

Case Number:	BOA-23-10300248
Applicant:	Kedra Adele Segler
Owner:	Neon Wolf Holdings LLC
Council District:	1
Location:	110 Kearney Street
Legal Description:	East 71 feet of Lot 1, Block 2, NCB 3035
Zoning:	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

**A request for:**

1) a 663 square feet variance from the minimum 4,000 square feet requirement, as described in Section 35-310.01, to allow development on a 3,337 square feet lot, 2) a 5' variance from the minimum 10' rear setback requirement, as described in Section 35-310.01, to allow a 5' rear setback, 3) a half story variance from the maximum 2.5 stories, as described in Section 35-310.01 to allow a 3-story structure, 4) a 2' special exception from the maximum 6' height, as described in Section 35-514, to allow an 8' rear and side yard fence, and 5) an 8' variance from the minimum 20' from the back of a sidewalk, as described in Section 35-516(g), to allow a garage entry to be 12' from the front setback.

**Executive Summary**

The subject property is located on Kearney Street just west of IH 37 and east of South Presa Street and was located within the original 36 square miles of the City of San Antonio. The lot is currently vacant and has been vacant for some time. The applicant is requesting a 663 square foot variance from the minimum 4,000 square foot lot size requirement to construct a single-family dwelling, a 5' variance from the minimum 10' rear setback requirement, a half story variance, an 8' variance from the minimum 20' from the back of the sidewalk for a garage entry. Additionally, the applicant is requesting a 2' special exception from the maximum 6' height to allow an 8' fence on the rear and side yards. All other setback requirements will be met. The property is just outside the boundary of the South Presa St and South St Marys St Neighborhood Conservation District (NCD-1). Per the site plan, the proposed development is under the “RM-4” 65% buildable area.

**Code Enforcement History**

There is no code enforcement history.

**Permit History**

The issuance of a building 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 “D” Apartment District. The property was rezoned by Ordinance 47924, dated December 9, 1991, to “R-2” Two-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-2” Two-Family Residence District converted to the current “RM-4” Residential Mixed District.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
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“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Vacant Lot
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### **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Dwelling
South	“RM-4 NCD-1 AHOD” Residential Mixed South Presa/South St. Mary’s Streets Design Standards Airport Hazard Overlay District	Single-Family Dwelling
East	“RM-4 AHOD” Residential Mixed Airport Hazard Overlay District	Single-Family Dwelling
West	“RM-4 NCD-1 AHOD” Residential Mixed South Presa/South St. Mary’s Streets Design Standards Airport Hazard Overlay District	Single-Family Dwelling

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is under the Downtown Area Regional Center Plan and is designated as “Urban Low Density Residential” in the future land use component of the plan. The subject property is in the Lavaca Neighborhood Association, and they were notified of the request.

### **Street Classification**

Kearney Street is classified as a Local Street.

South Presa is classified as a Secondary Arterial Type A.

### **Criteria for Review for Lot Size, Rear Setback, Half Story, and Garage Entry Front Setback.**

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. The applicant is requesting a 663 square foot variance from the 4,000 minimum lot size requirements, a 5’ variance from the minimum 10’ rear setback, and an 8’ variance from the minimum 20’ from the back of the sidewalk requirement for the garage entry. Staff finds that this request is not contrary to the public interest.**

The half story variance is contrary to the public interest as the development will tower over surrounding single-family dwellings and reduce privacy.

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

**A literal enforcement of the ordinance would result in the inability to develop on the property. The lot size limits the space to where a reduced rear setback while still meeting the “RM-4” 65% buildable area. Additionally, the garage front setback will eliminate the ability to have a garage on the lot.**

A literal enforcement of the ordinance for a half story variance would not result in unnecessary hardship. The proposed development can be altered to meet code requirements.

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. This variance will permit a reduced rear setback, garage setback and development on a substandard lot. The request appears to observe the spirit of the ordinance.**

The variance for the half story variance will not observe the spirit of the ordinance. The 3-story development will reduce privacy from surrounding properties.

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 does not find evidence that the requested variance would alter the essential character of the district. The property is part of the original 36 square miles of the City of San Antonio where smaller lots are commonly found. The properties adjacent to the subject property also do not meet the minimum lot size requirements of the “RM-4” base zoning district therefore injury to adjacent properties is highly unlikely.**

Staff finds evidence that the requested half story variance would alter the essential character of the district. No other properties in the area are above the code permitted 2.5 stories.

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

Staff finds the plight of the owner for which the half story variance is sought is not due to unique circumstances existing on the property.

### **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 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 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 8' fence on the rear and side yard 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 fence exceeds the maximum 6' height requirement. The 8' 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, Height and Rear Setback Standards of the UDC Section 35-310.01, fence height standards in UDC Section 35-514.

**Staff Recommendation – Lot Size, Rear Setback, and Garage Entry Front Setback.**

Staff recommends **Approval** in **BOA-23-10300248** based on the following findings of fact:

1. The variance requests do not appear to alter the essential character of the district; and
2. The lot size variance will allow the development of the lot.

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**Staff Recommendation –Half Story Variance.**

Staff recommends Denial in BOA-23-10300248 based on the following findings of fact:

1. The additional half story will alter the essential character of the district; and
2. The half story variance will reduce privacy for surrounding residential lots.

**Staff Recommendation-Fence Height Special Exception.**

Staff recommends Denial in BOA-23-10300248 based on the following findings of fact:

1. The proposed 8' fence will result in inconsistent development patterns, as no other fences exceeding the height requirements were seen in the immediate area.