

Case Number:	BOA-22-10300170
Applicant:	Fernando Torres Castillo
Owner:	Castillo Fernando Torres
Council District:	4
Location:	551 Demya
Legal Description:	Lot 27, Block 30, NCB 15438
Zoning:	“R-6 MLOD-2 MLR-1 AHOD” Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

### **Request**

1) A request for a 3' special exception from the maximum 3' solid fence height, as described in Section 35-514, to allow a solid screened fence to be 6' tall along the front yard. 2) A request for a 2' variance from the minimum 15' clear vision requirement, as described in Sec 35-514 (a)(2), to allow a fence to be 13' from the curb. 3) A request for a 2' variance from the 5' minimum side property setback requirement, as described for Section 35-310.10, to allow a structure to be 3' from the side property line.

### **Executive Summary**

There is an existing single-family dwelling on the property, and the applicant has contracted a solid screen fenced past the front façade of the fence without permits. A solid screened fence past the front façade of the home have a maximum height of 3' is permitted by right. Additionally, staff observed the fence to be encroaching 2' into the Clear Vision Field making it 13' from the curb. Staff also observed an excising car port that measured 3' from the side property line.

### **Code Enforcement History**

PMT-Building Without a Permit 07/05/2022

### **Permit History**

Residential Fence Permit 07/07/2022

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 79035 dated December 30, 1993 and was zoned Temp “R-1” Single Family Residence District. Ordinance 80479 dated July 14, 1994 rezoned the property to “R-1” Single Family Residence District Upon adoption of the 2001 Unified Development Code to the current “R-6” Residential Single-Family District, established by Ordinance 93881 dated May 3, 2001.

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

Existing Zoning	Existing Use
“R-6 MLOD-2 MLR-1 AHOD” Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

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

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“R-6 MLOD-2 MLR-1 AHOD” Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
South	“R-6 MLOD-2 MLR-1 AHOD” Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
East	“R-6 MLOD-2 MLR-1 AHOD” Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the West/ Southwest Sector Plan and currently does not have a designation in the future land use component of the plan. The subject property is located within the Adams Hill and Rainbow Hill Neighborhood Association and were notified of the case.

### **Street Classification**

Demya is classified as a local road.

### **Criteria for Review - 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 carport variance request does not appear contrary to the public interest due to the limited space existing on the property and the existing concrete slab.**

The applicant is also requesting a variance to the Clear Vision Standards to allow a solid screened fence to be 13’ from the curb along the driveway approach. To observe the safety of vehicular traffic, the variance to the Clear Vision Standards appear to be contrary to the public interest.

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

**The carport currently stands at 3’ away from the side property line. This amount of space is sufficient to neighboring property. To conform to the 5’ minimum side setback standards would result in an unnecessary hardship.**

The Clear Vision Standards variance would not result in unnecessary hardship as the applicant will to relocate a portion of the fence or reduce the height of the rear yard fence to 3' to allow for clear visibility next to the driveway.

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

**The size of the lot is smaller and the limited space of the rear yard present an unnecessary hardship.**

The variance to the clear vision requirements does not appear to observe the spirit of the ordinance since the fence can be altered to meet the 15' Clear Vision Field.

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.*

**The distance of the carport is not likely to alter the essential character of the district as their carport similar setbacks around the property.**

The variance to the Clear Vision Standards does appear to alter the essential character of the district, if granted.

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.*

**The carport being existing and not being built by the applicant and the unique circumstance not being made by the applicant. The request is not merely financial.**

The fence that was built by the applicant. The clear vision minimum requirement can be met if the fence is altered to be 15'. The unique circumstance was created by the applicant.

### **Criteria for Review – Fence Height**

According to Section 35-482(h) of the UDC, in order for a special exception to be granted, the Board of Adjustment must find that the request meets each of the five following conditions:

- 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 additional fence height was observed upon the site visit and, if granted, staff finds the request would not 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 while still promoting a sense of community. The fence is located along the front property and is exceeding the maximum height requirement by 3'. The fence is solid screened which does not serve 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 property but it 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 height for the section of front yard fence will alter the essential character 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.*

The current zoning permits the current use of a single-family home. The requested special exception will weaken the general purpose of the district.

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

The alternative to the applicant's request is to conform to the Structure Setback Regulations of Sec 35-310.01, Clear Vision Requirement Sec 35-514 (a)(2), and the Fence Height Regulations of Section 35-514.

### **Staff Recommendation – Carport Side Setback Variance**

Staff recommends **Approval** in **BOA-22-10300170** based on the following findings of fact:

1. The carport has sufficient space from the side property line; and
2. The variance requests do not appear to alter the essential character of the district.

### **Staff Recommendation – Clear Vision Variance**

Staff recommends **Denial** in **BOA-22-10300170** based on the following findings of fact:

1. The fence can be altered to meet the Clear Vision Standards.

### **Staff Recommendation – Front Yard Fence Special Exception**

Staff recommends **Denial** in **BOA-22-10300170** based on the following findings of fact:

1. The front yard fence is 6' and appears to alter the essential character of the district;  
and
2. The front yard fence violates Clear Vision Standards.