

Case Number:	BOA-21-10300095
Applicant:	Joseph Palumbo
Owner:	Joseph Henry & Elizabeth Palumbo
Council District:	1
Location:	132 Rehmann Street
Legal Description:	East 44.81' of Lot 12, Block 1, NCB 3558
Zoning:	"R-6 MLOD-2 MLR-2 RIO-7 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 San Pedro Creek Overlay Airport Hazard Overlay District.
Case Manager:	Roland Arsate, Planner

Request

A request for 1) 1' 11" special exception from the 3' maximum fence height requirements, as described in Section 35-514, to allow a 4' 11" wooden privacy fence along the front property line, 2) a 6' variance from the clear vision standards of 25', as described in Section 35-514, to allow a solid screen fence to be within the clear vision field.

Executive Summary

The subject property is located on the corner of Rehmann Street and Adelaide Street. There are two structures on the subject property including a primary residential structure facing Rehmann Street and a detached carport facing Adelaide Street. The applicant is requesting a special exception to allow a 4' 11" wooden privacy fence in the frontyard. The fence follows the front and side property line and is encroaching into the Clear Vision Field. DSD Traffic Engineering staff reviewed this item and see no concern with the proposed placements. Proposed fence height and layout does not seem to propose any clear vision or sight constraints upon our review.

The subject property was granted other variances and a special exception from the Board of Adjustment on July 1, 2019. The following requests were granted at the previous BOA hearing:

- A 2' variance from the 5' side setback required for a detached structure to allow it to be 3' from side property line
- A 2' variance from the 5' rear setback to allow a detached structure to be 3' from the rear property line
- A 12' variance from the 20' garage setback to allow a garage to be 8' from the side property line
- A variance from a clear vision standard to allow a fence to be 15' within the clear vision field along the side property line.
- A special exception for a 8' rear fence along rear property line

The following requests were denied at the hearing:

- A special exception for a 5' tall solid screen fence in front yard of the property

Code Enforcement History

06/16/2018 Construction of two story structure without a permit.

10/31/2018 Solid wooden Fence constructed in front without a permit

Storage shed violating 5 ft side setback

02/13/2019 Fence permit still not pulled

12/05/2019 No fence permit obtained

Fence height in front not obtained

Accessory structure has roof overhang and has 3 ft setback

01/10/2020 No fence permit obtained

Fence height has not been modified

Accessory structure has 3 ft side setback with overhang, overhang needs to be eliminated

Permit History

08/27/2018 Completion of two story structure

Zoning History

The subject property is located within the Original City Limits of San Antonio and was zoned "L" First Manufacturing District. The zoning converted from "L" to "I-2" Heavy Industrial District upon adoption of the 2001 Unified Development Code (Ordinance 93881, dated May 3, 2001). The zoning changed from "I-2" Heavy Industrial District to the current "R-6" Residential Single Family on December 14, 2006, established by Ordinance 2006-12-14-1441.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"R-6 MLOD-2 MLR-2 RIO-7 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 San Pedro Creek Overlay Airport Hazard Overlay District.	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-6 MLOD-2 MLR-2 RIO-7 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 San Pedro Creek Overlay Airport Hazard Overlay District.	Single-Family Residence
South	"R-6 MLOD-2 MLR-2 RIO-7 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 San Pedro Creek Overlay Airport Hazard Overlay District.	Single-Family Residence
East	"R-6 MLOD-2 MLR-2 RIO-7 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 San Pedro Creek Overlay Airport Hazard Overlay District.	Single-Family Residence

West	"R-6 MLOD-2 MLR-2 RIO-7 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 San Pedro Creek Overlay Airport Hazard Overlay District.	Single-Family Residence
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Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Lone Star Community Plan and is designated “Low Density Residential” in the future land use component of the plan. The subject property is located within the Collins Garden Neighborhood Association and were notified of the case.

Street Classification

Rehmann Street is classified as a Local Road

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 is intended to provide safety and security of the applicant’s property. The request is to exceed the maximum fence height by 1’ 11”. The front yard fence is not in harmony with the spirit and purpose of the chapter as the applicant is able to reduce the solid-screen fencing to 3’ or open up the fencing to allow the current fence to be predominately (70%) open.

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. A 4’ 11” solid screened fence along the front and side yards will not provide additional security for the applicant’s property and the carport. There is only one other solid front yard fence along Rehmann Street. This does not substantially serve the public welfare and convenience.

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

The 4’ 11” solid screened fence will create enhanced security and privacy for the subject property and is highly unlikely to injure adjacent 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 front and side yard fence will alter the essential character of the district and will provide security of the district. The solid front yard fencing taller than 3’ is not permitted by the City of San Antonio UDC code, specifically in a corner lot as it does not abide by clear visions standards and therefore creates a life and safety issue. The property owner may trim down the solid wooden privacy fence to be 3’ tall.

- 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 – 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 public interest is defined as the general health, safety, and welfare of the public. The applicant is requesting a variance from the clear vision standards to allow a solid screen fence to be within the clear vision field, which is not contrary to the public interest.

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

The solid screen fence facing Rehmann Street is existing, so a literal enforcement of the ordinance would result in the applicant needing to relocate the fence as to not impede with clear vision standards set forth.

- 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. DSD Traffic Staff does not find any adverse effects with the existing solid fence constructed along the front and side property line, so the spirit of the ordinance will be observed and substantial justice will not be done.

- 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 for a solid screen fence to remain in the front and side property lines is not likely to alter the essential character of the district.

- 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. The solid screen fence facing Rehmann Street was constructed and encroached into the clear vision setback. The circumstances were created by the owner and are not merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is comply to UDC and City of San Antonio Building standards with regards to fence heights in front façades of properties as they conform to Clear Vision to the Lot and Building Dimensions of the UDC Sections 35-310.01, the Fence Height Regulations of Section 35-514.

Staff Recommendation – Front Fence Height Special Exception

Staff recommends Denial in BOA-21-10300095 based on the following findings of fact:

1. The front yard wooden privacy fence measure 4' 11" in height;
2. The front yard fence design aspects are not consistent with height regulations for UDC 35-514 (c) (1); and
3. The request was denied in 2019 without being corrected; and
4. Fence height could be reduced to 3' in height for a solid-screened fence or altered to a predominately open fence at the same height; and
5. Fence design does not match that of the surrounding neighborhood

Staff Recommendation – Clear Vision Variance

Staff recommends **Approval** in **BOA-21-10300095** based on the following findings of fact:

1. Fence impedes in the area designated for clear vision which is 25' from front and side property lines from the corner; and
2. DSD Traffic Staff does not have concerns for the proposed placement of the fence.