

Case Number:	BOA-23-10300066
Applicant:	Hometek, LLC
Owner:	Hometek, LLC
Council District:	1
Location:	509 West Mistletoe Avenue
Legal Description:	The South 10.850 feet of Alley and Lot 18, Block 24, NCB 1832
Zoning:	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a 2' special exception from the maximum 6' side yard fence height requirement, as described in Section 35-514, to allow an 8' fence along the western property line, 2) a 2'-8" variance from the minimum 5' side setback requirement, as described in Section 35.310.01, to allow a structure to be 2'-4" from the western property line, and 3) a 2'-1" variance from the maximum 5' side setback requirement, as described in Section 35-370(b)(1), to allow an accessory structure with an 11" overhang to be 2'-11" from the eastern property line.

Executive Summary

The subject property is located along West Mistletoe Avenue located near North Flores Street. The applicant is seeking to construct an 8' solid screened fence along the western property line, behind the front façade of the home. Fences constructed in San Antonio are allowed up to 6' in height and must obtain a special exception to exceed this limitation. Upon site visits, staff observed the existing principal and accessory structures that were in imposing into the setback. The principal structure measured 2'-4" from the western property line and the accessory structure measured 2'-11" with an 11" overhang from the eastern property line. Anytime a new construction needs to obtain a variance, Zoning Staff will ensure all existing structures have the opportunity to be brought to the current Universal Development Code (UDC) building standards, which is a minimum of 5' from both western and eastern property lines in this case. Per BCAD, the principal structure was constructed in 1940 and the accessory structure in 1974, before the current UDC standards. While the property is located in the Alta Vista Neighborhood Conservation District (NCD), no additional variances are required from the NCD.

Code Enforcement History

Complaint- October 2022

Building Investigation- October 2022

Electrical Investigation- October 2022

Mechanical Investigation- October 2022

Permit History

The issuance of a fence and building permit are pending the outcome of the Board of Adjustment

Mechanical Permit- November 2022

Plumbing Gas Permit- November 2022

Plumbing General Permit- November 2022

Electrical General Permit- November 2022

Re-Roof Permit-October 2022

Foundation Repair Permit-October 2022

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “D” Apartment District. The property rezoned under Ordinance 86704, dated September 25, 1997, from “D” Apartment 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 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
South	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
East	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence
West	“R-6 NCD-2 AHOD” Residential Single-Family Alta Vista Neighborhood Conservation Airport Hazard Overlay District	Single-Family Residence

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Midtown Neighborhoods Neighborhood Plan and is designated as “Medium Density Residential” in the future land use component of the plan. The subject property is located within the boundary of the Alta Vista Neighborhood Association and they have been notified of the request.

Street Classification

W. Mistletoe Avenue is classified as a local road.

Criteria for Review – Fence Height Special Exception

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 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 proposed fence being requested is solid screened, located along the western

property line and exceeds the maximum height requirement. If granted, staff finds the request would not be in harmony with the spirit and purpose of the ordinance.

2. *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 proposed fence be requested will be located along the western property line and is exceeding the maximum height requirement. Staff did not observe any significant topographical changes on the subject property or adjacent property. The fence is solid screened which still does not serve the public welfare and convenience.

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

The proposed 8'solid screened fence will substantially injure neighboring conforming properties, as no other fences in the immediate seemed to exceed the height requirement.

4. *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 appears to alter the essential character of the district. Solid screened fences exceed the height requirement along West Mistletoe Avenue cannot be found in the surrounding area, including properties adjacent to the subject property thus it is highly likely that the request will alter the essential character of the district.

5. *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 exceptions will likely weaken the general purpose of the district.

Criteria for Review –Side Setback 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. In this case, the public interest represented by setback requirements to ensure uniform development and space between properties. Per BCAD, the structure was built in 1910 and the accessory structure in 1970. The structures in their current location have not been contrary to the public interest since they were constructed.

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 altering the structures to conform to current UDC building regulations. The special condition found on the subject property is that both structures were built prior to current regulations, making them non-conforming. A literal enforcement of the ordinance would result in an

unnecessary hardship, as the applicant would have to alter the existing structures to conform.

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 existing structures in their current locations provide a decent amount of space between adjacent properties, which observe the spirit of the ordinance by allowing space for maintenance to be completed without imposing into adjacent properties and light and air to trespass freely.

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 structure will stay in their current locations. Upon site visits, staff observed other lots with narrow widths in the immediate area with reduced building setbacks. Due to this, the request does not seem to alter the essential character of the district or injure neighboring properties.

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 the structures being built prior to current UDC regulations. The circumstances do not appear to be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Fence Height Requirements of the UDC Section 35-514 and Building Regulations of the UDC Section 35-370(b)(1).

Staff Recommendation – Fence Height Special Exception

Staff recommends Denial in BOA-23-10300066 based on the following findings of fact:

1. The proposed 8' fence will result in inconsistent development patterns, as no other fences exceeding the height requirements were seen in the immediate area.

Staff Recommendation – Western and Eastern Property Line Variances

Staff recommends **Approval** in **BOA-23-10300066** based on the following findings of fact:

1. The structures were built prior to current UDC building regulations, resulting in them being non-conforming; and

2. The current distances in place allows for routine maintenance without trespass onto adjacent properties; and
3. Light and air can freely flow through the subject property.