

Case Number:	BOA-22-10300021
Applicant:	Mario Quiroz
Owner:	Mario and Alicia Quiroz
Council District:	7
Location:	5700 Harefield Drive
Legal Description:	Lot 10, Block 4, NCB 15028
Zoning:	"R-5 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

### **Request**

A request for 1) a 4'-3" variance from a 5' side setback, as described in Section 310.01, to allow a patio cover with gutters to be 9" away from side property line, 2) a 1'-2" special exception to the 3' solid fence maximum height, as described in Section 35-514, to allow a 4'-2" solid fence in the front yard, and 3) a 10" special exception to the 6' solid fence maximum height, as described in Section 35-514, to allow a 6'-10" solid fence in the side and rear yard.

### **Executive Summary**

The subject property is located on Harefield Drive and is currently has a single-family home on the lot. The applicant erected a patio cover that is encroaching into the side property line setback. The patio cover currently has gutters installed due to the proximity of the patio cover to the property line.

### **Code Enforcement History**

INV-ZPS-22-3160000166 Zoning Investigation for setback violation.

### **Permit History**

The permit for the patio cover is pending the outcome of the Board of Adjustment Hearing.

### **Zoning History**

The property was annexed into the City of San Antonio by Ordinance 18115, dated September 24, 1952 and zoned "A" Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property converted to "R-5" Residential Single-Family District.

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

Existing Zoning	Existing Use
"R-5 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**

Orientation	Existing Zoning District(s)	Existing Use
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North	"R-5 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-5 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-5 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-5 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 is designated as “General Urban Tier” in the future land use component of the plan. The subject property is within the Canterbury Farms Neighborhood Association and were notified of the case.

### **Street Classification**

Harefield Drive is classified as a local road.

### **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 variance for the side setback is to allow a structure to be 9” from the side property line. The patio cover appears to be contrary to the public interest.

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

Staff finds no hardship on the lot as there is adequate space to meet the the 3’ alternate recommended setback for the patio cover.

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

The patio cover setback variance will be 9” from the side property line. The spirit of the ordinance will not be observed as the patio cover is less than the minimum side setback requirement from the side property line.

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 evidence that the requested variance would alter the essential character of the district as there are no similar patio covers 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.*

Because of the width of the area between the existing residence, maintain a 9" side setback is not appropriate for the area. The request is not merely financial.

### **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 in the rear and side appears to have been caused by a concrete slap on the patio area. Staff finds the request would be in harmony with the spirit and purpose of the ordinance.**

The additional fence height in the front yard does not appear in harmony with the spirit of the ordinance as equal fence height can be achieved if a portion is predominantly open.

- 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 located along the side and rear property is exceeding the maximum height requirement by 10". The fence is solid screened and would serve the public welfare and convenience.**

No additional protection is achieved to the property owner through the additional 1'-2" of privacy in the front yard fence.

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

**The side and rear 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 side, rear and front yard fence will not alter the essential character of the district as there were other similar fence heights in the area.**

*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 not weaken the general purpose of the district.**

The front yard fence will weaken the general purpose of the district as no other front yard privacy fences were observed in the neighborhood.

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

The alternative to the applicant's request is to conform to the setback requirements of the UDC Section 310.01 and Fence Height requirements of Section 35-514 of the UDC.

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

Staff recommends Denial **with an alternate recommendation for a 3' setback** in **BOA-22-10300021**, based on the following findings of fact:

1. There is adequate space for the patio cover to conform to a 3' side setback requirements.
2. The patio cover will alter the essential character of the district.

#### **Staff Recommendation – Side and Rear Yard Fence Special Exception**

Staff recommends **Approval** in **BOA-22-10300021** based on the following findings of fact:

1. The side and rear yard fence does not appear to alter the essential character of the district; and
2. The fence will provide additional security for the homeowner.

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

Staff recommends Denial in **BOA-22-10300021** based on the following findings of fact:

1. The front yard fence will alter the essential character of the district; and
2. No additional security or privacy is achieved.