



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** April 22, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon

**CASE NUMBER:** BOA-24-10300045

**APPLICANT:** Nerida Chapa

**OWNER:** Nerida Chapa

**COUNCIL DISTRICT IMPACTED:** District 1

**LOCATION:** 2911 Deer Ledge Drive

**LEGAL DESCRIPTION:** Lot 8, Block 1, NCB 14103

**ZONING:** "R-5" Residential Single-Family District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

- 1) A 3' special exception from the maximum 3' fence height to allow a 6' privacy fence east side front yard. Section 35-514
- 2) A 3'-2" variance from the minimum 5' side setback for an accessory structure to be 1'-10" from side set back. Section 35-370(b)(1)

**Executive Summary**

The subject property is located west of Vance Jackson Road, north of Callaghan Road, within the corner of Boutwell Drive and Deer Ledge Drive. The applicant, being the property owner, installed the fence to create further separation and privacy from neighboring property. Code Enforcement initiated an investigation on October 25, 2023, for building without a permit due the privacy fence, exceeding the height maximum allowance of 3' for a front yard fence. The property was reinspected and cited by Code Enforcement on January 30, 2024, with no further actions having been made by property owners. Code Enforcement Administrative Hearing and citations are on hold pending

BOA decision. Additionally, during site visit, Staff found that an existing structure on the property requires a 4'-2" variance to be 1'-10" from the side setback. The issuance of a building permit is pending the outcome of the Board of Adjustment.

### **Code Enforcement History**

INV-PBP-23-3100003771- PMT-Building without a permit 10/25/2023

COD-ADH-REQ24-43900526- Code/Administrative Hearing 02/07/2024

### **Permit History**

The applicant has not yet applied for the building permit.

### **Zoning History**

The property was annexed by the City of San Antonio by Ordinance 18115, dated September 24, 1952, and zoned "A" Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "A" Single-Family Residence District converted to the current "R-5" Residential Single-Family District.

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

#### **Existing Zoning**

"R-5" Residential Single-Family District

#### **Existing Use**

Single-Family Residential

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

#### **North**

#### **Existing Zoning**

"R-5" Residential Single-Family District

#### **Existing Use**

Single-Family Residential

#### **South**

#### **Existing Zoning**

"R-5" Residential Single-Family District

#### **Existing Use**

Single-Family Residential

#### **East**

#### **Existing Zoning**

"R-5" Residential Single-Family District

#### **Existing Use**

Single-Family Residential

#### **West**

#### **Existing Zoning**

"R-5" Residential Single-Family District Hazard Overlay District

#### **Existing Use**

Single-Family Residential

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is currently located in the North Sector Plan and is designated as “Suburban Tier” in the future land use component of the plan. The subject property is located within 200’ of the Carrington Place Neighborhood Association and were notified of the case.

**Street Classification**

Deer Ledge Drive is classified as a local road.

**Criteria for Review – Fence Height Special Exception**

According to Section 35-482(h) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

*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 fence height being requested is 6’ for privacy fence for the east of the front property line. If granted, staff finds the request would not be in harmony with the spirit and purpose of the ordinance, as the request exceeds the maximum height requirements for a fence in the front yard.

*B. The public welfare and convenience will be substantially served.*

In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The proposed fence does not appear to serve the public welfare and convenience, as there are no fences similar in design in the immediate surrounding area.

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

The special exception will substantially injure the neighboring properties as it will create a disproportionate fence height and composition along the front yards.

*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 fence height in the front property line appears to alter the location for which the special exception is sought, as only one other similar styled fence was observed in the area.

*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 weaken the general purpose of the district as it goes against the established Unified Development Code fence standards.

### **Criteria for Review – Side Setback Variance**

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 restricted setbacks to provide adequate spacing between properties. The applicant is requesting a variance to the side setback to allow an accessory structure to be 1'-10" from the side property line. This distance does not provide suitable spacing and is 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 ordinance would result in the applicant building the structure five feet from the side property line, which would not result in an unnecessary hardship as staff found no special conditions on the subject property that would warrant the need for a reduced side setback.

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. In this case, the intention is for sufficient spacing between structures and property lines. The addition would be 1'-10" from the side property line, which does not observe the spirit of the ordinance as it would be too close to the side property line and neighboring property.

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.*

If granted, the structure will be 1'-10" from the side property lines, which is likely to cause harm to the adjacent conforming property, as the addition will be too close to the side property line causing possible water runoff on the adjacent neighboring property.

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 not due to unique circumstances existing on the property as sufficient space exists to relocate the structure.

### **Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the fence height and side setback requirements of the UDC Sections 35-514 and 35-370(b)(1).

### **Staff Recommendation – Fence Height Special Exemption**

Staff recommends Denial in BOA-24-10300045 based on the following findings of fact:

- 1) The request will alter the essential character of the district as only one other property in the immediate area have fence exceeding the regulations of the Unified Development Code in height and privacy; and,
- 2) The request will injure the appropriate use of the surrounding properties.

### **Staff Recommendation – Side Setback Variance**

Staff recommends Denial in BOA-24-10300045 based on the following findings of fact:

- 1) The addition will injure neighboring lot as there is not adequate space between properties; and
- 2) The addition will be too close to the side property line causing possible water runoff on the adjacent neighboring property.