

Case Number:	BOA-22-10300020
Applicant:	Joe Wilson
Owner:	Joe Wilson
Council District:	7
Location:	9203 Tifton Drive
Legal Description:	Lot 20, Block 12, NCB 17416
Zoning:	“R-5 AHOD” Residential Single Family Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

Request

A request for 1) a 9” special exception from the maximum 6’ fence height requirement, as described in Section 35-514, to allow a 6’ 9” solid screened fence along the side property line and 2) a 4’ 4” variance from the minimum 5’ rear setback requirement, as described in Section 35-371, to allow an accessory structure to be 1’ 8” from the rear property line.

Executive Summary

The subject property is located on the corner of Tifton Drive and Manassas Drive. The applicant has installed a 6’ 9” fence along a portion of the side property line. The fence has been placed atop a concrete retaining wall and towards the rear of the property there is a downward slope which causes the fence to change in height. Upon the site visit conducted by staff, an accessory structure in the rear yard was observed to be encroaching into the rear setback. The accessory structure did not have any overhang and measured 1’ 8” from the rear property line.

Code Enforcement History

PMT-Building Without A Permit 12/30/2021

ROW - Brush-Debris 12/30/2021

Permit History

No permits have been issued. A fence permit is pending the outcome of the BOA Meeting.

Zoning History

The subject property was annexed to the City Limits of San Antonio city limits by Ordinance 41426, December 25, 1972, and was zoned Temp “R-1” Residence District. Ordinance 59676 dated October 30, 1984 rezoned the property to “R-5” One Family Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted to the current “R-5” Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-5 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
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North	“R-5 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling
South	“R-5 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling
East	“R-5 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-5 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Northwest Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Alamo Farmstead Babcock Road Homeowners Association and were notified of the case.

Street Classification

Tifton Drive is classified as a local road.

Criteria for Review - 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. The applicant is requesting a 4’4” variance from the minimum 5’ rear setback to allow an accessory structure to be 1’ 8” from the rear property line. The accessory structure does not have any overhang and the any water runoff would appear to fall onto the subject property itself which does not appear to be contrary to the public interest.

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 applicant having to move the structure to 5’ away from rear property line in the rear yard which has limited space.

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. A 4’4” variance from the minimum 5’ rear setback to allow an accessory structure to be 1’ 8” from the rear property line will observe the spirit of the ordinance as there is no overhang on the structure and is located far from any adjacent structures.

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 finds the request for a 4'4" variance for a rear setback is enough space away from the adjacent property line and is not likely to negatively affect the adjacent neighboring 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 structure being pre-existing.

Criteria for Review – Fence Height

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 additional fence height was observed upon the site visit and, if granted, staff finds the request would 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 portion of fence is located along the side property line and is exceeding the maximum height requirement by 9". With the property sitting at a higher elevation than the street level and the retaining wall needing to be installed, the public welfare and convenience will be substantially served with this portion of fencing.

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

The fence will create enhanced security and privacy for the subject property and is unlikely to substantially injure any neighboring properties.

- 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 for the section of side yard fence will not 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 permits the current use of a single-family home. The requested special exception will not 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 Setback Regulations of Section 35-371, and the Fence Height Regulations of Section 35-514.

Staff Recommendation – Rear Setback Variance

Staff recommends **Approval** in **BOA-22-10300020** based on the following findings of fact:

1. The structure was existing and is 1' 8" from the rear property line; and
2. Water runoff from the structure appears to fall onto the subject property itself; and
3. The accessory structure will not negatively affect neighboring properties.

Staff Recommendation – Side Fence Special Exemption

Staff recommends **Approval** in **BOA-22-10300020** based on the following findings of fact:

1. Only a portion of the side yard fence is 6' 9" tall and does not appear to alter the essential character of the district; and
2. There are unique circumstances existing on the property, such as the fact that the property is slightly elevated from the street level.