

Case Number:	BOA-23-10300116
Applicant:	Rene Lafuente
Owner:	Fidel Salas
Council District:	4
Location:	402 Lovett Avenue
Legal Description:	Lot 9, Block 10, NCB 8749
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:	Vincent Trevino, Senior Planner

**Request**

A request for 1) a 975 square feet variance from the minimum 6,000 square feet requirement, as describe in Section 35-310.01, to allow development on a 5,025 square feet lot, 2) a 19'-11" variance from the minimum 20' rear setback requirement, as described in Section 35-310.01, to allow an addition to be 1" from the rear property line, 3) a 17' variance from the minimum 25' corner clear vision requirement, as described in Section 35-514(a)(2), to allow a corner fence with an 8' clear vision, 4) a 5' variance from the minimum 15' driveway clear vision, as described in Section 35-514(a)(2), to allow a 10' driveway clear vision, and 5) a 1'-4" special exception from the maximum 3' privacy fence, as described in Section 35-514, to allow a 4'-4" privacy fence in the front yard.

**Executive Summary**

The subject property is located on Lovett between the intersections of Oregon Street and Fleming Street, just North of New Laredo Highway. The applicant constructed an addition without permits that is 1” from the rear property line. Per the UDC, the addition is required to be setback 20’ from the rear property line. Additionally, the applicant is requesting a corner and clear vision variances for the existing fence. The applicant is also requesting a special exception for a privacy fence in the front yard. Upon site visits, staff did not observe other structures in the immediate area.

**Code Enforcement History**

Zoning UDC Investigation Property Setback (INV-ZPS-23-3160000073) April 2023  
 Building Without a Permit (INV-PTI-23-3090000085) April 2023

**Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment

**Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 1259, dated August 2, 1944, and zoned “B” Residence District. The property was rezoned by Ordinance 47762, dated March 17<sup>th</sup>, 1977 to “R-1” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-1” Single-Family Residence District converted to the current “R-6” Residential Single-Family District.

**Subject Property Zoning/Land Use**

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

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1	Public School
South	“C-3 MLOD-2 MLR-1 AHOD” General Commercial Lackland Military Lighting Overlay Military Lighting Region 1	Apartments
East	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1	Single-Family Dwelling
West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is under the Kelly/South San PUEBLO Plan and is designated as “Neighborhood Commercial” in the future land use component of the plan. The subject property is in the Quintana Community Neighborhood Association, and they were notified of the request.

**Street Classification**

Lovett Avenue is classified as a Local Street.

**Criteria for Review for Lot Size, Rear Setback, and Clear Vision.**

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 the restricted lot size and rear setback to provide space between properties. Staffs finds the requests to allow an addition to be 1” from the rear property line and variance for the lot size is contrary to the public interest.

**The applicant is requesting a 5’ variance from the minimum 15’ clear vision requirement to allow a predominately open fence to be 10’ from the driveway. Additionally, the applicant is requesting a 17’ variance from the minimum 25’ corner clear vision requirement to allow a predominately open fence to be 8’ from the driveway. In this case, the predominately open fence does not impede vehicles from entering or exiting the property. Staff finds that this request is not contrary as this distance does not propose any safety issues.**

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

There are no special conditions found on the subject property to warrant the applicant to deviate from the current Unified Development Code (UDC) standards. A literal enforcement of the ordinance would result in the applicant altering the already constructed addition to meet current building standards. Additionally, the lot size does not meet the minimum 6,000 square feet requirement and would require a zoning change to the “R-5” Residential Single-Family District.

**A literal enforcement of the ordinance would result in the applicant altering the fence to meet the minimum 15’ distance requirement and the 25’ minimum corner clear vision requirement as this would create an unnecessary hardship, as the fence is existing.**

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 addition in its current position does not observe the spirit of the ordinance. Additionally, the lot size does not meet the minimum 6,000 square feet requirement. These ordinances are put into effect to allow for uniform and safe development.

**The fence is currently 10’ from the driveway and 17’ from the corner. Staff finds the spirit of the ordinance will be observed and substantial justice will be done with the requested variance as adequate sight distance is presented.**

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 these requests as no other properties in the immediate vicinity seemed to be violating the UDC building standards and would alter the essential character of the district.

**If granted, the distance will maintain 10’ from the front driveway and 17’ from the corner which will not likely alter the essential character of the district. Upon site visits, staff observed other front yard predominantly open fences in the immediate vicinity.**

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 not due to unique circumstances existing on the property. The circumstances do not appear to be merely financial.

### **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 proposed fence being requested is a privacy fence that exceeds the maximum height requirement. 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 height to protect residential property owners while still promoting a sense of community. Staff did not observe any significant topographical changes on the subject property or adjacent property. The fence is privacy fence exceeds the maximum allowance, which still does not serve the public welfare and convenience.

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

The proposed 4'-4" privacy fence will substantially injure neighboring conforming properties, as no other fences in the immediate seemed to exceed the height requirement.

*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 appears to alter the essential character of the district. The privacy fence exceeds the maximum 3' height requirement. The 4'-4" fence height 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 allows for the use of a single-family dwelling. The requested special exceptions will likely weaken the general purpose of the district.

**Alternative to Applicant's Requests**

The alternative to the applicant's request is to conform to the Lot Size and Rear Setback Standards of the UDC Section 35-310.01, the clear vision and height standards in UDC Section 35-514.

**Staff Recommendation – Lot Size and Rear Setback**

Staff recommends Denial in BOA-23-10300116 based on the following findings of fact:

1. There are no special conditions found on the subject property to warrant the applicant to deviate from the current Unified Development Code (UDC) standards; and
2. The requested variances allow for inconsistent and unsafe development patterns.

**Staff Recommendation-Fence Height Special Exception**

Staff recommends Denial in BOA-23-10300116 based on the following findings of fact:

1. The proposed 4'-4" privacy fence will result in inconsistent development patterns, as no other fences exceeding the height requirements were seen in the immediate area.

**Staff Recommendation – Clear Vision Variance**

Staff recommends **Approval** in **BOA-23-10300116** based on the following findings of fact:

1. Altering the fence to meet the minimum 15' clear vision requirement will result in an unnecessary hardship, as front yard space would be reduced drastically.