

Case Number:	BOA-23-10300279
Applicant:	Joe Rios
Owner:	Joe Rios
Council District:	5
Location:	5707 S Zarzamora Street
Legal Description:	Lot 25, Block 47, NCB 7961
Zoning:	“C-1 MLOD-2 MLR-1 AHOD” Light Commercial Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

**Request**

A request for 1) a request for a 10’ variance from the minimum 15' Landscape Buffer, as described in Sec 35-510, to allow a 5’ Landscape Buffer on the western property line and 2) a 5’ variance from the required minimum 10' side setback, as described in Section 35-310.01, to allow a structure with a 5’ side setback.

**Executive Summary**

The subject property is located on S Zarzamora Street between the intersections of Fitch Street and Milvid Avenue. The applicant will be demolishing an existing building and constructing a new structure on the same foundation, however facing towards Fitch Street. Due to the location of the existing foundation the applicant is requesting buffer yard and side setback variances.

**Code Enforcement History**

There is no code enforcement history for the subject property.

**Permit History**

Sign Permit Application (SIG-PMT-APP23-20801298) - June 2023

The issuance of a new building permit is pending the outcome of the Board of Adjustment.

**Zoning History**

The property was annexed into the City of San Antonio by Ordinance 1391, dated September 22, 1944, and zoned “B-2” Business District. The property was rezoned by Ordinance 47762, dated March 22, 1977, to “B-1” Business District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B-1” Business District converted to the current “C-1” Light Commercial District.

**Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“C-1 MLOD-2 MLR-1 AHOD” Light Commercial Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Restaurant/Corner Store

**Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
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North	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
South	“C-1 MLOD-2 MLR-1 AHOD” Light Commercial Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Salon
East	“C-1 MLOD-2 MLR-1 AHOD” Light Commercial Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Commercial Uses
West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Kelly/South San PUEBLO Community Plan and is designated as “Mixed Use” in the future land use component of the plan. The subject property is in the Tierra Linda Neighborhood Association, and they were notified of the request.

**Street Classification**

S Zarzamora Street is classified as a principal Primary Arterial Type A.  
 Fitch Street is classified as a Local Street.

**Criteria for Review – Rear Setback and Buffer Variance**

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 the restricted buffer yard and side setback to provide spacing between the commercial use lot and the abutting residential lot. The applicant is requesting a variance to the side setback and buffer yard to be 5’ from the rear property line. Staff finds this distance is not suitable, as it imposes on the public interest of the adjacent residential neighbor by being too close to the shared property line and commercial uses.

**The alternate 7’-6” side setback and buffer yard will leave suitable space between the residential and commercial use which will be in the public interest.**

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

Staff found no special conditions on the subject property that warrant the need for the structure to have a 5’ buffer yard and side setback. No unnecessary hardship seems to be presented in this case, as the applicant could redesign the addition.

**The applicant can redesign the proposed building to meet a 7'-6" side setback and landscape buffer as space exists towards the rear of the proposed building.**

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. In this case, the intention is for sufficient spacing between a commercial use and a residential use to the side. The structure does not observe the spirit of the ordinance or intent of the code as it will be too close to the shared property line and neighboring residential lot.

**The spirit of the ordinance will be observed with a 7'-6" side setback and landscape buffer as it leaves significant separation between the uses.**

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.*

If granted, the structure will maintain 5' from the side property line, which is likely to injure the appropriate use of the adjacent conforming property by having commercial uses close to the residential side property line.

**The proposed 7'-6" side setback and bufferyard will not substantially injure the adjacent conforming use or 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 found no unique circumstances on the subject property that would warrant the need for a 5' buffer yard and side setback as additional space is available behind the proposed building.

**Staff found unique circumstances on the subject property that would warrant the need for a 7'-6" buffer yard and side setback as the lot shape limits the development size of a structure.**

### **Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the Structure Setback of the UDC Section 35-310.01 and conform to the Buffer Requirements of the UDC Section 35-510.

### **Staff Recommendation – Buffer and Rear Setback Variance**

Staff recommends Denial **with an alternate recommendation of a 7'-6" side setback and landscape buffer** in BOA-23-10300279 based on the following findings of fact:

1. This distance is not suitable, as it imposes on the public interest of the adjacent neighbor by being too close to the shared residential property line; and
2. The spirit of the ordinance is not being observed as it increases commercial uses close to the residential side property line.
3. A 7'-6" side setback/bufferyard will leave suitable room between uses and not change the essential character of the district.