



# City of San Antonio

## Agenda Memorandum

**File Number:**21-4480

**Agenda Item Number:** 5.

**Agenda Date:** 6/21/2021

**In Control:** Board of Adjustment

Case Number:	BOA-21-10300057
Applicant:	Laura Butterfield
Owner:	Laura Butterfield
Council District:	7
Location:	9306 Pottesgrove
Legal Description:	Lot 59, Block 5, NCB 17883
Zoning:	"R-6" Residential Single-Family District
Case Manager:	Mirko Maravi, Senior Planner

### **Request**

A request for 1) a 15' variance from the minimum 20' rear setback as required in Section 35-310.01, to allow the structure to be 5' from the rear property line, 2) a 1'8" variance from the minimum 5' side setback as required in Section 35-310.01, to allow the structure to be 3'4" from the side property line, and 3) a 2' special exception request from the maximum fence height of 6' to allow a back and side yard fence to be 8' tall, as described in Section 35-514.

### **Executive Summary**

The subject property is in a cul-de-sac off Silverbrook Place in a predominantly single-family area. The applicant is proposing to build a 184 square foot attached accessory dwelling in the rear yard. The attached accessory dwelling must abide by principal structure setback though the existing structure was built to zero lot line making it a Nonconforming structure. An attached accessory dwelling would normally follow the district setbacks of 5 foot side and 20 foot rear. The applicant is also requesting a special exception to allow a fence along the back property line to be 8' tall.

Platted in 1982 many of the homes on Pottesgrove were built to zero lot line between 1984 and 1985 with annexation taking place December 1985. The plat makes no reference to zero lot line yet deed restrictions from 1983 mention zero lot line development with overhang on neighboring lots. Many of the homes on Pottesgrove zero lot line side setbacks are now considered Nonconforming structures.

### **Code Enforcement History**

No code enforcement history exists on this property.

### **Permit History**

No permits have been processed for this property.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 61607, dated December 20, 1985 and zoned Temporary "R-1" Single-Family Residence District. The zoning converted from "R-1" to the current "R-6" Residential Single-Family District upon adoption of the 2001 Unified Development Code (Ordinance 93881, dated May 3, 2001).

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

Existing Zoning	Existing Use
"R-6" Residential Single-Family District	Single-Family Residence

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

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6" Residential Single-Family District	Single-Family Residence
South	"R-6" Residential Single-Family District	Single-Family Residence
East	"R-6" Residential Single-Family District	Single-Family Residence
West	"R-6" Residential Single-Family District	Single-Family Residence

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Northwest Community Plan and is designated "Low Density Residential" in the future land use component of the plan. The subject property is not located within any registered Neighborhood Association.

### **Street Classification**

Pottesgrove is classified as a Local Roads.

### **Criteria for Review - Variances**

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. The applicant is requesting a variance to the rear and side setback for an attached accessory dwelling, which is not contrary to the public interest. The rear setback will have more than 40' to the abutting structure and the side setback will have 3'4" which would leave enough room for maintenance and an overhang if approved.

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

The attached accessory dwelling is required to comply with the setbacks of the main structure, however if detached, a rear setback variance would not be required. The side setback would also not be required per Sec 35-516 projecting Architectural Features, which permits a side yard setback of 3' with no projections within those 3'.

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 defined as the intent of the code, rather than the exact letter of the law. The principal home is 1,780 square feet, which would allow an attached accessory dwelling of 623 square feet. The proposed 184 square foot accessory dwelling is significantly less, however with the size of the rear yard, the applicant is building to the respective size.

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 side are rear setback 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.*

If granted, the attached accessory dwelling will have ample enough room for maintenance on the side and rear. The addition will not alter the essential character of the district in which the property is located.

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 finds the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property. The size of the rear yard does not allow adequate room for a detached accessory dwelling and the size of the detached accessory dwelling is far below what would be permitted with the size of the principal dwelling.

### **Criteria for Review - 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. 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 fence heights to protect residential property owners while still promoting a sense of community. An 8' fence along a rear yard will provide additional security for the applicant's property and the carport.**

*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 additional height for the section of side yard fence will not alter the essential character of the district and will provide security 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 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**

The alternative to the applicant's request is to conform to the Lot and Building Dimensions of the UDC Sections 35-310.01, and the Fence Height Regulations of Section 35-514.

#### **Staff Recommendation - Side and Rear Setback Variances**

Staff recommends **Approval** in **BOA-21-10300057** based on the following findings of fact:

1. The detached accessory dwelling will be 5' from the rear and 3'4" from the side property line, leaving enough room for maintenance of the addition; and
2. If available room were present, the addition would meet the standards as a detached accessory dwelling without a variance for the rear setback.

#### **Staff Recommendation - Rear Yard Fence Special Exception**

Staff recommends **Approval** in **BOA-21-10300057** based on the following findings of fact:

1. The 8' fence will be constructed on the back property line; and
2. The additional height will provide more privacy and security which promotes health, safety, and welfare.