

Case Number:	BOA-22-10300055
Applicant:	Valerie Montes
Owner:	Valerie Montes
Council District:	7
Location:	104 Pardo Circle
Legal Description:	Lot 18, Block 8, NCB 8105
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for 1) a 4’ special exception from the maximum 3’ front yard fence height requirement, as described in Section 35-514, to allow a 7’ solid screened privacy fence in the front yard, and 2) a 9’-7” variance from the 15’ minimum clear vision requirement, as described in Section 35-514(a)(2), to allow a solid screened privacy fence to be 5’-5” from the front driveway.

### **Executive Summary**

The subject property is located along Pardo Circle near St. Cloud Street. The applicant constructed a solid screened privacy fence in the front yard without pulling building permits. Solid screened privacy fences are required to be 3’-0” in the front yard, and the existing fence is currently 7’. Additionally, it does not abide by the minimum Clear Vision requirement of 15’, which measured at 5’-5”. Upon site visits conducted by staff, no fences were seen with similar height and placement in the immediate area.

### **Code Enforcement History**

An investigation was opened on November 3, 2022 for Building Without A Permit.

### **Permit History**

There are no relevant permits pulled for the subject property. The issuance of a building permit is pending the outcome of the Board of Adjustment.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 1450, dated October 11, 1944, and originally zoned “B” Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B” Residence District converted to the current “R-4” Residential Single-Family District.

### **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**

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District	Single-Family Residence

South	ROW	Public Park
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 Near 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 boundary of the Donaldson Terrace Neighborhood Association and they have been notified of the request.

### **Street Classification**

Pardo Circle is classified as a local road.

### **Criteria for Review – Special Exception for Fence Height Modification**

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. Upon the site visit, a 7’ solid screened privacy fence was observed in the front yard that deviates from the 3’ maximum height requirement. If granted, staff does not find the request to be harmonious 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. Staff did not observe any significant topographical changes on the subject property or adjacent properties. A 7’ solid screened privacy fence in the front yard does not appear to serve the public welfare and convenience.

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

7’ wood privacy fences were not observed in the surrounding neighborhood; therefore, the additional height could adversely injure 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 additional height in fence along the side property line will alter the essential character of the district, as there is no established precedence for solid screened privacy fences in the front yard.

*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 allows for the use of a single-family dwelling. The requested special exception will likely 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. Staff finds the clear vision intrusion is 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 pushing back the location of the fence to meet the minimum 15' clear vision requirement, which will not result in an unnecessary hardship.

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 clear vision measurement of 5'-5" is not within the spirit of the ordinance, as these requirements are enforced for the safety of vehicular traffic.

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 clear vision encroachment will 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 any unique circumstances existing on the property and created by the owner of the property.

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

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

### **Staff Recommendation – Special Exception for Fence Height Modification**

Staff recommends Denial in BOA-22-10300055 based on the following findings of fact:

1. A 7' solid screened privacy fence in the front yard deviates from the 3' maximum height requirement; and
2. 7' solid screened privacy fences were not observed in the surrounding neighborhood; therefore, the additional height could adversely injure neighboring properties

**Staff Recommendation – Clear Vision Variance**

Staff recommends Denial in BOA-22-10300055 based on the following findings of fact:

1. The clear vision measurement of 5'-5" does not provide adequate distance from the driveway to the curb, as minimum distance requirements of 15' are enforced for the safety of vehicular traffic.