

Case Number:	BOA-23-10300197
Applicant:	JoAnn Galvez
Owner:	JoAnn Galvez
Council District:	1
Location:	935 Aganier Avenue
Legal Description:	The north 42 feet of the south 84 feet of Lot Q, NCB 6523
Zoning:	“R-4 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

**Request**

A request for 1) a 4' special exception from the NCD-5 maximum 2' height, as described Section 35-335(c)(E), to allow a 6' privacy fence along the front yard, 2) a variance from the NCD-5, as described Section 35-335(c)(E), to allow a gate structure across the driveway, and 3) a 1'-8" variance from the minimum 15' clear vision requirement, as described in Section 35-514(d), to allow a fence to be 13'-4" from the front yard driveway curb.

**Executive Summary**

The subject property is located on Aganier between the intersections of West Mulberry Avenue and West Magnolia Avenue, just East of IH-10. The applicant constructed a 6' privacy fence along the South side of the property without a permit. Additionally, the applicant is requesting variances for the gate structure across the driveway and clear vision along the front yard driveway curb.

**Code Enforcement History**

INV-PTI-23-3090001586 – Building Without a Permit

**Permit History**

RES-FEN-APP23-31800801 – Residential Fence Application

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

**Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “B” Residence District. The property was rezoned by Ordinance 86704, dated September 25, 1997 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 “R-6” Residential Single-Family District. The property was rezoned by Ordinance 2022-08-04-0551, dated August 4, 2022 to “R-4” Residential Single-Family District.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“R-4 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	“R-3 NCD-5 AHOD” Single-Family Residential Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
South	“R-3 NCD-5 AHOD” Single-Family Residential Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
East	“R-6 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
West	“R-5 NCD-5 AHOD” Residential Single-Family Beacon Hill Area Neighborhood Conservation Airport Hazard Overlay District	Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Midtown Neighborhoods Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is in the Beacon Hill Neighborhood Association, and they were notified of the request.

**Street Classification**

Aganier Avenue is classified as a Local Street.

**Criteria for Review for Gate Structure Variance and Clear Vision Requirement 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 Fencing Design Standards as Described in the Beacon Hill Neighborhood Conservation District. Staffs finds the requests for the gate structure across the driveway is contrary to the public interest.

**The applicant is requesting a 1’-8” variance from the minimum 15’ clear vision requirement to allow a fence to be 13’-4” from the front yard driveway curb. In this case, the 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 Fencing Design Standards as Described in the Beacon Hill Neighborhood Conservation District. A literal enforcement of the ordinance would result in the applicant having to remove the gate structure from across the driveway.

**A literal enforcement of the ordinance would result in the applicant altering the fence to meet the minimum 15’ 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 gate structure across the driveway does not observe the spirit of the ordinance. These ordinances are put into effect to allow for uniform and safe development.

**The fence is currently 13'-4" from the front yard driveway curb. 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 no other properties in the immediate vicinity seemed to be violating the Fencing Design Standards as Described in the Beacon Hill Neighborhood Conservation District and would alter the essential character of the district.

**If granted, the distance will maintain 13-4" from the front yard driveway curb and will not likely alter the essential character of the district. Upon site visits, staff observed other similar placed 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.

**Staff finds the plight of the owner of the property for which the clear vision variance is sought is a result of the general conditions of the district when established.**

### **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 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 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 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 6' 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 2' privacy fence height requirement. The 6' privacy 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 Beacon Hill Neighborhood Conservation District standards in Sec. 35-335(c)(E), and the Clear Vision standards in Sec. 34-514(d).

### **Staff Recommendation – Beacon Hill Neighborhood Conservation District**

Staff recommends Denial in BOA-23-10300197 based on the following findings of fact:

1. The Neighborhood Conservation District standards were created to project uniformity in the neighborhood; and
2. The fence and gate across the driveway will alter the character of the district; and
3. The proposed 6' 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-23-10300197** based on the following findings of fact:

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