

Case Number:	BOA-22-10300003
Applicant:	Salvador Flores
Owner:	Salvador Flores
Council District:	1
Location:	419 Marshall Street
Legal Description:	Lot 5, Block 3, NCB 761
Zoning:	"R-4 AHOD" Residential Single- Family Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

### **Request**

A request for 1) a special exception from the maximum 3' front yard solid screened fencing requirement, as described in Section 35-514, to allow a 3' 10" solid screened fence and 2) a 2' 2" variance from the maximum 6' fence height requirement, as described in Section 35-514, to allow an 8' 2" solid screened fence along the side and rear property lines.

### **Executive Summary**

The subject property is located along Marshall Street. There is an existing single-family dwelling on the property, that is currently undergoing renovations. Upon the site visit conducted by staff, a solid screened fence was observed to be placed in the front yard at a height of 3' 10" where a maximum of 3' is permitted by right. Additionally, the side yard fence was measured at 8' 2". Due to the fence height exceeding 8' in height, a variance is being requested for the proposed side and rear yard fencing.

### **Code Enforcement History**

There is no relevant Code Enforcement history on file.

### **Permit History**

Trade Permits have been issued to the subject property. A fence permit was issued in 2021 for a 4' wrought iron fence in the front yard and has since expired.

A fence permit application has not yet been submitted for the proposed fence and is pending the result of the BOA Hearing.

### **Zoning History**

The subject property was part of the original 36 square miles of the City Limits of San Antonio and was zoned "D" Apartment District. Upon adoption of the 2001 Unified Development Code, the zoning converted to "MF-33" Multi-Family District, established by Ordinance 93881, dated May 3, 2001. Ordinance 97522, dated April 24, 2003, rezoned the property to the current "R-4" Residential Single Family District.

### **Subject Property Zoning/Land Use**

<b>Existing Zoning</b>	<b>Existing Use</b>
"R-4 AHOD" Residential Single- Family Airport Hazard Overlay District	Single-Family Dwelling

### **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	"R-4 AHOD" Residential Single- Family Airport Hazard Overlay District, "MF-25 Low Density Multi-Family Airport Hazard Overlay District, "MF-50 Multi-Family Airport Hazard Overlay District	Single-Family Dwellings, Apartment Homes
South	"R-4 AHOD" Residential Single- Family Airport Hazard Overlay District	School
East	"MF-33 AHOD" Multi Family Airport Hazard Overlay District	Single-Family Dwellings, Apartment Homes
West	"R-4 AHOD" Residential Single- Family Airport Hazard Overlay District	Single-Family Dwelling

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

The property is within the boundaries of the Midtown Neighborhood Plan and is currently designated "Urban Low Density Residential" in the future land use component of the plan. The subject property is within the Five Points Neighborhood Association and were notified of the case.

### **Street Classification**

Marshall Street is classified as a local road.

### **Criteria for Review**

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:

### **Criteria for Review – Front Yard 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 front yard fence was observed during the site visit and there were not other non-conforming front yard fences observed in the surrounding area. The front yard fence special exception does not appear to be in harmony with the chapter.

*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 fence that is located along the front property line and is exceeding the maximum height requirement by 10". With other predominately open fences in the immediate vicinity, the public welfare does not appear to be substantially served by the proposed fence.

*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 requested special exception for the additional front yard fence height appears to alter the essential character of the district. A fence permit was issued in 2021 for a 4' wrought iron fence which would 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.

### **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 requested variance is due the fence height measuring at 8' 2" upon staff's site visit. Any height exceeding 8' in height must be a variance. The variance appears contrary to the public interest as most of the fences on the street appeared to abide by UDC fence regulations.

*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 having to place a 6' fence along the side and rear property lines, which would appear to provide enough security to the property.

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 fence height restrictions are intended to provide security to properties by maintaining uniformity. The additional fence height does not appear to observe the spirit of the ordinance with there not being any topographical changes in the area.

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.*

The fence height variance for the side and rear property lines appears to alter the essential character of the district. The request does not seem consistent with the surrounding area and existing fencing on adjacent lots.

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 not merely financial in nature, but there do not appear to be any unique circumstances existing on the property.

### **Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the Fence Height Regulations of Section 35-514.

### **Staff Recommendation – Front Yard Fence Special Exception**

Staff recommends Denial in BOA-22-10300003 based on the following findings of fact:

1. The front yard fence is 3' 10"; and
2. The front yard fence appears to alter the essential character of the district as there are many front yard fences along Marshall Street that abide the front yard fence requirements.

**Staff Recommendation – Side and Rear Yard Fence Height Variance**

Staff recommends Denial in BOA-22-10300003 based on the following findings of fact:

1. The side fence measured to be 8' 2" and appears to alter the essential character of the district; and
2. There do not appear to be any unique circumstances existing on the property that would justify additional fence height for the subject property.