urban Corridor Airport Hazard Overlay District	Vacant Commercial lot
South	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
East	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-6 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The subject property is within the boundaries of the Midtown Regional Center Plan and currently designated as Urban Low Density Residential in the future land use component of the plan. The subject property is located within the boundaries of Tobin Hill Community Association. As such, they were notified and asked to comment.

Street Classification

Valdez Street is classified as a local street.

Criteria for Review - Special Exception for Fence Height within Rear Yard

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 UDC states the Board of Adjustment can grant a special exception for a fence height modification up to eight feet. The additional fence height 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. An 8' tall closed fence along the rear property lines will provide additional security for the applicant's property. This is not contrary to the public interest.

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

The fence will create enhanced security and privacy for the subject property and is highly unlikely to injure adjacent properties. The material and style of the fence is similar to other fences and is not noticeable from the right-of-way. Further, the fencing does not violate Clear Vision standards.

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 fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.

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.

Criteria for Review - Variance Request for Fence Height in Front Yard and Clear Vision Field

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. If the property owner came in to obtain the permit prior to constructing the high 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 current 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 variance would substantially injure the appropriate use of adjacent properties as the placement of the 8' 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. If 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 request would result in the owner having to meet the required fence height regulations in Section 35-514.

Staff Recommendation

Staff recommends **APPROVAL of BOA-10300038** of the requested special exception for the rear yard fence, based on the following findings of fact:

1. The material and look of the existing fence is not out of character with the surrounding neighborhood.

Staff Recommendation

Staff recommends **DENIAL of BOA-10300038** of the requested variance for a variance to allow a solid screen fence to be up to 8' tall along the side property line within the front yard and clear vision, based on the following findings of fact:

1. The constructed fence within the front yard is entirely out of character in the neighborhood, and;
2. Clear Vision standards are in violation.