

Case Number:	BOA-23-10300080
Applicant:	American GI Forum National Veterans Outreach Program, Inc.
Owner:	NVOP Development Corporation
Council District:	1
Location:	202 and 206 San Pedro Avenue
Legal Description:	Lots 6 and 7 exc. 9.2 feet, and the Northeast 157.8 feet of Lot 8, Block 7, NCB 787
Zoning:	“D AHOD” Downtown Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

Request

A request for 1) a 2' special exception from the maximum 5' front yard fence height requirement, as described in Section 35-514, to allow a 7' predominantly open fence in the front yard, 2) a 1' special exception from the maximum 6' fence height requirement, as described in Section 35-514, to allow a 7' predominantly open fence in the side and rear yards, and 3) a 9'-9" variance from the minimum 15' clear vision requirement, as described in Section 35-514 (a)(2) to allow a fence to be 5'-3" from the front driveways.

Executive Summary

The subject property is located along San Pedro Avenue, located adjacent to Interstate 35 in Downtown San Antonio. The applicant is requesting a special exception to construct a 7' predominately open fence in the front, rear, and side yards. The fence is anticipating being located around the perimeter of the property. Per the site plan, the fence is anticipating encroaching into the clear vision area for the two front driveways. Fences that are constructed in the front yard are allowed to be 5', if predominantly open, and 6' in the side and rear yards. Furthermore, fences are required to maintain a minimum distance of 15' when located near a driveway. The driveway is one way, and vehicular traffic will exit on the alley.

Code Enforcement History

Overgrown Yard Investigation (INV-LOT-21-2580013826) - May 2021

Permit History

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

Re-Roof Permit (REP-ROF-PMT22-35200712) - March 2022

Fire Alarm Permit (FIR-FAS-PMT21-24703177) - November 2021

Zoning History

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “J” Commercial District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “J” Commercial District converted to “I-1” General Industrial District. The property rezoned under Ordinance 97651, dated May 22, 2003, from “I-1” General Industrial District to the current “D” Downtown District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“D AHOD” Downtown Airport Hazard Overlay District	Office

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	ROW	IH-35
South	“D AHOD” Downtown Airport Hazard Overlay District”	Commercial Building
East	“D AHOD” Downtown Airport Hazard Overlay District”	Parking Lot
West	“D AHOD” Downtown Airport Hazard Overlay District”	Vacant Commercial

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Downtown Area Regional Center Plan and is designated as “Regional Mixed-Use” in the future land use component of the plan. The subject property is located within the boundary of the Downtown Neighborhood Association, and they have been notified of the request. Additionally, the subject property is located less than 200’ from the boundaries of Tobin Hill Community Neighborhood Association and have been notified of the request.

Street Classification

San Pedro Avenue is classified as a Primary Arterial Type B.

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 predominantly open, located along the front, side, and rear property lines and does not exceed 7’ in height. If granted, staff finds the request would be 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 property owners while still promoting a sense of community. The proposed fence be requested will be located along the front, side, and rear property lines and is exceeding the maximum height requirement by 2’ and 1’. The fence is predominantly open which still serves the public welfare and convenience.

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

The fence will create enhanced security and privacy for the subject and adjacent properties. Furthermore, Interstate Highway 35 is abutting the subject property, which the fence can act as a barrier. Additionally, other 7’ predominantly open fences were seen in the immediate area.

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, side, and rear yards of the subject property does not appear to alter the location for which the special exception is sought, as the abutting base zoning districts are commercially zoned. Additionally, the property is zoned for more intense commercial uses that would be beneficial to add a 7' fence.

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

The purpose of the fencing standards is to protect the health, safety, and general welfare of the public. The special exception request is to allow an 7' tall fence in order to add security for the owner. Therefore, the requested special exception will not 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. In this case, the public interest is represented by minimum clear vision requirements to ensure the safety of vehicular traffic. The applicant is requesting a clear vision variance to allow a fence to be 5'-3" from the two front driveways. Staff finds that this request will not be contrary to the public interest as this is an acceptable distance for sight.

- 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 plans to meet the minimum 15' clear vision requirement for the front and side driveways. This would result in an unnecessary hardship as the parking lot and office building of the subject property would need to decrease in size to abide by the current requirements.

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

The clear vision request to allow a fence to be 5'-3" from the front driveways will observe the spirit of the ordinance by providing a safe distance between the two points, allowing vehicular traffic to not be obstructed. Additionally, the driveways are currently one-way, meaning no vehicles would be reversing onto San Pedro Avenue.

- 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 distance will be 5'-3" from the front driveways, which is not likely to alter the essential character of the district as other fences were seen in the immediate area with similar clear vision distances.

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 location the parking lot and structures on the subject property. 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 Regulations of the UDC Section 35-514 and Fence Clear Vision Area of the UDC Section 35-514 (a)(2).

Staff Recommendation – Fence Height Special Exception

Staff recommends **Approval of** in **BOA-23-10300080** based on the following findings of fact:

1. The fence will create enhanced security and privacy for the subject and adjacent properties; and
2. The current district allows for a more intense commercial development, thus making the special exception not out of character with the assigned base zoning district.

Staff Recommendation – Clear Vision Variance

Staff recommends **Approval of** in **BOA-23-10300080** based on the following findings of fact:

1. The driveway will not have any vehicles backing out; and
2. The clear vision request to allow a fence to be 5'-3" from the front driveways will observe the spirit of the ordinance by providing a safe distance between the two points, allowing vehicular traffic to not be obstructed.