



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** May 20, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon

**CASE NUMBER:** BOA-24-10300059

**APPLICANT:** Juan Hernandez

**OWNER:** Juan Hernandez

**COUNCIL DISTRICT IMPACTED:** District 2

**LOCATION:** 2423 Rigsby Avenue

**LEGAL DESCRIPTION:** Lot 15, NCB 10747

**ZONING:** "C-1 MLOD-3 MLR-1" Light Commercial Martindale Military Lighting Overlay Military Lighting Region 1 District and "C-3 MLOD-3 MLR-1" General Commercial Martindale Military Lighting Overlay Military Lighting Region 1 District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

- 1) A 29'-11" variance from the minimum 30' setback to allow a structure with a 1" rear setback. Section 35-310.01
- 2) A fence material variance to allow a corrugated metal fence on the property. Section 35-514(a)(6)

**Executive Summary**

The subject property is situated between Southeast Loop 410 and Interstate Highway 10, on the corner of the Rigsby Avenue and Grobe Drive intersection. On July 22, 2022, the applicant also being the owner of the property, was cited by Code Enforcement for a building setback violation pertaining to a structure encroaching neighboring property. Investigation was closed and re-opened, March 15, 2024, due to noncompliance of rear setback violation. On March 26, 2024, the

applicant applied for a 29'-11" variance to allow the accessory structure to remain 1" from the rear property line. Google images reflecting the accessory structure was built sometime between March 2019 and January 2022. Additionally, during site visit, Staff discovered the use of corrugated metal fencing utilized along the property. Applicant has requested to retain the fencing material as it provides a security barrier needed for pets.

### **Code Enforcement History**

INV-ZPS-22-3160001895—Zoning UDC Investigation

INV-ZPS-24-3160000787—Zoning UDC Investigation

### **Permit History**

The applicant has not yet applied for the building permit.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 18115, dated September 24, 1952, and zoned "A" Single-Family Residence District. The property was rezoned by Ordinance 38828 dated August 20, 1970, from "A" Single-Family Residence District to "B-1" and "B-3" Business District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the portions of the property zoned "B-1" and "B-3" Business District, converted to the current "C-1" Light Commercial District, and "C-3" General Commercial District.

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

#### **Existing Zoning**

"C-1 MLOD-3 MLR-1" Light Commercial Martindale Military Lighting Overlay Military Lighting Region 1 District and "C-3 MLOD-3 MLR-1" General Commercial Martindale Military Lighting Overlay Military Lighting Region 1 District

#### **Existing Use**

Commercial Signage store/Warehouse

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

#### **North**

##### **Existing Zoning**

"R-5 MLOD-3 MLR-1" Residential Single-Family Martindale Military Lighting Overlay Military Lighting Region 1 District

##### **Existing Use**

Vacant Land

#### **South**

##### **Existing Zoning**

"R-5 MLOD-3 MLR-1" Residential Single-Family Martindale Military Lighting Overlay Military Lighting Region 1 District

##### **Existing Use**

Comanche Lookout Park/Public Park

#### **East**

**Existing Zoning**

“C-1 MLOD-3 MLR-1” Light Commercial Martindale Military Lighting Overlay Military Lighting Region 1 District, “C-3 MLOD-3 MLR-1” General Commercial Martindale Military Lighting Overlay Military Lighting Region 1 District

**Existing Use**

Vacant Land

**West****Existing Zoning**

“R-5 MLOD-3 MLR-1” Residential Single-Family Martindale Military Lighting Overlay Military Lighting Region 1 District

**Existing Use**

Church

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Eastern Triangle Community Plan and is designated as “Parks Open Space” in the future land use component of the plan. The subject property is not located within the boundary of a registered neighborhood association.

**Street Classification**

Rigsby Avenue is classified as Primary Arterial Type A.

Grobe Drive is classified as a local road.

**Criteria for Review – Corrugated Metal and Rear 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 public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by restricted rear setbacks to provide spacing between the property line and is also represented by the required materials for constructing a fence. Staff finds the request is not suitable, as it imposes on the public interest of the adjacent neighbor by being too close to the shared property line, limits access around structure for upkeep and will create water runoff onto neighboring lot.

Additionally, the applicant is requesting an exception to the approved fence materials as defined in the Unified Development Code Section 35-514 to allow for a corrugated metal fence. The request is contrary to the public interest, as corrugated metal is a prohibited material for fence construction and would be uncharacteristic of the surrounding area if allowed.

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 be 1” from the rear property line, and no unnecessary hardship seems to be presented in this case, as the applicant could relocate the structure to meet regulation requirements and can replace fencing with materials authorized for use according to Unified Development Code Section 35-514(a)(6).

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 the structure and the property line. The structure will be 1” from the rear property line, which 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 property. Also, the fence does not appear to observe the spirit of the ordinance, as it is constructed from prohibited fencing materials.

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 granting of the variances will substantially injure the appropriate use of adjacent conforming properties or alter the essential character of the district in which the property is located, as the fence is constructed of prohibited fencing materials and the structure will remain 1” from the rear setback, which is likely to injure any future residential development.

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 1” rear setback as the structure could be relocated within the boundaries of the property and there are approved fence materials for constructing a fence outlined in the Unified Development Code Section 35-514(a)(6).

### **Alternative to Applicant’s Request**

The alternative to the applicant’s request is to conform to the rear setback and fence material requirements of the UDC Sections 35-310.01. and 35-514(a)(6).

### **Staff Recommendation – Corrugated Metal and Rear Setback Variance**

Staff recommends Denial in BOA-24-10300059 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 property line, limits access general upkeep of the structure and will create water runoff onto neighboring lot.
2. The applicant could relocate the structure to comply with setback regulations.
3. There are no unique circumstances on the property that merit deviation from the required fence material.