



City of San Antonio

Agenda Memorandum

File Number: 17-3629

Agenda Item Number: 4.

Agenda Date: 6/5/2017

In Control: Board of Adjustment

Case Number: A-17-114
Applicant: Laura Jones
Owner: Laura Jones
Council District: 10
Location: 3131 Thousand Oaks
Legal: Lot 15, NCB 13740
Description:
Zoning: "C-2 AHOD" Commercial Airport Hazard Overlay District
Case Manager: Shepard Beamon, Senior Planner

Request

A request for a variance from the fencing requirement for commercial uses adjacent to single-family residential uses to eliminate the requirement for a fence along the rear property line, as described in Section 35-514(d)(1).

Executive Summary

The subject property is currently a CrossFit facility. As the property is not screened along the rear property line, the activities that take place at the CrossFit center are highly visible from the residential properties. According to the UDC, all property zoned for nonresidential uses shall erect and maintain solid screen (opaque) fencing along the property boundaries adjacent to an existing single-family residential use. The definition of adjacent in the UDC 35-A101 is: *Two (2) properties, lots or parcels are "adjacent" where they abut, or where they are nearby and are separated by a dissimilar type of manmade or geologic feature including but not limited to a roadway or street, right-of-way, or railroad line, or any stream, river, canal, lake, or other body of water. Adjacent may or may not imply contact but always implies absence of anything of the same kind in between; to physically touch or border upon, or to share a common property line or border. Includes properties or uses that are separated by a drive, street, or other public-dedicated right-of-way.* The owner states that a fence should not be required as there is adequate separation between the commercial and residential uses and that there are similar businesses that also do not have the rear yard screening. The owner of the subject property obtained approval of a certificate of occupancy two years ago, and was not informed that a fence would be required during the permitting process. The landscape review staff was unaware of the definition of adjacent and did not originally require the new businesses along this section of Thousand Oaks to install one. Neighboring residential property owners, complaining about the music and crowd noise, questioned the approval without the required fencing. Staff investigation determined that a review error had occurred and informed the businesses of the need for fencing. Other businesses along the drainage easement are complying with the fence violation.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"C-2 AHOD" Commercial Airport Hazard Overlay District	Gym

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-5 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Dwellings
South	"PUD R-6 AHOD" Planned Unit Development Single-Family Residential Airport Hazard Overlay District, "MF-33 AHOD" Multi-Family Airport Hazard Overlay District	Single-Family Dwellings, Apartments
East	"C-2 AHOD" Commercial Airport Hazard Overlay District	Vacant Commercial
West	"C-2 AHOD" Commercial Airport Hazard Overlay District	Auto Parts Retail

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the San Antonio International Airport Vicinity Plan and is currently designated Community Commercial under the future land use. The subject property is not located within the boundaries of a registered neighborhood association.

Criteria for Review

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 fencing requirements to ensure that the neighboring residential properties are not negatively impacted by inadequate screening. In this case, the absence of the required fencing creates a public nuisance for neighboring residential properties. The subject property's current business includes activities, which can be an unwanted distraction and reduce the level of privacy for the neighboring properties.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

The enforcement of the ordinance would not result in an unnecessary hardship. Compliance with the code requirement would not hinder or result in the termination of the daily functions of the current business.

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

The intent of a fencing requirement is to screen conflicting types of uses from the view of adjoining properties and buffer uncomplimentary land uses. As such, granting the variance will not uphold the spirit of the ordinance and substantial justice will not be done for the adjacent property owners.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.*

The variance will not authorize the operation of a use other than those uses specifically authorized in the "C-2 AHOD" Commercial Airport Hazard Overlay District.

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.*

The daily activities from the current operations on the subject property are highly visible from the neighboring residential properties and create conditions such as excessive noise and visual nuisances. The requested variance would injure the rights of the adjacent property owners.

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 could not identify any unique property related hardship that would warrant the approval of the request. Similar businesses along the Thousand Oaks corridor, that also abut residential properties, are complying with the fencing requirement.

Alternative to Applicant's Request

Denial of the variance request would result in the owner having to meet the requirement and construct a six foot privacy fence along the rear property line.

Staff Recommendation

Staff recommends **DENIAL of the variance in A-17-114**, based on the following findings of fact:

1. Approval of the variance would injure the rights of the adjacent property owners;
2. Similar properties along the commercial corridor comply with the requirement;
3. There is no property related hardship that warrants the approval the request.