



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** February 10, 2025

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon, Director

**CASE NUMBER:** BOA-25-10300001

**APPLICANT:** Terry Frey

**OWNER:** Terry Frey

**COUNCIL DISTRICT IMPACTED:** District 3

**LOCATION:** 183 Atlas Street

**LEGAL DESCRIPTION:** North 54.87 feet of the south 215.41 feet of Lot D, NCB 10946

**ZONING:** "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

**CASE MANAGER:** Colton Unden, Planner

**A request for**

1) A 2' Fence Height Special Exception from the maximum 6' height to allow an 8' privacy fence along the rear yard abutting the northern property line.  
Section 35-514 (c)

2) A 5' Fence Height Special Exception from the maximum 3' height to allow an 8' privacy fence along the front yard not to pass the front facade of the northern property neighbor.  
Section 35-514 (c)

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

4) A 3’-6” rear setback variance from the minimum 5’ rear setback to allow an accessory structure to be 1’-6” from the rear property line.  
Section 35-370(b)(1)

### **Executive Summary**

The subject property is located along Atlas Street, south of IH-37, located within the Highland Hills Neighborhood Association. The applicant had a fence constructed without permit and was issued a violation notice by Code Enforcement. The applicant constructed an 8’ privacy fence only spanning the length of the property line bordering the neighboring home with the stated purposes of providing privacy and security against neighboring cameras and bright lights. Upon site visits, staff identified a shed within setbacks in the rear yard and added it after consultation with the applicant. There is a vacant strip of land that is unable to be developed in its current form approximately 25 feet wide behind this property and surrounding properties owned by neighboring 269 Utopia Ln.

### **Code Enforcement History**

INV-PBP-24-3100006916 - PMT-Building Without A Permit – Closed

### **Permit History**

Building permit is pending outcome from the Board of Adjustment.

### **Zoning History**

The subject property was annexed by the City of San Antonio by Ordinance 18115, dated September 24, 1952, and originally zoned “B” Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B” Residence District converted to the current “R-4” Residential Single-Family District.

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

#### **Existing Zoning**

“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

#### **Existing Use**

Single-Family Dwelling

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

#### **North**

#### **Existing Zoning**

“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

#### **Existing Use**

Single-Family Dwelling

#### **South**

#### **Existing Zoning**

“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

#### **Existing Use**

Single-Family Dwelling

**East****Existing Zoning**

“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

**Existing Use**

Single-Family Dwelling

**West****Existing Zoning**

“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District

**Existing Use**

Single-Family Dwelling and Vacant Lot

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is located within the Brooks Area Regional Center Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is located within the Highland Hills Neighborhood Association, and they have been notified of this request.

**Street Classification**

Atlas Street is classified as a Local Road.

**Criteria for Review – Side and Rear Setback for an Accessory Structure 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 adhering to setback requirements to provide adequate spacing between properties. The side setback variance is contrary to the public interest as insufficient space will remain for the purposes of water runoff and fire safety concerns.

The rear setback variance is not contrary to the public interest as there appears to be a deliberate vacant lot to create separation from the neighboring property owner.

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

A literal enforcement of the side setback ordinance would not result in unnecessary hardship as the applicant can modify the configuration and location of the shed to be within the side setback on the lot.

A literal enforcement of the rear setback ordinance would result in unnecessary hardship as the lot provides adequate separation from the rear abutting property.

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

The requested side setback variance does not appear to be in the spirit of the ordinance as insufficient space will remain for the purposes of water runoff and fire safety concerns.

The requested rear setback variance does appear to be in the spirit of the ordinance as sufficient space exists from any structures to the rear.

*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 side setback variance would substantially injure the appropriate use of adjacent properties as insufficient space will remain for maintenance of the shed and the increased risk of fire spreading would be aggravated.

Staff finds that the rear setback variance would not substantially injure the appropriate use of adjacent properties as an undevelopable vacant lot was established to the rear of the 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 no unique circumstances existing on the property for the side setback variance as the shed could be relocated to a different part of the lot in compliance with setback rules.

Staff finds unique circumstances existing on the property for the rear setback variance as limited room exists to the rear to provide for an accessory structure.

#### **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 8' for the front and side yard not to pass the front facade of the northern property neighbor. If granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance, as additional safety and security will be provided.

*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 appear to serve the public welfare, as the fence is limited to one side of the lot to provide additional privacy and security and is not out of character for the district in which the property is located.

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

The fence special exception does appear to create additional enhanced security and privacy for the subject and adjacent properties. Neighboring property will not be substantially injured as the fence height is limited to one portion of one side of the lot in which it is located.

*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 does not appear to alter the location for which the special exception is sought, as the fence will be located behind the façade of the neighboring property and will serve a purpose in providing additional privacy.

*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 as it will be limited to the neighboring front façade and to one side on the lot.

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

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

#### **Staff Recommendation – Side Setback for an Accessory Structure Variance**

Staff recommends Denial in BOA-25-10300001 based on the following findings of fact:

1. Insufficient space will remain for the purposes of water runoff and fire safety concerns.
2. The requested variance will alter the essential characteristics of the district in which the property is located.

#### **Staff Recommendation –Rear Setback for an Accessory Structure Variance**

Staff recommends Approval in BOA-25-10300001 based on the following findings of fact:

1. Sufficient space exists from any structures to the rear.
2. An undevelopable vacant lot was established to the rear of the property.

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

Staff recommends Approval in BOA-25-10300001 based on the following findings of fact:

1. The fence height is limited to neighboring front façade and will provide additional privacy and security.
2. The requested variance will not alter the essential characteristics of the district in which the property is located.