

Case Number:	BOA-22-10300265
Applicant:	Oscar Montiel
Owner:	Oscar Montiel
Council District:	1
Location:	730 West Olmos Drive
Legal Description:	Lot 3, Block 18, NCB 7267
Zoning:	“R-4 AHOD” Residential Single-Family Airport Hazard Overlay District
Case Manager:	Jake Exler, Planner

### **Request**

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

### **Executive Summary**

The subject property is located along West Olmos Dr near Olmos Park. The applicant constructed a wood privacy fence along the front property line without obtaining a fence permit. The case came from Code Enforcement Services. The maximum height permitted for a solid fence is the front is 3’. Upon the site visit conducted by staff, the fence measured 5’-2” in height at the highest point. Staff also observed that the fence is 9’-7” from the curb, short of the 15’ front setback requirement. Staff did not observe any abnormal physical features such as a slope on the property.

### **Code Enforcement History**

An investigation was opened on August 23, 2022, for Building Without a Permit and a Stop Work Order was posted. The case is pending resolution.

### **Permit History**

A residential fence permit for a 5’-2” privacy fence was not obtained. The fence permit is pending the outcome of the Board of Adjustment hearing.

### **Zoning History**

The property was annexed into the City of San Antonio by Ordinance 1941, dated May 31, 1940, and 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	“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 North Central Neighborhood 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 Edison Neighborhood Association, and they have been notified of the request.

### **Street Classification**

West Olmos Drive is classified as a local street.

### **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. Various fences in the area observing the UDC requirements, the requested 5’-2” wood privacy fence is not 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 privacy fence will not contribute to the public welfare and convenience as the privacy height will be exceeded by 2’-2”.

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

Privacy fences above the 3’ maximum permitted were not observed in the vicinity of the subject site; therefore, the additional height could likely substantially 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 other houses in the area have predominantly open front fences.

*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 use of a single-family home. The requested special exception may weaken the general purpose of the district, as it does not permit privacy fences over 3’.

## **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 to the clear vision requirement for the fence to be 9'-4" from the curb. This is still sufficient space between the curb and the fence and so is not 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 fence needing to comply with the 15' clear vision requirement. Neighboring houses have the same fence placement and this would require the applicant to move their fence line behind those houses.**

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 5'-5" clear vision variance for the fence aligns with other houses in the area and allows adequate front spacing, and so appears 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.*

**A 5'-5" clear vision variance is fitting with the character of the neighborhood as there are other fences observed in the area with similar fence location.**

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 variances are sought is due to unique circumstances existing on the property, such as the location of the property. The requested clear vision variance will ease the hardship by allowing the fence line to remain the same and in line with neighboring houses.**

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

The alternative to the applicant's request is to conform to the Fence Height Regulations listed under Section 35-514 of the UDC.

## **Staff Recommendation – Fence Special Exception**

Staff recommends Denial in BOA-22-10300265 based on the following findings of fact:

1. The 5'-2" wood privacy fence was constructed on the front property line without an issued permit; and
2. The privacy fence is out of character for the neighborhood as neighboring properties have predominantly open fences; and
3. The property does not include any abnormal physical features such as a change in elevation or slope.

**Staff Recommendation – Clear Vision Variance**

Staff recommends **Approval** in **BOA-22-10300265** based on the following findings of fact:

1. The fence is in line with others in the immediate area therefore the request does not appear to alter the essential character of the neighborhood.