



# City of San Antonio

## Agenda Memorandum

**File Number:**21-5359

**Agenda Item Number:** 1.

**Agenda Date:** 9/13/2021

**In Control:** Board of Adjustment

|                    |  |
|--------------------|--|
| Case Number:       | BOA-21-10300083  |
| Applicant:         | Maricela Sanchez   |
| Owner:             | Maricela Sanchez   |
| Council District:  | 2  |
| Location:          | 531 Peggy Drive  |
| Legal Description: | Lot 42, Block 6, NCB 13909   |
| Zoning:            | "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District |
| Case Manager:      | Kayla Leal, Senior Planner   |

### **Request**

A request for 1) a special exception to allow a predominately open front yard fence, as described in Section 35-514, to be 6' tall with a 6' 10" tall gate, 2) a special exception to allow a solid screen fence in the front yard, as described in Section 35-514, to be 6' tall, 3) a 4' 11" variance from the minimum 5' side setback requirement, as described in Section 35-510, to allow an attached carport to be 1" from the side property line, and 4) a 3' 6" variance from the 15' minimum Clear Vision Standard, as described in Section 35-514, to allow a gate to be 11' 6" away from the street.

### **Executive Summary**

The subject property is located along Peggy Drive, southeast of the Loop 410 and IH-10 East interchange. The property owner was issued a Stop Work Order for not having a fence permit for the front yard fence. The fencing along the front property line is wrought iron and exceeds the 5' height maximum and there is a section of solid screened fencing along the side property line which is installed past the front façade of the home. This section of solid screened fencing is considered to be in the front yard and is exceeding the 3' maximum height for solid screened fencing. Upon the site visit conducted by staff, a carport was observed to be encroaching into the side setback by 4' 11".

Additionally, it was observed that the front yard fence encroaches into the Clear Vision Field. DSD Traffic Engineering staff reviewed this item and see no concern with the proposed placement. Proposed gate layout and fence height does not seem to propose any clear vision or sight constraints upon our review.

### **Code Enforcement History**

A Permit Investigation occurred on May 27, 2021 and a Stop Work Order was issued on June 9, 2021. The applicant applied for BOA shortly after the Stop Work Order.

### **Permit History**

No permits were found for the subject property.

### **Zoning History**

The subject property was annexed into San Antonio City Limits on December 16, 1965, established by Ordinance 33810, and was zoned "A" Single Family Residence District. The zoning changed to "R-1" Single Family District on November 2, 1989, established by Ordinance 70527. Upon adoption of the 2001 Unified Development Code, the zoning converted from "R-1" to the current "R-6" Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001.

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

| Existing Zoning  | Existing Use            |
|--|-------------------------|
| "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District | Single-Family Residence |

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

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

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

The subject property is in the I-10 East Corridor Community Plan and is designated "Low Density Residential" in the future land use component of the plan. The subject property is located within the Eastgate Neighborhood Association and were notified of the case.

### **Street Classification**

Peggy Drive is classified as a local road.

### **Criteria for Review - Variances for Carport and 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. The applicant is requesting a variance from the side setback for an attached carport. The carport is already constructed and is currently built 1" away from the side property line.

**Staff is recommending an alternate recommendation to request that the carport be 3' away from the property line, which is not contrary to the public interest.**

**Regarding the Clear Vision variance, DSD Traffic Staff has reviewed the request and finds that the fencing does not propose any clear vision or sight constraints.**

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

A literal enforcement of the ordinance would result in the applicant in adjusting the carport to be 5' from the side property line.

**By constructing the carport 3' from the side property line, the carport will reduce the risk of fire hazards.**

**Proposed gate layout and fence height does not seem to propose any clear vision or sight constraints upon our review.**

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. A 1" side setback will not observe the spirit of the ordinance, as it may pose a fire hazard and would be required to be fire rated.

**The recommended variance to allow a 3' side setback variance will maintain the spirit of the ordinance to create more space between the carport and the adjacent structure.**

**Proposed gate layout and fence height does not seem to propose any clear vision or sight constraints and meet the spirit of the ordinance.**

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.*

Staff finds the request for a 4' 11" variance is proposed too close to the property line and is likely to affect the adjacent property.

**If the alternate recommendation is granted, the structure and attached carport will further the distance between structures which is not likely to alter the essential character of the district. The adjacent property has a carport with similar setbacks.**

**Proposed gate layout and fence height does not seem to propose any clear vision or sight constraints upon our review.**

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 such as the small amount of available space.**

### **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 was observed upon the site visit and, if granted, staff finds the 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. A 6' predominately open fence with a 6' 10" tall gate along the front property line does not pose any adverse effects to the public welfare. The 6' tall solid screened fence in the front yard also does not pose any adverse effects.**

- 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 unlikely to substantially injure any neighboring properties. DSD Traffic Staff has reviewed the request and finds that the fencing does not propose any clear vision or sight constraints.**

- 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 front yard fence will not alter the essential character of the district. There are similar wrought iron front yard fences in the surrounding area.**

- 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 Section 35-310.01 and the Fence Height Regulations of Section 35-514.

### **Staff Recommendation - Side Setback Variance and Clear Vision Variance**

Staff recommends **Approval** of the Clear Vision Variance request.

Staff recommends Denial **with an Alternate Recommendation of a 2' variance to the minimum side setback of 5' to allow the carport to be 3' away from the side property line in BOA-21-10300088** based on the following findings of fact:

1. The carport will be 3' away from the side property line; and
2. The adjusted width of the carport will be 10'.
3. Proposed gate layout and fence height does not seem to propose any clear vision or sight constraints.

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

Staff recommends **Approval** of the fence height special exception request

1. The fence along the front property line is predominately open and is six feet tall with a 6' 10" gate; and
2. The gate is on a rolling track; and
3. The fence along the side property line in the front yard is 6' tall;
4. DSD Traffic Staff finds the fencing does not propose any clear vision or sight constraints.