

Case Number:	BOA-23-10300273
Applicant:	Audrey Trinidad
Owner:	Trinidad Group LLC
Council District:	1
Location:	1039 West Hildebrand Avenue
Legal Description:	Lot 21, Block 2, NCB 3929
Zoning:	“C-2 AHOD” Commercial Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for 1) a 3’ special exception from the 5’ maximum fence height requirement, as described Section 35-514, to allow an 8’ predominately open fence in the front yard, and 2) a request for a 9’-11” variance from the minimum 10’ side setback requirement, as described in Section 35-514, to allow a barbed wire fence to be 1” from the side property line.

### **Executive Summary**

The subject property is located at 1039 West Hildebrand Avenue and is a corner lot. The applicant added an eight-foot tall predominately open fence within the front yard and barbed wire along the eastern fence for additional security for the subject property. Predominantly open fences within the front yard are permitted up to five feet. Furthermore, anytime a fence is proposed with barbed wire, it must be located behind the minimum setback line. The property is permitted an 8’ fence on the side and rear as it abuts an alley in the rear and residential on the east.

### **Code Enforcement History**

Permit Investigation (INV-PBP-23-3100002922)- September 2023

Permit Investigation (INV-PBP-21-3100004890): December 2021

### **Permit History**

There are no relevant permits pulled for the subject property. A fence permit will need to be obtained and is pending the outcome of the BOA Hearing.

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and zoned “F” Local Retail District. Ordinance 91192 dated January 27, 2000, rezoned the property to “B-2” Business District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “B-2” Business District converted to the current “C-2” Commercial District.

### **Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
“C-2 AHOD” Commercial Airport Hazard Overlay District	Office Building

### **Surrounding Zoning/Land Use**

Orientation	Existing Zoning District(s)	Existing Use
North	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
South	"C-3NA NCD-5 AHOD" General Commercial Nonalcoholic Sales Beacon Hill Neighborhood Conservation Airport Hazard Overlay District	Office Single-Family Residence
East	"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District	Single-Family Residence
West	"C-2 AHOD" Commercial Airport Hazard Overlay District	Church

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Greater Dell view Area Community Plan is currently designated as "Mixed Use" in the future land use component of the plan. The subject property is located within the Central Neighborhood Association and within 200 feet of the Beacon Hill Heights Neighborhood Association, and they were notified of the case.

### **Street Classification**

West Hildebrand Avenue is classified as a Secondary Arterial B.  
Michigan Avenue is classified as a Local Road.

### **Criteria for Review – Fence Height Special Exception**

According to Section 35-482(h) of the UDC, in order for a special exception to be granted, the applicant must demonstrate all of the following:

*A. The special exception will be in harmony with the spirit and purpose of the chapter.*

**The spirit of the chapter is intended to provide for protection of properties and to establish a sense of community within our neighborhoods. The request for an eight-foot-tall fence within the front yard is in harmonious with the spirit of the chapter, as the applicant is merely seeking to establish security within their property.**

*B. The public welfare and convenience will be substantially served.*

**In this case, these criteria are represented by fence heights to protect commercial property owners' privacy and security while still promoting a sense of community. An 8' tall fence along the front portion of the yard does not pose any adverse effects to the public welfare.**

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

**The front yard fence will create enhanced privacy for the subject property and is unlikely to substantially injure any neighboring properties. Upon site visits, staff observed other predominately open front yard fences exceeding the height requirement.**

*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 additional fence height for the front yard will not alter the essential character of the district. The request for the additional fence height is due to privacy and security because of the high volume of foot traffic along West Hildebrand Avenue.**

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

**The current zoning of “C-2” Commercial District permits the current use of commercial uses. The requested special exception will not weaken or detract from the general purpose of the district.**

### **Criteria for Review – Barbed Wire Setback 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 applicant is requesting a 9’-11” variance from the minimum 10’ side setback requirement to allow a fence with barbed wire to be 1” from the side property line. This request appears to be contrary to the public interest, as it can inflict significant physical injury to the residentially zoned district abutting the subject property.

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

Staff is unable to establish any special conditions within the subject property to warrant the need for a fence with barbed wire to be 1” from the side property line. A literal enforcement of the ordinance will not result in an unnecessary hardship, as there is ample spacing within the property for relocation.

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

The requested side setback variance is to allow a fence with barbed wire to be closer to the side property line. The request will not observe the spirit of the ordinance, as it may inflict significant injury to the public.

*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 granting of the variance will injure the appropriate use of adjacent conforming properties. The abutting property is single-family residential, which if granted, may impose onto this use.

*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 side setback variance sought is not due to unique circumstances existing on the property. The property appears big enough to allow for the fence to be pushed back 10' from the side property line to adhere to the spirit of the ordinance.

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

The alternative to the applicant's request is to conform to the Fence Height and Barbed Wire Setback Requirements of the UDC Section 35-514.

### **Staff Recommendation –Front Fence Special Exception**

Staff recommends **Approval** in **BOA-23-10300273** based on the following findings of fact:

1. The additional two feet in height will provide additional safety and security to the property due to being located along a Secondary Arterial B; and
2. The request does not appear to alter the essential character of the district; and
3. The request does not create a clear vision issue.

### **Staff Recommendation –Barbed Wire Setback Variance**

Staff recommends **Denial** in **BOA-23-10300273** based on the following findings of fact:

1. Staff is unable to establish any special conditions within the subject property to warrant the need for a fence with barbed wire to be 1" from the side property line, and
2. The request appears to be contrary to the public interest, as it can inflict significant physical injury to the residentially zoned district abutting the subject property.