



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** October 21, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Amin Tohmaz, Interim Department Head

**CASE NUMBER:** BOA-24-10300189

**APPLICANT:** Miguel Rivera

**OWNER:** Christine Ortiz and Miguel Rivera

**COUNCIL DISTRICT IMPACTED:** District 5

**LOCATION:** 146 Los Arboles

**LEGAL DESCRIPTION:** Lot 12, NCB 7788

**ZONING:** "R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Airforce Base Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**CASE MANAGER:** Colton Unden, Planner

**A request for**

1) A 4' variance from the minimum 5' side setback to allow a 1' side setback for a porch.  
Section 35-310.01

2) A 6'-6" variance from the minimum 10' front setback to allow a 3'-6" front setback.  
Section 35-310.01

3) A 4'-11" variance from the minimum 5' side setback to allow a 1" side setback for an accessory structure.  
Section 35-370(b)(1)

4) A 4' variance from the minimum 15' clear vision to allow a 11' driveway clear vision.  
Section 35-514(a)(2)

5) A 1' special exception from the maximum 6' rear fence height to allow a 7' fence height in the rear yard.

Section 35-514

### **Executive Summary**

The subject property is located along Los Arboles Street, east of South Flores Street, located within the St. Leo's Neighborhood Association. The applicant had home and accessory structure additions done by a contractor that did not acquire permits for the work completed. According to the applicant's Residential Improvements Permit Application a home expansion was added to the front of the existing house as well as patios to the front and rear, as well as adding an accessory structure to the rear.

### **Code Enforcement History**

INV-BLD-INV24-23200448 – Building Investigation – Pending Resolution

INV-ELE-INV24-23300493 – Electrical Investigation – Pending Resolution

INV-MEC-INV24-23400436 – Mechanical Investigation – Pending Resolution

INV-PLB-INV24-23500438 – Plumbing Investigation – Pending Resolution

### **Permit History**

RES-ACC-PMT24-32100910 – Accessory Building Permit

RES-ADD-PMT24-32500910 – Home Addition Permit

RES-COV-PMT24-32300910 – Covered Patio or Porch Permit

RES-CRT-PMT24-32200910 – Carport Permit

MEP-ELE-PMT24-33327557 – Electrical General Permit

MEP-GAS-PMT24-34226395 – Plumbing Gas Permit

MEP-MEC-PMT24-33925732 – Mechanical Permit

MEP-PLM-PMT24-34324875 – Plumbing General Permit

### **Zoning History**

The property was annexed into the City of San Antonio by Ordinance 1391, dated September 22, 1944, and zoned "D" Apartment District. The property was rezoned by Ordinance 83932, dated April 11, 1996, to "R-7" Small Lot Home District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "R-7" Small Lot Home District converted to the current "R-4" Residential Single-Family District.

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

#### **Existing Zoning**

"R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Airforce Base Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

#### **Existing Use**

Single-Family Dwelling

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

#### **North**

#### **Existing Zoning**

"R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Airforce Base Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Single-Family Dwelling

**South**

**Existing Zoning**

"R-6 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Airforce Base Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Single-Family Dwelling

**East**

**Existing Zoning**

"R-5 RIO-4 MLOD-2 MLR-2 AHOD" Residential Single-Family River Improvement Overlay 4 Lackland Airforce Base Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Vacant Lot

**West**

**Existing Zoning**

"R-4 MLOD-2 MLR-2 AHOD" Residential Single-Family Lackland Airforce Base Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the South Central Community Plan and is designated as "Low Density Residential" in the future land use component of the plan. The subject property is located within the St. Leo's Neighborhood Association, and they have been notified of this request.

**Street Classification**

Los Arboles Street is classified as a Local Road.

**Criteria for Review – Side Setback, Front Setback, Side Setback for an Accessory Structure, and Driveway Clear Vision 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. In this case, the public interest is represented by the side setback, front setback, side setback for an accessory structure and a driveway clear vision. The requested variances are contrary to the public interest as the reduced setbacks will aggravate water runoff and increase risk of fire spreading between

buildings. Additionally, the reduced clear vision closely located to a residential intersection creates a public hazard.

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

A literal enforcement of setback ordinances would not result in unnecessary hardship as the applicant can modify the additions to the lot to come into compliance. Additionally, space on the lot exists to meet the clear vision standard for a driveway.

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

The requested setback variances do not appear to be in the spirit of the ordinance as no other homes in the immediate area exhibited encroachment into the setbacks as deep as the variances are requesting. Furthermore, issues on water runoff and fire safety will be aggravated with the reduced setbacks. Additionally, the reduced clear vision will not observe the safety mitigation controls the ordinance established.

*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 that the setback variances will substantially injure the appropriate use of adjacent properties as increased water runoff and fire spreading risks will be inflicted on neighboring properties. Additionally, the reduced clear vision will injure adjacent properties by potentially creating a safety hazard in the immediate area.

*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 no unique circumstances existing on the property warranting the need to have reduced setbacks. The lot is adequately sized, and neighboring properties do not encroach into their setbacks and allows for proper clear vision near an intersection.

#### **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. If granted, the special exception will be contrary to the spirit and purpose of the Chapter. No other fences were seen in the immediate area exceeding the guidelines of the UDC.

*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 requested fence height will not add to the protection of the property beyond what is afforded by following the guidelines of the UDC.

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

The fence as requested would substantially injure neighboring properties as a fence height of this extent in the rear yard is not seen in the immediate vicinity.

*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.*

Upon inspection of the district and location, the fence height will alter the essential characteristics 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.*

If granted, the special exception will alter the general purpose of the district, or the regulations herein established for the specific district. The fence exceeds the height regulations by 1-foot and will not enhance the security of the property beyond what can be afforded by following the guidelines of the UDC.

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

The alternative to the applicant's request is to conform to the side setback, front setback, side setback for an accessory structure, driveway clear vision, and rear fence height requirements of the UDC Sections 35-310.01, 35-370(b)(1), 35-514(a)(2), and Section 35-514.

#### **Staff Recommendation – Side Setback, Front Setback, Side Setback for an Accessory Structure, and Driveway Clear Vision Variances**

Staff recommends Denial in BOA-24-10300189 based on the following findings of fact:

1. The reduced setbacks will aggravate water runoff and fire safety issues for surrounding properties.
2. The requested variances will alter the essential characteristics of the neighborhood in which they are located.
3. The reduced clear vision closely located to a residential intersection creates a public hazard

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

Staff recommends Denial in BOA-24-10300189 based on the following findings of fact:

1. The requested fence height will not add to the protection of the property beyond what is afforded by following the guidelines of the UDC.
2. The requested fence height will alter the essential characteristics of the neighborhood in which the fence is located.