



City of San Antonio

Agenda Memorandum

File Number:15-2057

Agenda Item Number: 3.

Agenda Date: 3/16/2015

In Control: Board of Adjustment

Case Number: A-15-052

Applicant: Carlos Gutierrez
Owner: Josephina Gutierrez
Council District: 6
Location: 747 SW 38th Street
Legal Description: Lot 23, Block 12, NCB 8990
Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District
Case Manager: Logan Sparrow, Planner

Request

A request for a two foot variance from the four foot maximum front yard fence height, as described in Section 35-514, to allow a six foot tall wrought iron fence in the front yard of the property.

Executive Summary

The subject property is located at 747 SW 38th Street approximately 506 feet south of Eldridge Avenue. The applicant is seeking a variance to allow a six foot tall wrought iron fence, which was constructed without permits, to remain. While driving around the community, including along SW 38th Street, staff noted that the six foot tall, wrought iron fencing is extremely common within the community. The fence was built as a means to protect the home and to deter criminal activity, which is common within the community.

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	"R-6 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwelling
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 property is not within the boundaries of any neighborhood plan. The subject property is located within the boundaries of the Community Workers Council registered neighborhood association. As such, the neighborhood association was notified and asked to comment.

Criteria for Review

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 public interest is represented by fence height limitations to encourage a sense of community and ensure clear-vision requirements are maintained for public safety. In this case, the subject property is not a corner lot and thus poses little threat to the safety or welfare of the public. Additionally, staff noted that this type of fencing is very common in the community, so staff finds that the requested variance is not contrary to the public interest.

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

A literal enforcement of the code would require that the applicant remove two feet of the current fence to make the structure conforming to the standards established by the Unified Development Code. The special condition present in this case is the prevalence of criminal activity within the community. The applicant constructed the fence to protect the home when he is out at work. The owner of the property has had multiple items stolen from the front and back yards. Additionally, the applicant states that the home has been burglarized in the past, though no police reports were provided to staff. As this type of fencing serves to protect the applicant's home, and considering that this type of fencing is very common in the community, staff finds that it would be an unnecessary hardship to ask the applicant to remove two feet of the fence to make it conforming.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The requested variance is to allow a fence that protects the applicant's home. This type of fencing is extremely common within this community and contributes to a character that is relatively unique to this area. Staff finds that granting the variance will result in substantial justice.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-6 AHOD” Residential Single-Family 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.*

Six foot tall, wrought iron fencing is very common in the community. Though staff was unable to find any other variances having been granted on the street that the subject property is located, staff did find that several similar requests have been approved on surrounding streets. As such, by granting the variance, the character of the district will not be harmed. It is also unlikely that the variance will harm adjacent property as they, too, have a six foot tall wrought iron fence.

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 present in this case are the abnormally high occurrences of theft. Another unique circumstance is that many properties within the community have the same type of fencing. The fence is requested to deter criminal activity which is not the fault of the applicant.

Alternative to Applicant’s Request

The applicant needs to remove two feet of the existing fence to come into compliance with the standards established by the Unified Development Code.

Staff Recommendation

Staff recommends **APPROVAL of A-15-052** based on the following findings of fact:

1. The existing fence type is very common within the community and;
2. The requested variance is intended to deter criminal activity within the community and;
3. Adjacent property owners have the same type of front yard fencing.