

Case Number:	BOA-23-10300271
Applicant:	Linda Espino
Owner:	Linda Espino
Council District:	1
Location:	437 East Mulberry Avenue
Legal Description:	Lot 22 and the northwest irregular 5.5 feet of Lot 23, Block 10, NCB 3094
Zoning:	“R-4 H AHOD” Residential Single-Family Historic Monte Vista Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a 16’ variance from the minimum 25’ corner clear vision requirement, as described in Section 35-514, to allow a fence to have a 9’ clear vision, and 2) a 6’ variance from the minimum 15’ driveway clear vision requirement, as described in Section 35-514, to allow a fence to have a 9’ clear vision.

Executive Summary

The subject property is located on the corner of East Mulberry Avenue and Kings Court. The applicant is anticipating on constructing a 5’ combination fence, with the first 3’ solid screened and the remaining 2’ predominantly open to replace an existing hedge. Although this height is permitted within the front yard, the location in which the applicant is placing the fence is within the corner and driveway clear vision fields. At minimum, fences shall be located 25’ from the corner curb and 15’ from the driveway curb. The applicant is proposing to have the fence be 9’ from the corner and driveway curbs.

This property is located within the Monte Vista Historic District. Any exterior modifications or new construction will require approval from the Office of Historic Preservation (OHP). Approval of a site plan or materials submitted as part of a variance application does not supersede any requirements for design review outlined in Article VI of the Unified Development Code. To date, no application has been made to the Office of Historic Preservation for work on this property. The proposed fence height and design is not consistent with the Historic Design Guidelines, Guidelines for Site Elements.

Code Enforcement History

There is no code history for the subject property.

Permit History

Re-Roof Permit (REP-ROF-PMT22-35203125)- August 2022

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 “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
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“R-4 H AHOD” Residential Single-Family Historic Monte Vista Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 H AHOD” Residential Single-Family Historic Monte Vista Airport Hazard Overlay District	Single-Family Residence
South	“R-4 H AHOD” Residential Single-Family Historic Monte Vista Airport Hazard Overlay District	Single-Family Residence
East	“R-4 H AHOD” Residential Single-Family Historic Monte Vista Airport Hazard Overlay District	University Athletic Field
West	“R-4 H AHOD” Residential Single-Family Historic Monte Vista Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is not within a Neighborhood Plan in the future land use component of the plan. The subject property is located within the boundary of the Monte Vista Historical Neighborhood Association, and they have been notified of the request.

Street Classification

East Mulberry Avenue is classified as a local road.

Criteria for Review – 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 applicant is requesting a variance to the Clear Vision Standards to allow a fence to be 9’ from the corner curb and along the driveway approach. To observe the safety of vehicular traffic for those traveling along East Mulberry Avenue Kings Court, the variance to the Clear Vision Standards appears not to be contrary to the public interest.

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

Special conditions exist on the property as there is a stop sign at the location of the corner clear vision, and the applicant will have a 9’ driveway clear vision.

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 variance to the clear vision requirements appears to observe the spirit of the ordinance, as it will leave room for safe visibility for oncoming vehicles. Staff recognizes the property is irregular in shape and if the property owner would abide by the minimum distances of 25' and 15', the area of the front yard would be reduced. Additionally, the presence of the stop sign applies any lost safety mitigation from the reduced clear vision.

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 variance request will not injure the appropriate use of adjacent conforming properties. Staff did not observe other fences within the clear vision fields, however no other lots had an irregular shape as 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 due to unique circumstances existing on the property such as the shape of the lot and location of traffic signs. The circumstances do not appear to be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Clear Vision Requirements of the UDC Section 35-514.

Staff Recommendation – Clear Vision Variance

Staff recommends **Approval** in **BOA-23-10300271** based on the following findings of fact:

1. Traffic Stop Sign reduces any loss of safety mitigation from the reduced corner clear vision; and
2. The variances will not alter the essential character of the district.