



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** June 16, 2025

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon, Director

**CASE NUMBER:** BOA-25-10300064

**APPLICANT:** Burea Inc.

**OWNER:** Burea Inc.

**COUNCIL DISTRICT IMPACTED:** District 1

**LOCATION:** 910 East Mistletoe Avenue

**LEGAL DESCRIPTION:** Lot 41 and Lot 42, NCB 6461

**ZONING:** "C-1 UC-4 AHOD" Light Commercial North St. Mary's Street Urban Corridor  
Airport Hazard Overlay District

**CASE MANAGER:** Joel Vela, Senior Planner

**A request for**

- 1) A 25' variance from the minimum 30' rear setback to allow a 5' rear setback.  
Section 35-310.01
- 2) A 10' variance from the minimum 15' buffer to allow a 5' rear buffer.  
Section 35-510(c)
- 3) A 10' variance from the minimum 15' buffer to allow a 5' side buffer.  
Section 35-510(c)
- 4) An elimination of the minimum 10' front buffer.  
Section 35-510(c)

### **Executive Summary**

The subject property is located between North St. Mary's Street and U.S. Highway 281. The property owner intends to redevelop these two lots into a food service establishment on Lot 41 and a parking lot on Lot 42. To do so, the property owner intends to move the existing structure on Lot 42, the eastern lot, to the rear yard of Lot 41, the western lot. This building would be renovated into a commercial kitchen and connected to the existing structure on Lot 41, the western lot. The property abuts properties zoned both "MF-33" and "R-6", which requires a Type-B / 15-foot buffer against the "R-6" Residential Single-Family lot. A Type-A / 10-foot buffer is also required where the subject property fronts Mistletoe Avenue, a collector street.

### **Code Enforcement History**

The property has no code enforcement history.

### **Permit History**

RES-RBP-APP25-35501844 – New Residential Home – Additional Information Required

The scope of work proposed by this permit application is for the relocation of an existing structure onto the rear yard of Lot 41 to be used as a kitchen. Plan Review staff has advised the applicant that this is the wrong permit application type for the proposed scope of work. A Commercial Project Application is needed for review.

### **Zoning History**

The subject property is within the original 36 square miles of the City of San Antonio and was zoned "B" Residence District. Lot 41 of the subject property was rezoned by Ordinance 48029, dated May 19, 1977, to "B-1" Business District. Lot 42 of the subject property was rezoned by Ordinance 83331, dated December 14, 1995, to "R-1" Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 3, 2001, the property zoned "B-1" Business District was converted to the current "C-1" Light Commercial District, and the property zoned "R-1" Single-Family Residence District converted to "R-6" Residential Single-Family District. Lot 42 was rezoned by Ordinance 2011-08-04-0626, dated August 4, 2011, to "C-1" Light Commercial District.

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

#### **Existing Zoning**

"C-1 UC-4 AHOD" Light Commercial North St. Mary's Street Urban Corridor Airport Hazard Overlay District

#### **Existing Use**

Commercial – Proposed Food Service Establishment

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

#### **North**

#### **Existing Zoning**

"IDZ UC-4 AHOD" Infill Development Zone North St. Mary's Street Urban Corridor Airport Hazard Overlay District with uses permitted in "RM-4" Residential Mixed District; and "R-3 UC-4 AHOD" Single-Family Residential North St. Mary's Street Urban Corridor Airport Hazard Overlay District

**Existing Use**

Vacant Lot

**South****Existing Zoning**

“R-6 UC-4 AHOD” Residential Single-Family North St. Mary’s Street Urban Corridor Airport Hazard Overlay District; and “MF-33 UC-4 AHOD” Multi-Family North St. Mary’s Street Urban Corridor Airport Hazard Overlay District

**Existing Use**

Multi-Family and Single-Family Dwellings

**East****Existing Zoning**

“R-6 UC-4 AHOD” Residential Single-Family North St. Mary’s Street Urban Corridor Airport Hazard Overlay District

**Existing Use**

Single-Family Residence

**West****Existing Zoning**

“C-2 UC-4 AHOD” Commercial North St. Mary’s Street Urban Corridor Airport Hazard Overlay District; and “R-6 UC-4 AHOD” Residential Single-Family North St. Mary’s Street Urban Corridor Airport Hazard Overlay District

**Existing Use**

Commercial Retail and Services

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Midtown Area Regional Center Plan and is designated as “Neighborhood Mixed-Use” in the future land use component of the plan. The subject property is located within the notification area of Tobin Hill Community Neighborhood Association and the San Antonio Texas District One Resident Association, and they have been notified of the request.

**Street Classification**

East Mistletoe Avenue is classified as a Local Street.

**Criteria for Review – Rear Setback and Buffers**

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 rear setback and rear, side, and front buffers required in the proposed commercial development. Staff finds that the request is contrary to the public interest as the standards exist to preserve privacy, green space, and provide landscaped separation between residential and nonresidential uses.

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

Staff finds no special conditions existing on the property that a literal enforcement of the ordinance would result in unnecessary hardship. The lot does not have any unusual topography, and the rear yard has enough space to accommodate the new proposed structure while adhering to the setback and buffer standards.

*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 request is not in the spirit of the ordinance, as the city code provides regulations to create adequate space and buffering between residential and nonresidential 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.*

Staff finds the request will substantially injure the adjacent residential properties as a reduction in separation and landscaped buffers can lead to loss of privacy, increased noise, increased visual clutter and distraction on those adjacent residential properties.

*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 the plight of the owner of the property for which the variance is sought is not due to unique circumstances existing on the lot, and the owner is creating the unique circumstances. The property is not shaped in a manner to create an obstacle for development, and the standards were properly established prior to the proposed development.

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

The alternative to the applicant's request is to conform to the rear setback and buffer regulations of the UDC Section 35-310.01 and Section 35-510.

**Staff Recommendation – Rear Setback and Buffers**

Staff recommends Denial in BOA-25-10300044 based on the following findings of fact:

1. The standards exist to preserve privacy, green space, and provide landscaped separation between residential and nonresidential uses.
2. The request will substantially injure the adjacent residential properties as a reduction in separation and landscaped buffers can lead to loss of privacy, increased noise, and increased visual clutter and distraction on those adjacent residential properties.