



# City of San Antonio

## Agenda Memorandum

**File Number:**18-3207

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**Agenda Item Number:** 3.

**Agenda Date:** 5/7/2018

**In Control:** Board of Adjustment

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Case Number: A-18-080  
Applicant: Key Properties  
Owner: Key Properties  
Council District: 1  
Location: 244 West Cevallos Street  
Legal: Lot 13, Block 1, NCB 1011  
Description:  
Zoning: "O-1 RIO-7E AHOD" Office River Improvement Overlay  
Airport Hazard Overlay District  
Case Manager: Dominic Silva, Planner

### **Request**

A request for 1) a 14'11" variance from the 15' Type B landscape bufferyard, as described in Section 35-510, to allow a bufferyard to be as narrow as 1" along the east and south property lines and 2) a 9'11" variance from the 10' Type A bufferyard requirement to allow a bufferyard to be as narrow as 1" along the north property line and 3) a special exception to allow an 8' tall predominately open fence along all four property lines.

### **Executive Summary**

The subject property is located at 244 West Cevallos Street on the intersection with Marty Street, approximately 900' northwest of Nogalitos Street and South Flores Street. The applicant developed a parking lot with no bufferyards on the north, south, and east property lines, and built an 8' wrought iron fence on all sides of the property.

Code Enforcement initiated this case on June of 2017 having found a vacant lot converted into a parking lot with a wrought iron fence without any permits. The applicant applied for a permit to begin concrete flatwork for on-site parking on December 22, 2017, however, the building, historical, irrigation, landscape, and tree reviews were denied within 1 month of plan submission. Specifically, landscape and tree reviews were denied pending a corrected landscape plan designating compliance of a mandatory 15' abutting bufferyard and a 25% tree canopy calculation along with a \$2,000 fine for removal of trees without a permit. The applicant has until June of this year until the permit is expired and must re-apply.

If the Board approves the variance and special exception, the applicant would need to finalize all pending building plan reviews for flatwork, pay the balance on the permit, and request a separate permit for the wrought iron fence.

### Subject Property Zoning/Land Use

Existing Zoning	Existing Use
“O-1 RIO-7E AHOD” Office River Improvement Overlay Airport Hazard Overlay District	Parking Lot

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“I-2 RIO-7E AHOD” Heavy Industrial River Improvement Overlay Airport Hazard Overlay District	Industrial
South	“R-6 RIO-7E AHOD” Residential Single-Family River Improvement Overlay Airport Hazard Overlay District	Single-Family Dwelling
East	“R-6 RIO-7E AHOD” Residential Single-Family River Improvement Overlay Airport Hazard Overlay District	Single-Family Dwelling
West	“R-6 RIO-7E AHOD” Residential Single-Family River Improvement Overlay Airport Hazard Overlay District	Single-Family Dwelling

### Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the Lone Star Plan and is currently designated Low Density Mixed Use in the future land use component of the plan. The subject property is within the Collins Garden Neighborhood Association. As such, they were notified and asked to comment.

### Criteria for Review

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 up to eight feet. The additional fence height is intended to provide safety and security of the applicant’s parking lot. If granted, this 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 maximum fence heights to protect commercial property owners while still promoting a sense of community. An 8’ tall predominately open fence was built along all four property lines to provide additional security for the parking lot. This is not contrary to the public interest.**

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

**The fence will create enhanced security for the subject property and is highly unlikely to injure adjacent properties. Further, the fencing does not violate Clear Vision standards.**

*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 fencing does not detract from the character of the neighborhood. The fencing is in line with other preexisting fencing material and height within the immediate vicinity.**

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

**The property is located within the “O-1 RIO-7E AHOD” Office River Improvement Overlay Airport Hazard Overlay District and permits the current use of a commercial use parking lot. The requested special exception will not weaken the general purpose of the district.**

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 applicant constructed the parking lot and fenced in the property without following the permitting process and following plan review guidelines. Bufferyards are intended to provide landscaped separation between residential and nonresidential uses and to screen from view certain land uses that may create visual clutter and distraction. Staff cannot support the near elimination of the north, south, and east bufferyards.

**Staff recommends leaving 5’ bufferyards which will alleviate concerns of separation between the uses of the adjacent properties and the subject property as well as balancing the owner’s needs with the community.**

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

Literal enforcement of the 15’ bufferyard would make the use of a parking lot impossible for a lot of this size. However, there is no special condition present that warrants the near elimination of the bufferyards as requested.

**Staff realizes that some relief is merited in this instance given the size of the lot. With the recommended 5’ bufferyard, some separation can be enjoyed by adjacent property owners while also allowing the owner of the subject property to continue the permitting process.**

- 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 the intent of the requirements rather than the strict letter of the law. The intent of the bufferyards is to reduce conflicts between adjacent land uses as well as maintain landscaping. The variance requested compromises the integrity of each of the aforementioned criteria. As such, allowing the 1” bufferyards of the parking lot to remain does not observe the spirit of the ordinance.

**Staff recommends a 5’ bufferyard which meets the needs of the subject property and enhances the district’s landscaping.**

- 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 “O-1 RIO-7E AHOD” Office River Improvement Overlay 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 requested variance of a 1” bufferyard is likely to harm adjacent, conforming properties by eliminating the bufferyard and thus eliminating separation of residential to nonresidential uses.

**Leaving 5’ bufferyards along the north, south, and east property lines would alleviate concerns of separation elimination between land uses and elimination of landscaping that is essential through this district.**

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 that there are no unique circumstances present in this case to warrant the granting of the requested variance for the near elimination of the bufferyards. Had the applicant applied for a permit to construct the parking lot, the bufferyard requirements could have been identified prior to construction of the non-conforming lot.

**Staff is supportive of a 5’ bufferyard to provide some screening of the subject property and adjacent neighboring properties as well as to enhance the landscaping of the district.**

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

Denial of the variance request would result in the owner having to meet the required bufferyards set forth in Section 35-510.

#### **Staff Recommendation**

Staff recommends **APPROVAL** of the requested special exception for an 8’ tall wrought iron fence on all property sides in **A-18-080**, based on the following findings of fact:

1. The request does not alter the essential character of the district, and;
2. The request does not interfere with Clear Vision standards.

Staff recommends **DENIAL** of 1) a 14’11” variance from the 15’ Type B landscape bufferyard, as described in Section 35-510, to allow a bufferyard to be as narrow as 1” along the east and south property lines and 2) a 9’11” variance from the 10’ Type A bufferyard requirement to allow a bufferyard to be as narrow as 1” along the north property line with an **Alternate Recommendation** of a 5’ bufferyard along the north, south, and east property lines in **A-18-080**, based on the following findings of fact:

1. The request does not observe the spirit of the ordinance, and;
2. The applicant was advised through the plan review process to modify the landscape and tree plans submitted, and;
3. If the applicant followed the plan review and permitting process, staff could have advised on alternate methods available before construction was finalized.

