

Case Number:	BOA-23-10300124
Applicant:	Jose Jaramillo-Maldonado
Owner:	Jose Jaramillo-Maldonado
Council District:	5
Location:	1525 Delgado Street
Legal Description:	The west 38.7 feet of Lot 6, Block 5, NCB 2141
Zoning:	“R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Mirko Maravi, Principal Planner

### **Request**

A request for 1) a 3'-4" variance from the minimum 5' side setback, as described in Sec. 35-370(b)(1), to allow accessory structures with a 1'-8" side setback, 2) a 4'-11" variance from the minimum 5' rear setback, as described in Sec. 35-370(b)(1), to allow an accessory structure with a 1" rear setback, 3) a 1' variance from the minimum 15' clear vision, as described in Sec. 35-514(a)(2), to allow a driveway with a 14' clear vision from a predominantly open fence, 4) a 2'-4" special exception from the maximum 5' fence height, as described in Sec. 35-514, to allow a 6'-5" predominantly open fence in the front property line with a 7'-4" fence posts and a 6' predominantly open fence in the front yard eastern property line, and 5) a 3' special exception from the maximum 3' fence height, as described in Sec. 35-514, to allow a 6' privacy fence in the front yard western property line.

### **Executive Summary**

The subject property is located northwest of downtown, near the intersection with South Zarzamora Street and Culebra Road. The property appears to have a new addition to the accessory structure in the rear of the property. The addition is in-line with the existing 1" rear setback and a 3'-2" side setback on the east property line. The eastern side setback does not require a variance, however the rear does. The western side setback of the accessory structure was built in an undetermined time and has a 1'-8" side setback which requires a variance. The accessory dwelling appears to be under 800 square feet, which would not require an additional parking space. All accessory structures cannot have more than 2,500 square feet and take up over 50% of the side/rear yard, this does not appear to be the case on this property. Dated photographs show the front property line fence and gate were built after February of 2021 with no permits. The west side property line fences in the front yard appear to have been on the property after June 2013.

### **Code Enforcement History**

Zoning UDC Investigation (INV-ZPS-23-3160000437)- May 2023

### **Permit History**

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

### **Zoning History**

The subject property was part of the original 36 square miles of the City of San Antonio and originally zoned “B” Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B” Residence District converted to the current “R-4” Residential Single-Family District.

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

Existing Zoning	Existing Use
“R-4 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
North	“R-4 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-4 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-4 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-4 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 not located within a Community Plan or a Neighborhood Association.

**Street Classification**

Delgado Street is classified as a local road.

**Criteria for Review – Rear Setback, Side Setback and 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. In this case, the public interest is represented by the restricted side and rear setback to provide spacing between the property line and the accessory structure. Staff finds this distance is not suitable, as it imposes on the public interest of the adjacent neighbor by being too close to the shared property line, water runoff may impose, and risk of fire spread is greater.

**The applicant is requesting a 1’ variance from the minimum 15’ clear vision requirement to allow a fence to be 14’ from the front 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 proposes any safety issues.**

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

Staff found no special conditions on the subject property that warrant the need for the accessory structure to have a 1'-8" side setback and 1" rear setback. No unnecessary hardship seems to be presented in this case, as the applicant could build the accessory structure with a 5' rear setback.

**A literal enforcement of the ordinance would result in the applicant altering the fence to meet the minimum 15' distance 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. In this case, the intention is for sufficient spacing between the accessory structure and the rear property line. The accessory structure will be 1'-8" from the side setback and 1" from the rear setback, which does not observe the spirit of the ordinance or intent of the code as it will be too close to the shared property line and neighboring structure.

**The fence is currently 14' from the front driveway. 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, the structure will maintain a 1'-8" side setback and 1" rear setback, which is likely to injure the appropriate use of the adjacent conforming property, as staff did not observe the adjacent neighbor with the shared property line violating setback violations.

**If granted, the distance will maintain 14' from the front driveway 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 found no unique circumstances on the subject property that would warrant the need for a reduced side and rear setback. Additionally, if the applicant had obtained permits for the accessory structure and the patio cover, the setback dialogue would have been communicated thoroughly.

**Staff finds the plight of the owner of the property for which the variance is sought 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 fence height being requested is a 6' privacy fence along the west property line located in the front yard, 6' predominantly open fence along the east property line located in the front yard and a 6'-5" predominately open fence along the front property line with 2 support structures measuring at 7'-4". If granted, staff finds the request would not be in harmony with the spirit and purpose of the ordinance as no similar fences exist in the area.

*B. The public welfare and convenience will be substantially served.*

In this case, the fence height criteria protect residential property owners while still promoting a sense of community. The privacy fence will not contribute to the public welfare and convenience as the privacy height will be exceeded by 3'.

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

Privacy fences above the 3' maximum and predominantly open fence above the 5' maximum in the front yard were not observed in the vicinity of the subject site, therefore the additional height could likely substantially injure other properties in the neighborhood.

*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 in fence along the side property line will alter the essential character of the district, as other houses in the area are within the maximum front yard fence height standards.

*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 use of a single-family home. The requested special exception may weaken the general purpose of the district, as it does not permit predominantly open fences over 3'. 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 Accessory Structure Regulations side and rear setback of the UDC Section 35-370(b)(1), Fence Regulation of the UDC Section 35-514, and Clear Vision of the UDC Section 35-514(a)(2).

### **Staff Recommendation – Side and Rear Setback**

Staff recommends Denial in BOA-23-10300124 based on the following findings of fact:

1. This distance is not suitable, as it imposes on the public interest of the adjacent neighbor by being too close to the shared property line, water runoff may impose, and risk of fire spread is greater; and
2. The applicant could relocate the structure.

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

Staff recommends **Approval** in **BOA-23-10300124** based on the following findings of fact:

1. The predominately open fence does not impede vehicles from entering or exiting the property; and
2. The variance will not alter the essential character of the district.

### **Staff Recommendation – Fence Height**

Staff recommends **Denial** in **BOA-23-10300124** based on the following findings of fact:

1. The fence height will alter the essential character of the district; and
2. No other front yard fence height was observed to exceed the maximum permitted.