

Case Number:	BOA-21-10300118
Applicant:	Juan R Cervantes
Owner:	Juan R Cervantes
Council District:	5
Location:	427 Guanajuato Street
Legal Description:	Lot 45 & 46, Block 11, NCB 11331
Zoning:	"R-4 MLOD-2 MLR-1 AHOD" Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Kayla Leal, Senior Planner

### **Request**

A request for 1) a 15' variance from the minimum 20' rear setback requirement, as described in Section 35-310.01, to allow a structure to be 5' from the rear property line and 2) a 1' special exception from the 5' maximum fence height in the front yard to allow a portion of a solid screened front yard fence, as described in Section 35-514, to be 6' tall.

### **Executive Summary**

The subject property is located along Guanajuato Street, just north of Highway 90. The applicant is requesting a rear setback variance to allow a single-family residence to be 5' away from the rear property line. According to BCAD, the residence was built in 2007 and city records show the structure was built without permits. An investigation was opened on July 10, 2014 for Building Without a Permit, and the applicant applied for a zoning variance shortly after. At its meeting on August 4, 2014, the Board of Adjustment approved the variance request. The applicant did not apply for permits within the allotted time frame, so they have to go before the Board again in order to pull permits. Upon the site visit, staff observed a section of 6' solid screened fencing along the side property line that is past the front façade of the home.

### **Code Enforcement History**

There are no relevant Code Enforcement violations pending.

### **Permit History**

No relevant permits appear to have been pulled for the property.

### **Zoning History**

The subject property was annexed into the San Antonio City Limits on September 25, 1952, established by Ordinance 18115, and was zoned "B" Residence District. The zoning changed from "B" to "R-7" Small Lot Residence District on May 28, 1987, established by Ordinance 65106. Upon adoption of the 2001 Unified Development Code, the zoning converted from "R-7" to the current "R-4" Residential Single-Family District, established by Ordinance 93881 dated May 3, 2001.

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

Existing Zoning	Existing Use
"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

### **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	Single-Family Residence
South	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
West	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

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

The subject property is in the West/Southwest Sector Plan and is designated “General Urban Tier” in the future land use component of the plan. The subject property is located within the Westwood Square Neighborhood Association and were notified of the case.

### **Street Classification**

Guanajuato Street 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 constructed the home without permits, and the structure is only setback 5’ from the rear property line. There is adequate space in the front yard in order to provide a 20’ rear setback, so the variance appears 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 relocating the structure 20’ from the rear property line.

*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 rear setback is intended to provide spacing between adjacent structures, and the requested variance does not appear to observe the spirit of the ordinance.

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 did not observe other residential structures with similar front and rear setbacks in the surrounding area. The constructed residence appears 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 does not find the plight of the owner of the property for which the variance is sought to be 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 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 6' fence along the portion of front yard on the west side does not pose any adverse effects to the public welfare.**

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

**The neighboring property will not be substantially injured as the 6' fence is placed along the side yard of the abutting property to the west.**

- 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 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 Lot and Building Dimensions of the UDC Sections 35-310.01 and the Fence Height Regulations of Section 35-514.

**Staff Recommendation – Rear Setback Variance**

Staff recommends Denial in BOA-21-10300118 based on the following findings of fact:

1. The residential structure is 5' from the rear property line; and
2. There is adequate space in the front yard to provide a 20' rear setback.

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

Staff recommends **Approval** in **BOA-21-10300118** based on the following findings of fact:

1. The 6' solid-screened fence is along a portion of the western side property line; and
2. The fence is along the side yard of the western abutting property.