

Case Number:	BOA-22-10300008
Applicant:	Hillard Soward
Owner:	Hillard Soward
Council District:	6
Location:	5215 Dove Nest
Legal Description:	Lot 28, Block 12, NCB 18682
Zoning:	“R-6 AHOD” Residential Single Family Airport Hazard Overlay District
Case Manager:	Richard Bautista-Vazquez, Planner

Request

A request for a 3’ variance from the maximum 6’ fence height requirement, as described in Section 35-514, to allow a 9' solid screen fence along the rear property line.

Executive Summary

The applicant has installed a 9’ fence along the rear property line due to issues with privacy. The request is to allow an existing 9’ tall fence, which would require a variance due to it being taller than 8’. Upon the site visit, staff could see the fence from the right of way. While there are some elevation changes in the within the neighborhood, staff did not find other similar fences seen in the surrounding area. Additionally, the property to the rear of the subject property was found to be slightly higher in elevation.

Code Enforcement History

A Code Investigation for Building Without A Permit was opened on 03/24/2022.

Permit History

Fence permits are pending the outcome of the BOA Meeting.

Zoning History

The subject property was annexed into the City Limits of San Antonio by Ordinance 68297 dated December 30, 1989 and was zoned “O-1” Office District. Ordinance 79875, dated March 24, 1994, rezoned the property to “R-1” Single Family Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted to the current “R-6” Residential Single Family District, established by Ordinance 93881, dated May 3, 2001.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“R-6 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling
South	“R-6 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling
East	“R-6 AHOD” Residential Single Family Airport Hazard Overlay District	Single-Family Dwelling
West	“R-6 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 Misty Oaks Neighborhood Association and they were notified of the case.

Street Classification

Dove Nest 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 variance to allow a 9' fence along the rear property line that may 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 conform to the maximum 6' fence height requirement. With the property to the rear sitting at a slightly higher elevation, there may be an unnecessary hardship with their view into the rear yard of the subject 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. A variance from the maximum 6' fence requirement to allow a fence to be 9' in height will not 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 finds the request for a variance for a 9' fence is likely to negatively affect the adjacent property. No other fences were observed in the area so the fence 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 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 small elevation change and privacy concerns.

Alternative to Applicant's Request

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

Staff Recommendation – Fence Height Variance

Staff recommends Denial in BOA-22-10300008 based on the following findings of fact:

1. Staff did not find any other fences in the surrounding area so the request appears to alter the essential character of the district.