



City of San Antonio

Agenda Memorandum

File Number:21-2960

Agenda Item Number: 2.

Agenda Date: 4/19/2021

In Control: Board of Adjustment

Case Number:	BOA-21-10300029
Applicant:	Jack R Bernal
Owner:	Jack R Bernal
Council District:	7
Location:	1263 Bandera Road
Legal Description:	Lot 81 and Southeast Irregular 50.21' of Lot 9A, Block B, NCB 11507
Zoning:	"C-2 MLOD-2 MLR-2 AHOD" Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District and "C-3NA MLOD-2 MLR-2 AHOD" General Commercial Non-Alcoholic Sales Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Kayla Leal, Senior Planner

Request

A request for a 1) a 7' variance to the 30' minimum side setback, as described in Section 35-310.01, to allow a structure to be 23' away from the side property line and 2) a variance from the fencing material, as described in Section 35-514, to allow a corrugated metal fence along the side property line.

Executive Summary

The subject property is located along Bandera Road and the applicant is requesting variances to the side setback and the fencing material requirements. The property is zoned "C-3NA" General Commercial Non-Alcoholic Sales District and is abutting a property zoned "R-5" Residential Single-Family District. The minimum setback requirement for the commercial zoning district when abutting residential is 30'. The applicant is requesting to reduce the side setback to be 23' away from the side property line. He will proceed in providing the required landscape buffer yard. Upon staff's field visit, the fence material was observed to be corrugated metal which is not permitted by the UDC.

Code Enforcement History

There are no relevant code enforcement violations outstanding for the property.

Permit History

There are no relevant permits pulled for the property.

Zoning History

The subject property was annexed into the City of San Antonio on September 25, 1952 by Ordinance 18115 and was zoned "A" Residence District. The zoning changed from "A" to "B-2" Business District on February 20, 1969, established by Ordinance 37259. A portion of the property was rezoned from "B-2" to "B-3NA" Non-Alcoholic Sales Business District on February 23, 1985, established by Ordinance 81706. The zoning converted from "B-2" and "B-3NA" to the current "C-2" Commercial District and "C-3NA" General Commercial Non-Alcoholic Sales upon adoption of the 2001 Unified Development Code (Ordinance 93881, dated May 3, 2001).

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"C-2 MLOD-2 MLR-2 AHOD" Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District and "C-3NA MLOD-2 MLR-2 AHOD" General Commercial Nonalcoholic Sales Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Vacant lot

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"C-2 MLOD-2 MLR-2 AHOD" Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District and "C-3NA MLOD-2 MLR-2 AHOD" General Commercial Nonalcoholic Sales Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Commercial uses
South	"R-5 MLOD-2 MLR-2 AHOD" Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-family dwelling

East	“C-2 MLOD-2 MLR-2 AHOD” Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District and “C-3NA MLOD-2 MLR-2 AHOD” General Commercial Nonalcoholic Sales Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Commercial uses
West	“R-5 MLOD-2 MLR-2 AHOD” Residential Single Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-family dwelling

Comprehensive Plan Consistency/Neighborhood Association

The subject property is located in the West Sector Plan and is designated “General Urban Tier” in the future land use component of the plan. The subject property is located within the University Park Neighborhood Association and within 200 feet of the Donaldson Terrace Neighborhood Association, and they were notified of the case.

Street Classification

Bandera Road is classified as a Primary Arterial Type A.

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. Adequate space will be maintained between the structure and the side property line abutting residential zoning, which is not contrary to the public interest.

The subject property is abutting residentially-zoned property and is permitted an 8’ tall fence. However, the corrugated metal is not permitted and appears to be contrary to the public interest as it is unprotected.

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

Staff finds that any special conditions that, if enforced, would result in an unnecessary hardship. The applicant was informed of the zoning of the property and the proximity of the concrete slab to the side property line upon an inspection. A literal enforcement would require the concrete to be altered.

A literal enforcement of the ordinance would require the property owner to change the material of the fence. The hardship would be to replace the fencing material, but if a fence permit had been pulled the property owner would have been made aware of the regulation.

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 side setback requirement for commercial properties abutting residential properties is to create separation between uses. The structure is proposed to be 23' away from the side property line, which is only 7' short of the requirement and provides adequate space between uses.

The variance to the fencing material would allow for a corrugated metal fence. The metal fence appears to be out of character and does not observe the spirit of the ordinance.

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.*

The request to reduce a portion of the side setback does not pose a risk of substantially injuring the use of adjacent properties and does not seem likely to alter the essential character of the 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 the unique circumstances existing on the property were not created by the owner of the property nor are they merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Lot & Setback Dimensions of the UDC Sections 35-310.01.

Staff Recommendation

Staff recommends **Approval** in BOA-21-10300029 for 1) a 7' variance to the 30' minimum side setback to allow a structure to be 23' away from the side property line, based on the following findings of fact:

1. The proposed structure will be setback 23' from the side property line; and
2. The applicant will install and maintain a landscape buffer yard along the side property line; and
3. There is 7' of space between the structure and the side property line.

Staff recommends **Denial** in BOA-21-10300029 for 2) a variance from the fencing material to allow a corrugated metal fence along the side property line, based on the following findings of fact:

1. The corrugated metal fence is unprotected and out of character with the surrounding properties; and
2. The fence can be 8' tall as long as it is a permitted fencing material.