

Case Number:	BOA-23-10300320
Applicant:	Maria Guadalupe DelGiudice
Owner:	Maria Guadalupe DelGiudice
Council District:	5
Location:	1618 Whitman Avenue
Legal Description:	Lot 16 and 17, Block 30, NCB 8523
Zoning:	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Colton Unden, Planner

Request

A request for 1) a 3' special exception from the maximum 3' privacy fence, as described in Section 35-514, to allow a 6' privacy fence in the front yard, and 2) a 5' variance from the minimum 15' clear vision, as described in Section 35-514 (a)(2), to allow a 10' driveway clear vision.

Executive Summary

The subject property is located along Whitman Avenue, south of West Southcross Boulevard and north of Southwest Military Drive. The applicant is requesting a 3' special exception from front yard fence height requirements to allow a 6' privacy fence in the front yard. The applicant is additionally requesting a 5' variance from the clear vision requirements to allow a 10' driveway clear vision. The property owner had the fence built with no permit and was cited by Code Enforcement. The property is flanked by commercially zoned lots, however the lot to the east appears to be a single-family dwelling. The commercial property to the west recently applied for a fence permit, however the planned fence was projected to be 5' predominantly open.

Code Enforcement History

PMT-Building Without a Permit / Fence Height (INV-PBP-23-3100004574)

PMT-Building Without a Permit / Fence Height (INV-PBP-23-3100003489)

PMT-Building Without a Permit / Fence Height (INV-PBP-23-3100002009)

Permit History

The issuance of a building permit is pending the outcome of the Board of Adjustment.

Zoning History

The property was annexed by the City of San Antonio by Ordinance 1391, dated September 22, 1944. The property was rezoned by Ordinance 88456, dated September 10, 1998 from “B-1” Business District to “R-1” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “R-1” Single-Family Residence District converted to the current “R-6” Residential Single-Family District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling
South	“I-1 MLOD-2 MLR-1 AHOD” General Industrial Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling
East	“C-1 MLOD-2 MLR-1 AHOD” Light Commercial Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Dwelling
West	“C-1 MLOD-2 MLR-1 AHOD” Light Commercial Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Day Care Center

Comprehensive Plan Consistency/Neighborhood Association

The subject property is located within the Kelly / South San Pueblo Community Plan and is designated as “Low Density Residential” in the future land use component of the plan. The subject property is not located within the boundary of any registered neighborhood association.

Street Classification

Whitman Avenue is classified as a local road.

Criteria for Review – Fence Height Special Exception

According to Section 35-482(h) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

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 fence height being requested is 6’ for the front of the yard. If granted, staff finds the request would not be in harmony with the spirit and purpose of the ordinance, as the request exceeds the maximum height requirements for a fence in the front yard.

B. The public welfare and convenience will be substantially served.

In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The proposed fence does not appear to serve the public welfare and convenience, as there were no fences like the proposed design in the immediate surrounding area.

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

The special exception will substantially injure the neighboring properties as it will create a disproportionate fence height and composition along the front yards.

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 fence height in the front property line appears to alter the location for which the special exception is sought, as no similar styled fences were observed to be in the immediate surrounding area.

E. The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district

The requested special exception will weaken the general purpose of the district as it goes against the established Unified Development Code fence standards.

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 also requesting a clear vision variance to allow a fence to be 10' from the curb. Staff finds that this request will not be contrary to the public interest as leaves adequate clear vision space to safely back into the local street.

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

The constructed fence has a 10' clear vision view, that would not cause hardship for vehicular traffic. A literal enforcement of the ordinance would result in the applicant altering the fence back which would prevent adequate parking space for a vehicle.

- 3. By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

The clear vision of 10' leaves sufficient room to back into a local residential street and will 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.*

The clear vision variance distance will be 10' from the curb. This distance of the fence is not likely to alter the essential character of the district as it appears to be the established fence distance in the area. The clear vision variance will not 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.*

The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property for the clear vision variance, such as having a small front yard to park a vehicle.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Clear Vision Regulations of the UDC Section 35-514(a)(2) and Fence Height Regulations of the UDC Section 35-514.

Staff Recommendation – Fence Height Special Exemption

Staff recommends Denial in BOA-23-10300320 based on the following findings of fact:

1. The request will alter the essential character of the district as no other properties in the immediate area have fences exceeding the regulations of the Unified Development Code in height and privacy; and,
2. The request will injure the appropriate use of the surrounding properties.

Staff Recommendation – Clear Vision Variance

Staff recommends **Approval** in **BOA-23-10300320** based on the following findings of fact:

1. **Vehicular traffic will not be obstructed with the reduced clear vision; and,**
2. **The reduced clear vision will not alter the essential character of the district.**