



City of San Antonio

Agenda Memorandum

File Number:15-3427

Agenda Item Number: 5.

Agenda Date: 6/1/2015

In Control: Board of Adjustment

Case Number: A-15-092
Applicant: Marcelino Mendez
Owner: Marcelino Mendez
Council District: 6
Location: 5459 Castroville Road
Legal Description: Lots 32 & 33, Block 10, NCB 13961
Zoning: "C-3 R AHOD" General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District
Prepared By: Logan Sparrow, Planner

Request

A request for 1) a two foot variance from the four foot maximum predominately open fence height, as described in Section 35-514, to allow a six foot tall predominately open fence in the front yard of the property and 2) a three foot variance from the three foot maximum solid screen fence height, as described in Section 35-514, to allow a six foot tall corrugated metal fence in the front yard and 3) a variance from the prohibition against corrugated or sheet metal as a fencing material, as described in Section 35-514, and 4) a request for a 25 foot variance from the 30 foot side setback requirement, as described in Section 35-310.01, to allow a commercial structure to remain five feet from the side property line.

Executive Summary

The subject property is located at 5459 Castroville Road just north of Castroville Road's exit from Highway 90. The applicant was cited by Code Enforcement for building a six foot tall wrought-iron fence along the south property line in the front yard, and also for constructing a six foot tall corrugated metal fence along the east and north property lines. During the visit to the property, staff discovered that the commercial structure, which did obtain permits for construction, is located five feet from the side property line. Because this commercial use abuts a residential use, the commercial structure must be located 30 feet from the side property line.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"C-3 R AHOD" General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District	Commercial - Plumbing Supply

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	“R-6 AHOD” Residential Single-Family Military Airport Overlay Airport Hazard Overlay District	Single-Family Dwelling
South	UZROW	Castroville Road
East	“C-3 R AHOD” General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District	Single-Family Dwelling
West	“C-3 R AHOD” General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District	Single-Family Dwelling

Comprehensive Plan Consistency/Neighborhood Association

The property is within the boundaries of the West/Southwest Sector Plan. The subject property is not located within the boundaries of any 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, these criteria are represented by setback requirements to reduce the threat of fire and to provide equal access to air and light. The public interest is further represented by fence height limitations to protect property owners and to encourage a sense of community. In this case, the applicant applied for, and obtained building permits, for the commercial structure. The adjacent property is used for residential purposes, but zoned “C-3 R AHOD” General Commercial Restrictive Alcohol Sales Airport Hazard Overlay District. It is possible that, during the review of the project, commercial plans examiners noted commercial zoning, not realizing it was a residential use, and permitted the current structure five feet from the side property line. The adjacent home is located about seven feet from its side property line, making the total distance between these two structures 12 feet, a safe distance for fire prevention. A review of the building plans also indicate that the wall facing the residential structure does have a two-hour fire rated wall, reducing further fire risk.

The applicant states that the property, while under construction, fell victim to theft of several expensive construction materials. The fence was built to protect the property from future thefts. Along the south property line, being that portion of the property along Castroville Road, the applicant built a six foot tall wrought-iron fence. The corrugated metal fence along the east and north property line are also six feet tall. Because the fencing serves to protect the subject property from theft, as well as to buffer the property from adjacent residential uses, staff finds that the fence variance requests are not contrary to the public interest, either.

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 having to demolish the existing commercial structure that was granted permits for construction by the City of San Antonio. This would

result in substantial hardship.

A literal enforcement of the code would also result in the applicant having to reduce the height of front yard fencing to four feet, a height that may permit further theft from the subject property. Also, the applicant would be forced to remove the solid-screen corrugated-metal fencing, which does serve as a buffer for adjacent residential properties. These, too, would result in substantial hardship for the applicant.

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

Granting the requested variances will result in substantial justice as the applicant could effectively secure the property from criminal activity and provide buffering from adjacent residential uses.

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 R AHOD” General Commercial Restrictive Alcohol Sales 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.*

Despite the commercial structure being permitted in violation of the side setback requirement, the building is unlikely to harm adjacent property because it is still located 12 feet from the nearest adjacent structure, a safe distance for fire prevention, and designed with a two-hour fire rated wall. Additionally, increased fence height, and the materials used, do not detract from the character of this community as the property is located at the exit ramp from Highway 90 and match the increasingly commercial nature of the corridor.

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 plight of the owner of the property is that permits were issued for the commercial structure when they should not have been. The applicant, and their contractor, applied for permits and inspections and passed each. Additionally, the fence variances are requested to protect the property from theft. These problems are not merely financial in nature, nor are they the fault of the applicant.

Alternative to Applicant’s Request

The applicant would have to relocate the structure 25 feet to the east to fall into compliance with the side setback requirement. Also, the applicant must remove corrugated metal fencing and replace with an approved material and approved heights.

Staff Recommendation

Staff recommends **APPROVAL** of **A-15-092** based on the following findings of fact:

1. The applicant was granted permits to build the structure in its current location; and
2. The fencing design and height serves to protect the subject property from theft.

Attachments

Attachment 1 - Notification Plan (Aerial Map)

Attachment 2 - Plot Plan (Aerial Map)

Attachment 3 - Site Plan

Attachment 4 - Site Photos