



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** July 1, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon

**CASE NUMBER:** BOA-24-10300083

**APPLICANT:** Elbert A Fuqua

**OWNER:** Elbert A Fuqua

**COUNCIL DISTRICT IMPACTED:** District 2

**LOCATION:** 203 Toledo Street

**LEGAL DESCRIPTION:** Lot 31 and the east 71 feet of Lot 32, NCB 1393

**ZONING:** "AE-2 MLOD-3 MLR-2 AHOD" Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

1) A half story variance from the maximum 2.5 stories to allow two detached structures to be 3 stories.

Sec 35-358(e)(4)(B)

2) A 15% variance from the "AE-2" 25% to allow first-floor non-reflective glass windows at 10% total area.

Sec 35-358(e)(4)(E)

3) A 2' variance from the minimum 5' side setback to allow a 3' side setback western property line.

Sec 35-358(e)(3)(A)(2)

4) A 19' variance from the minimum 25' corner clear vision to allow a 6' corner clear vision.  
Sec 35-514 (a)(2)(a)

5) A 6' variance from the minimum 15' driveway clear vision to allow driveways with a 9' clear vision.  
Sec 35-514(a)(2)(b)

6) A 15' and 13' variance from the minimum 20' garage setback to allow a 5' and 7' setback for garage entrance.  
Sec 35-516(g)

7) A variance to allow a Principal Entrance not on a street frontage.  
Sec 35-358(e)(4)(C)(2)

8) A 3' fence height special exception from the maximum 3' fence height to allow a 6' privacy fence in the front yard.  
Sec 35-514(c)(1)

### **Executive Summary**

The subject property is located just east of downtown and south of East Commerce Street on the corner of Montana Street and Toledo Street intersection. The applicant, also being the property owner, is proposing construction of two residential structures on an AE-2 Corner lot. The requested variances will allow a 3 story structures, 10% first-floor non-reflective glass windows, a 3' side setback on the western property line, a 6' corner clear vision, a 9' driveway clear vision, a 5' and 7' garage entrance setbacks, principal entrance no on a street frontage and a 6' privacy front yard fence. The majority of the requested variances are unique to the Arts and Entertainment district. Building permits are pending the outcome of Board of Adjustment's decision. The proposed development will have 2 single-family dwelling units. The majority of the requested variances are unique to the Arts and Entertainment district standard.

### **Code Enforcement History**

No Code Enforcement history found.

### **Permit History**

The applicant has not yet applied for the building permit.

### **Zoning History**

The subject property was part of the original 36 square miles of the City of San Antonio and zoned "D" Apartment District. The property was rezoned by Ordinance 79329 dated, December 16, 1993, from "D" Apartment District to "R-2" Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "R-2" Two -Family Residence District converted to "RM-4" Residential Mixed District. The subject property was rezoned by Ordinance 2008-12-04-1128 dated December 4, 2008, from "RM-4" Residential Mixed District to the current "AE-2" Arts and Entertainment District.

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

**Existing Zoning**

“AE-2 MLOD-3 MLR-2 AHOD” Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Vacant Land

**Surrounding Property Zoning/ Land Use****North****Existing Zoning**

“RM-4 S HS MLOD-3 MLR-2 AHOD” Residential Mixed Historic Significant District Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District with Specific Use Authorization for Cemetery.

**Existing Use**

Cemetery

**South****Existing Zoning**

“RM-4 MLOD-3 MLR-2 AHOD” Residential Mixed Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay

**Existing Use**

Single-Family Residence

**East****Existing Zoning**

“AE-2 MLOD-3 MLR-2 AHOD” Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**West****Existing Zoning**

“AE-2 MLOD-3 MLR-2 AHOD” Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Eastside/Arena District and is designated as “Medium Density Residential” in the future land use component of the plan. The subject property is located within the notification area of the Denver Heights Neighborhood Association and have been notified of the request.

**Street Classification**

Toledo Street is classified as a local road.

Montana Street 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 for a 6' privacy fence along the front yard of the property. 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 fence height requirements for 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 were no fences like the proposed 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 essential character of the location for which the special exception is sought, as no 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 weaken the general purpose of the district as it will decrease streetscapes that emphasize pedestrian traffic.

### **Criteria for Review – Half Story, First Floor Non-Reflective Glass Percentage, Principal Entrance, Garage Setback, Corner Clear Vision, Side Setback and Driveway Clear Vision 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. The requested

half story, 10% first floor non-reflective glass total area, and Principal Entrance variances are contrary to the public interest as they contradict the Arts and Entertainment District (Corner Lot) purpose and design standards. Moreover, requesting 5' and 7' setbacks for garage entrance as well as a 6' corner clear vision does not provide a safe distance to monitor on-coming traffic along a corner lot while entering or exiting the neighborhood.

**The applicant is also requesting a driveway clear vision variance to allow a 9' driveway clear vision as well as a 2' variance to allow a 3' side setback on the western property line. Staff finds that this request will not be contrary to the public interest as a 9' leaves adequate clear vision space to safely back into the local street and a 3' side setback provides sufficient distance from neighboring properties.**

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

A literal enforcement of the ordinance would not result in unnecessary hardship, as the two proposed structures can be redesigned or reduced to a single structure to meet all UDC setback, clear vision and "AE-2" (Corner lot) regulations.

**A literal enforcement of the ordinance would result in unnecessary hardship as the driveway entrance and the western side setback would have to be reconfigured to abide by the driveway clear vision and setback regulations that restrict development on a limited size lot.**

*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 requested half story, 10% first floor non-reflective glass total area, and Principal Entrance, corner clear vision and garage setback variances do not appear to observe the spirit of the ordinance as they do not abide UDC standards. The spirit of the ordinance was established to create certainty about the form of future development to create an identity.

**Both the 9' driveway clear vision and the 3' side setback provide a safe distance from the local road and the neighboring property and will observe the spirit of the ordinance.**

*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, staff finds the requested half story, 10% first floor non-reflective glass total area, and Principal Entrance variances will alter the essential character of the district as the variances would drastically alter the aesthetic, purpose and design standards specifically designated for "AE-2"

Arts and Entertainment District. Additionally, the corner clear vision and garage setback variances would not provide adequate separation between the right of way and neighboring properties required in the district and that exists in the surrounding development.

**The clear vision variance distance will be 9' from the curb and is not likely to alter the essential character of the district as leaves adequate clear vision space to safely back into the local street. Additionally, a 3' side setback will not substantially injure the appropriate use of adjacent conforming properties as similar lot sizes can be seen within the surrounding 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 the plight of the owner of the property for which the variances are sought are not due to unique circumstances existing on the property as the proposed design can be altered to meet safety regulations and aesthetics defined within the Unified Development Code "AE-2", corner clear vision and garage setback requirements.

**The driveway clear vision and side setback variance is due to unique circumstances that were not created by the property owner such as the location of the lot and surrounding area.**

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

The alternative to the applicant's request is to conform to the "AE-2" Arts and Entertainment District guidance under Sec 35-358, Clear Vision Regulations of the UDC Section 35-514(a)(2) and Fence Height Regulations of the UDC Section 35-514.

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

Staff recommends Denial in BOA-24-10300083 based on the following findings of fact:

1. The request will alter the essential character of the district as no other properties in the immediate area have fences exceeding the regulations of the Unified Development Code in height and privacy.
2. The request will decrease streetscapes that emphasize pedestrian traffic.

#### **Staff Recommendation – Half Story, First Floor Non-Reflective Glass Percentage, Principal Entrance, Garage Setback.**

Staff recommends Denial in BOA-24-10300083 based on the following findings of fact:

1. The requested variances will alter the essential character of the district as it was established to create certainty about the form of future development to create an identity.
2. The corner clear vision and garage setback variances would not provide adequate separation between the right of way and neighboring properties required in the district and that exists in the surrounding development.

**Staff Recommendation – Side Setback and Clear Vision Variance**

Staff recommends **Approval** in **BOA-24-10300083** based on the following findings of fact:

- 1. Vehicular traffic will not be obstructed with the reduced clear vision.**
- 2. The side setback will not injure the neighboring property.**
- 3. The reduced clear vision and side setback on the western property line will not alter the essential character of the district.**