

Case Number:	BOA-23-10300214
Applicant:	Reyes Gallegos
Owner:	Reyes Gallegos
Council District:	4
Location:	8942 Portside Street
Legal Description:	Lot 6, Block 45, NCB 17525
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:	Joseph Leos, Planner

Request

A request for 1) a variance, as described in Section 35-514(a)(6), to allow a corrugated metal fence in the front, side, and rear yard, 2) a 3' special exception from the maximum 3' fence height, as described in Section 35-514, to allow a 6' solid screened fence in the front yard, 3) a 2' special exception from the maximum 6' fence height requirement, as described in Section 35-514, to allow an 8' solid screened fence in the side and rear yard, 4) a 4'-11" variance from the minimum 5' side setback requirement, as described in Section 35-310.01, to allow a carport to be 1" from the side property line, 5) a 9'-11" variance from the minimum 10' front setback requirement, as described in Section 35-310.01, to allow a carport to be 1" from the front property line, and 6) a 10'-6" variance from the minimum 15' clear vision, as described in Section 35-514(a)(2), to allow a 4'-6" clear vision on 2 driveways.

Executive Summary

The subject property is located along Portside Drive. Cited by Code Enforcement for a Zoning UDC and Permit Investigation, the applicant constructed fences within the front, side, and rear yards using the prohibited fencing material, corrugated metal. The height of the solid screened fences vary, with the max height within the front yard measuring at 6' and 8' in the side and rear yards. Fences in San Antonio are permitted a max of 3' within the front yard and 6' in the side and rear yards. Anyone who deviates from these requirements must obtain a variance to allow the prohibited fencing material and a special exception to exceed the height requirement. Upon site visits conducted by staff, it was documented that the applicant constructed a carport, without obtaining permits, that is located within the side setback and front right of way. The carport measured to be 1" from the side property and if approved, the applicant would need to alter the carport to be 1" from the front property line within their property.

Code Enforcement History

Permit Investigation (INV-PBP-23-3100001792)- July 2023

Zoning UDC Investigation (INV-ZRD-23-3170001193)- July 2023

Permit History

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

Zoning History

The property was annexed into the City of San Antonio by Ordinance 59770, dated December 30, 1984 and zoned Temporary “R-1” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned Temporary “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
“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

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 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	Vacant Residential
West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Public School

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the United Southwest Neighborhood Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is not located within the boundaries of a registered neighborhood association.

Street Classification

Portside Drive is classified as a local road.

Criteria for Review – Corrugated Metal, Side and Front Setback, and Clear Vision 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 public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by permissible fence materials for uniformity within an established neighborhood, side and front setback requirements to prevent structures from being close to neighboring properties, and clear vision requirements to ensure safe vehicular traffic. The requested variances are contrary to the public interest.

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

Staff was unable to establish any special conditions on the subject property. A literal enforcement of the ordinance would not result in an unnecessary hardship, as the applicant could replace the corrugated metal fence with a permissible fence material. Furthermore, the applicant could alter the carport along the side and front property lines to abide by the minimum 5' and 10' requirements. Lastly, the front yard is approximately 30'x72'. The applicant could alter the front yard fence by relocating it deeper into their property to abide by the minimum 15' clear vision requirement for both driveways.

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 property currently has corrugated metal fencing material on all sides, a carport that is 1" from the side and front property lines, and a fence with a 4'-6" clear vision on both driveways. The spirit of the ordinance will not be observed, as they are enacted to provide safe and uniform development patterns, which the subject property does not observe.

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 property will continue having prohibited fencing material, 1" side and front setbacks for a carport, and a 4'-6" clear vision on both driveways. These variances will injure the appropriate use of adjacent conforming properties and may alter the essential character of the district. Corrugated metal is prohibited as a fence material to ensure safety and may pose a hazard to surrounding property owners and those walking along the sidewalk. The carport at its current distance may harm the adjacent property owners, as water runoff could potentially impact their property. Lastly, the current clear vision distance is unsafe for vehicles traveling and leaving the subject property.

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. Had the applicant consulted with Development Services, a thorough explanation of permissible fence materials, side and front setback distances, and clear vision requirements could have been communicated.

Criteria for Review – Fence Height Special Exception

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:

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 solid screened, located within the front, side, and rear yards and 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 heights to protect residential property owners while still promoting a sense of community. The proposed fence be requested will be located within the front, side, and rear yards and is exceeding the maximum height requirement. Staff did not observe any significant topographical changes on the subject to warrant the height increase on the property or adjacent property. The fence is solid screened 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' and 8' solid screened 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. Solid screened fences exceed the height requirement along Portside Drive cannot be found in the surrounding area, including properties adjacent to the subject property thus it is highly likely that the request 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 Request

The alternative to the applicant's request is to conform to Fencing Materials of Section 35-514 (a)(6), Setbacks of the UDC Section 35-310.01, Clear Vision and Fence Heights of Section 35-514.

Staff Recommendation – Corrugated Metal, Side and Front Setback, and Clear Vision Variances

Staff recommends Denial in BOA-23-10300214 based on the following findings of fact:

1. Corrugated metal is prohibited as a fence material to ensure safety; and
2. The carport at its current distance may harm the adjacent property owners, as water runoff could potentially impact their property; and
3. The current clear vision distance is unsafe for vehicles traveling and leaving the subject property.

Staff Recommendation – Fence Height Special Exception

Staff recommends Denial in BOA-23-10300214 based on the following findings of fact:

1. The proposed 6' and 8' solid screened fence will substantially injure neighboring conforming properties, as no other fences in the immediate seemed to exceed the height requirement.