



# City of San Antonio

## Agenda Memorandum

**File Number: 16-3287**

**Agenda Item Number: 4.**

**Agenda Date: 5/23/2016**

**In Control: Board of Adjustment**

**Case Number:** A-16-084  
**Applicant:** Chris Conger  
**Owner:** Roy Leslie  
**Council District:** 2  
**Location:** 106 Pershing Avenue  
**Legal Description:** Lots 17, 18, & 19, Block 1, NCB 6089  
**Zoning:** "C-3 RIO-1 AHOD" General Commercial River Improvement Overlay  
 Airport Hazard Overlay District  
**Case Manager:** Logan Sparrow, Senior Planner

### Request

A request for a four foot variance from the six foot maximum rear yard fence height, as described in Section 35 -514, to allow a ten foot tall privacy fence on a portion of the side and rear yard of the property.

### Executive Summary

The subject property is located at 106 Pershing Avenue, approximately 138 feet east of Broadway. The applicant is seeking a variance to allow for a ten foot tall fence along the majority of the rear property line, and along a portion of the east property line. The fence is proposed to be ten feet tall as a means to mitigate noise from the subject property, developed as a bar, from negatively affecting adjacent residential properties. This request is processed as a variance as special exception cannot authorize fences in excess of nine feet in commercial districts.

### Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"C-3 RIO-1 AHOD" General Commercial River Improvement Overlay Airport Hazard Overlay District	Bar

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“C-2 RIO-1 AHOD” Commercial River Improvement Overlay Airport Hazard Overlay District & “R-4 RIO-1 AHOD” Residential Single-Family River Improvement Overlay Airport Hazard Overlay District	Retail, Parking Lot
South	“MF-33 NCD-6 AHOD” Multi-Family Mahncke Park Neighborhood Conservation Overlay Airport Hazard Overlay District	Multi-Family Dwelling and Garden Center
East	“MF-33 NCD-6 AHOD” Multi-Family Mahncke Park Neighborhood Conservation Overlay Airport Hazard Overlay District	Single-Family Dwelling
West	“C-2 RIO-1 AHOD” Commercial River Improvement Overlay Airport Hazard Overlay District	Restaurant

**Comprehensive Plan Consistency/Neighborhood Association**

The property is within the boundaries of the Mahncke Park Neighborhood Plan and currently designated as Low-Density Mixed-Use in the future land use component of the plan. The subject property is within the Mahncke Park Neighborhood Association. As such, the neighborhood association was notified and asked to comment.

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 maximum fence heights to provide for privacy and to encourage a sense of community. The proposed fence is a response to complaints from adjacent property owners who are concerned about noise from the bar. The bar has an outdoor patio with seating and a small playground. The property owner is proposing an acoustic fencing, specially designed to absorb noise, for the benefit of their neighbors. Because the applicant is seeking the fencing along the portions of the property that abut residential uses, and that the fence is set back from public right-of-ways, staff finds that the request 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 property owner being limited to only six feet in height. This height would not allow the property owner to effectively contain the noise generated from the business and would detract from the enjoyment of nearby residential properties. Staff finds that a literal enforcement of the ordinance is likely to result in an unnecessary hardship.**

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

**Granting the requested variance will result in substantial justice in that the applicant will be able to more effectively contain noise for the benefit of adjacent property owners.**

- 4. The variance will not authorize the operation of a use other than those uses specifically authorized for*

*the district in which the property for which the variance is sought is located.*

**The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “C-3 RIO-1 AHOD” General Commercial River Improvement Overlay Airport Hazard Overlay District.**

*1. 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.*

**In that the request for a ten foot tall fence is intended to address concerns of adjacent property, staff finds that it is unlikely to harm those same adjacent 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.*

**The unique circumstance present in this case is that a business has been established in close proximity to residential properties. Understanding potential negative impacts, the Unified Development Code has certain provisions that allow for eight foot tall fencing for properties in this situation. The property owner is proposing to go above what the code calls for to provide more protection for the neighbors. This is not merely financial in nature.**

#### **Alternative to Applicant’s Request**

The applicant would have to build the fence to meet UDC permitted heights.

#### **Staff Recommendation**

Staff recommends **APPROVAL of variance request in A-16-084** based on the following findings of fact:

1. The fence is designed to protect adjacent residential neighbors. 2. The fence is unlikely to harm adjacent properties.