

Case Number:	BOA-22-10300116
Applicant:	Guadalupe Macias
Owner:	Jamie Gamez & Guadalupe Macias
Council District:	6
Location:	6007 Viva Max
Legal Description:	Lot 13, Block 1, NCB 14466
Zoning:	"R-6 MLOD-2 MLR-2 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

Request

A request for 1) a 1' 4" special exception from the 5' maximum fence height requirement, as described in Section 35-514, to allow a predominately open fence to be 6' 4". 2) A 4' 5" variance from the 15' minimum clear vision requirement, as described in Section 35-514(2)(b), to allow a fence to be 10' 7" from the curb.

Executive Summary

The subject property is located at 6007 Viva Max. There is currently a single-family dwelling on the property. A fence permit was issued for a new fence, however during a site visit conducted by staff, the predominately open face fence is 6'4" in height. The front gate for the fence is encroaching the Clear Vision area, however the gate is on a rolling track and will not appear to encroach the Clear Vision area when opened.

Code Enforcement History

There is no Code Enforcement history on file.

Permit History

A fence permit was issued on May 31, 2022.

Zoning History

The property was annexed into the City of San Antonio by Ordinance 38943, dated October 28, 1970, and zoned TEMP "R-1" Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned TEMP "R-1" Residence District converted to the current "R-6" Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-6 MLOD-2 MLR-2 AHOD" Residential Single Family 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
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North	"R-6 MLOD-2 MLR-2 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
South	"R-6 MLOD-2 MLR-2 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
East	"R-6 MLOD-2 MLR-2 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	"R-6 MLOD-2 MLR-2 AHOD" Residential Single Family 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 West Plan is currently designated General Urban Tier in the future land use component of the plan. The subject property is located within the Thunderbird Hills Neighborhood Association, and they were notified of the case.

Street Classification

Viva Max 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 special exception 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 being requested in a 6'4" predominately open fence along the front of the property line. 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 residential property owners privacy while still promoting a sense of community. An 6' 4" predominately open fence along the front portion of the yard does not pose any adverse effects to the public welfare.

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

The fence will create enhanced privacy for the subject property on the front yard and is unlikely to substantially injure any neighboring properties.

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 for the front yard will not alter the essential character of the district. The request for additional fence height is due for security of vehicles.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district.

The current zoning permits the current use of residential. The requested special exception will not weaken the general purpose of the district and will only enhance property values.

Criteria for Review – Clear Vision Variance

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 applicant is requesting a variance to the clear vision field. The fence is predominately open and they have 10' 7" of clear vision so the variance does not appear to be 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 having to move the gate 4' 5" inward which would reduce the size of the front yard.

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. A variance request for 4' 5" to the clear vision requirement of 15' observes the spirit of the ordinance as the fence is predominately open.

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 the request for a 4' 5" variance to the clear vision field will not injure adjacent properties or alter the essential character of the district. The fence line is consistent with others 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 the plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property and is not merely financial in nature.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Fence Height Requirements of the UDC Section 35-514.

Staff Recommendation – Front Yard Fence Special Exception

Staff recommends **Approval** in **BOA-22-10300116** based on the following findings of fact:

1. The 6' 4" fence will add in height will provide additional safety and security to the subject property.

Staff Recommendation – Front Yard Fence Special Exception

Staff recommends **Approval** in **BOA-22-10300116** based on the following findings of fact:

1. The predominately open fence and gate is 10' 7" from the curb; and
2. The gate is on a rolling track and will not further impede into the clear vision field.