



# City of San Antonio

## Agenda Memorandum

**File Number:**20-3629

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**Agenda Item Number:** 3.

**Agenda Date:** 6/15/2020

**In Control:** Board of Adjustment

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Case Number: BOA-10300052  
Applicant: Eduardo Di Loreto  
Owner: Justo Ramirez.  
Council District: 5  
Location: 509 Dowdy  
Legal: Lot E 110 FT of Lot 38, Block 2, NCB 3572  
Description:  
Zoning: "R-6 MLOD-2 MLR-2 AHOD" Residential Single-Family  
Lackland Military Lighting Overlay Military Lighting  
Region 2 Airport Hazard Overlay District  
Case Manager: Azadeh Sagheb, Planner

### **Request**

A request for 1) a variance from the minimum lot size of 6,000 square feet to allow a lot to be 4,486 square feet, 2) a special exception to allow a solid screen fence to be up to 6' tall along the side property line within the front yard, and 3) a variance from the Clear Vision standards to allow a fence to be within the Clear Vision field.

### **Executive Summary**

The subject property is located at 509 Dowdy Street, north of San Pedro Creek. The applicant has constructed a 6' tall privacy wood fence along the north side of property line within the front yard without a permit and it is 8' away from the sidewalk. He also built a 4' privacy fence along the south side property line without obtaining a permit and it is up to the edge of sidewalk.

The characteristic of the Dowdy Street is made up of single-family residences. The majority of houses in that territory have 5' tall chain link fence within the front yard.

The lot is currently 4,486 square feet, below the required 6,000 square feet. There is a pending platting application depends on this variance request.

### **Code Enforcement History**

There is no code enforcement record for this property.

### **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. The property was rezoned by Ordinance 2006-12-14-1441, dated December 14, 2006 from “MF-33” Multi-Family Residential District to its current “R-6” Single-Family Residence District.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
“R-6 MLOD-2 MLR-2 AHOD” Residential Single-Family 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 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	“R-6 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	“R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	“R-6 MLOD-2 MLR-2 AHOD” Residential Single-Family 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 Downtown Area 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 Lone Star Neighborhood Association. As such, they were notified and asked to comment.

### **Street Classification**

Dowdy Street is classified as a local street.

### **Criteria for Review - Variance to Lot Size 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, the smaller lot size, 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.*

**The unnecessary hardship relates to the fact that if the variance is not granted, the applicant will have to go through the rezoning process. This would cause delays in platting process and requires additional expenses.**

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 property was an arbitrary lot created a long time ago prior to the current owner's purchase. The owner acquired the property with the current specific size and has invested time and effort for its development.**

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/existing 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.*

**No uses other than those allowed within the district will be allowed with this variance.**

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 subject property and the adjacent properties are single-family dwellings. Further, since it is the**

**same residential single family use, this variance would not substantially injure or alter the use or character of adjacent conforming property or character of the district.**

The privacy fence has already been built, and it is 8' away from sidewalk on the north side and up to the edge of sidewalk on the south side. 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.*

**The unique circumstances existing on the property are neither due to the general conditions of the district, nor due to the owner, and is not financial in nature. This is created by the proliferation of older, outdated substandard lots.**

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 neighborhood. Although staff recommends denial, the applicant can push the fence back to have 9' space between the fence and sidewalk to comply with the Clear Vision Standards.

#### **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 UDC states the Board of Adjustment can grant a special exception for a fence height modification up to six 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. A 6' tall closed fence along the side 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.**

- 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 current zoning 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**

Denial of the request would result in the owner having to meet the required lot size requirements adhering to Section 35-310, and fence height regulations and clear vision standards in Section 35-514.

### **Staff Recommendation**

Staff recommends **APPROVAL of BOA-10300052** of the requested “variance from the minimum lot size of 6,000 square feet to allow a lot to be 4,486 square feet”, based on the following findings of fact:

1. The requested variance is will not detract from the neighborhood character.

### **Staff Recommendation**

Staff recommends **DENIAL of BOA-10300052** of the requested “a variance from the Clear Vision standards”, based on the following findings of fact:

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

### **Staff Recommendation**

Staff recommends **Approval of BOA-10300052** of the requested “special exception to allow a solid screen fence to be up to 6' tall along the side property line within the front yard, based on the following findings of fact:

1. The material used for fencing is not out of character in the district.