

Case Number:	BOA-23-10300293
Applicant:	Lucila Rivas
Owner:	Lucila Rivas
Council District:	5
Location:	1259 Elvira Street
Legal Description:	Lot 8, NCB 7366
Zoning:	“R-3 MLOD-2 MLR-2 AHOD” Single-Family Residential Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

Request

A request for 1) a 4'-2" variance from the 5' minimum side setback requirement, as described in Section 35-310.01, to allow an addition to be 10" from the side setback, and 2) a 3' special exception from the maximum 3' fence height, as described in Section 35-514, to allow an 6' privacy fence in the front yard.

Executive Summary

The subject property is located along Elvira Street, on the west side of San Antonio. The applicant constructed an addition without a permit (INV-PBP-23-3100003473). Upon staff inspections it was found to be encroaching into the required side setback by 4'-2". Additionally, a new solid screen fenced was observed that was recently constructed. The solid screened fenced measured at a height of 6'.

Code Enforcement History

PMT-Building Without a Permit (INV-PBP-23-3100003473) 10/11/2023

Zoning - Property Setback (INV-ZPS-23-3160002286) 10/17/2023

Permit History

No permit history on file.

Zoning History

The property was annexed into the City of San Antonio by Ordinance 41420 dated December 25, 1972, and was originally zoned “B” Residence District. The zoning converted from “B” Residence District to the current “R-4” Residential Single-Family District upon adoption of the 2001 Unified Development Code, established by Ordinance 93881, dated May 3, 2001. Ordinance 2023-08-03-0516 dated August 3, 2023, rezoned the property to “R-3” Single-Family Residence District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-3 MLOD-2 MLR-2 AHOD” Single-Family Residential Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-3 MLOD-2 MLR-2 AHOD” Single-Family Residential Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
South	“C-2 MLOD-2 MLR-2 AHOD” Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Gas Station
East	“R-3 MLOD-2 MLR-2 AHOD” Single-Family Residential Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“R-3 MLOD-2 MLR-2 AHOD” Single-Family Residential Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District “R-2 MLOD-2 MLR-2 AHOD” Single-Family Residential Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Guadalupe/ Westside Community Plan and is designated as “Low Density Residential” for future land use. The subject property is located within the Prospect Hill Neighborhood Association and were notified of the case.

Street Classification

Elvira Place is classified as a Local Street.

South Hamilton Avenue is classified as a Local Street.

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 setback requirements to prevent water runoff and adequate spacing between properties. The applicant is requesting a variance to the side setback a carport to be 10” from the side property line. This appears to be inadequate spacing and may cause possible water runoff from the side.

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

Staff does not find any special conditions on the subject property. The side property line is 10” from the addition. This may cause a hardship on the adjacent property. A literal enforcement of the ordinance would result in the applicant adjusting the location of their addition.

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 granting of the side setback variance will not observe the spirit of the ordinance, as there are no similar designed additions located in the surrounding area.

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 the side setback variance is granted the addition will be 10” from the neighboring property causing water runoff issues and alter the essential character of the district.

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, such as limited spacing on the property.

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 a 6’ privacy fence along the eastern part of the front yard. 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 property owners while still promoting a sense of community. The privacy fence still serves the public welfare and convenience.

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

The fence will create enhanced security and privacy for the subject and adjacent properties. Furthermore, residential structures are abutting the subject property which the fences can act as a barrier.

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 and west property line does not appear to alter the location for which the special exception is sought, as similar styled fences were observed to be in the immediate 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 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 Setback Regulations under Section 35-310.01 and Fence Height Regulations of the UDC Section 35-514.

Staff Recommendation – Side Setback Variance

Staff recommends Denial in BOA-23-10300293 based on the following findings of fact:

1. The reduced setbacks will alter the essential character of the district.
2. The carport will be too close to the neighboring property causing possible issues with water runoff.

Staff Recommendation – Fence Height Special Exception

Staff recommends **Approval of** in **BOA-23-10300293** based on the following findings of fact:

1. The fence will create enhanced security and privacy for the subject and adjacent properties; and
2. The request will not weaken the general purpose of the district.