



# City of San Antonio

## Agenda Memorandum

---

**Agenda Date:** May 6, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon

**CASE NUMBER:** BOA-24-10300034

**APPLICANT:** Trushant Patel

**OWNER:** Trushant Patel

**COUNCIL DISTRICT IMPACTED:** District 2

**LOCATION:** 6364 Interstate 35 North

**LEGAL DESCRIPTION:** Lot 15, Block 2, NCB 16818

**ZONING:** "I-1 MLOD-3 MLR-2 AHOD" General Industrial Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**CASE MANAGER:** Melanie Clark, Planner

**A request for**

1) A fence material variance to allow corrugated metal on the side and front of property.

Section 35-514 (a)(6)

2) A 3'-3" fence height special exception from the maximum 3' fence height to allow an 6'-6" privacy fence in the front and side of the property.

Section 35-514

**Executive Summary**

The subject property is located to the south of The City of Windcrest, near Rittiman Road, on Interstate 35 North. The applicant is the owner and operator of the property, The Rittiman Inn & Suites Hotel. On November 9, 2023, the applicant was cited by Code Enforcement for a fence constructed without a permit. A second citation was issued on February 20, 2024, due to not obtaining a fence permit. On February 27, 2024, the applicant applied for a fence material variance

to allow the corrugated metal fence to remain on the front and side of the property. Additionally, during Staff's review of the property, it was determined that a fence height exception would be required due to the non-industrial use of the property. According to public records, the property was acquired on February 17, 2023, with Google images reflecting the fence was built sometime between February and July 2023. The applicant stated that they were unaware of the fence height variance and utilization of prohibited fence materials as construction was initiated by the previous owner. However, due to ongoing violent criminal activity in the surrounding area, the applicant is requesting to retain the fence for the privacy, safety, and security of hotel guests as well as their family, who also resides on the property. Applicant attended a Code Enforcement Administrative Hearing on March 19, 2024, and citations have been placed on hold pending BOA decision. While the use of a hotel is not permitted on the current "I-1" base zoning district, the fence is independent of the use and can be considered by the Board of Adjustment for the proposed variance.

### **Code Enforcement History**

COD-ADH-REQ24-43900679-Code/Administrative Hearing  
INV-PBP-23-3100004035-Investigation for Building without a permit.

### **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 41431, dated December 25, 1972, and zoned "I-1" Light Industry District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "I-1" Light Industry District converted to the current "I-1" General Industrial District.

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

#### **Existing Zoning**

"I-1 MLOD-3 MLR-2 AHOD" General Industrial Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

#### **Existing Use**

Hotel

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

#### **North**

#### **Existing Zoning**

"I-1 MLOD-3 MLR-2 AHOD" General Industrial Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

#### **Existing Use**

Hotel

#### **South**

#### **Existing Zoning**

"C-3 MLOD-3 MLR-2 AHOD" General Commercial Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

#### **Existing Use**

Hotel

**East**

**Existing Zoning**

“I-1 MLOD-3 MLR-2 AHOD” General Industrial Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District

**Existing Use**

Self-Storage

**West**

**Existing Zoning**

ROW

**Existing Use**

IH-35 N

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is not located within any Neighborhood, Sector or SA-Tomorrow Plan. The subject property is not located within the boundary of a registered neighborhood association.

**Street Classification**

Interstate 35 North is classified as an expressway.

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

According to Section 35-482(h) of the UDC, in order for a variance 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 UDC states the Board of Adjustment can grant a special exception for a fence height modification. The fence height does not exceed 8' in height, provides security for hotel patrons from neighboring properties and is limited to the west side property line and small portion of front yard. If granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance.

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

In this case, these criteria are represented by fence heights to protect property owners while still promoting a sense of community. The fence exceeding the maximum height requirement by 3'-3" and is located along the west side and front property line. Due to the property's proximity to an expressway and continuous criminal activity occurring from neighboring properties, an increased fence height will serve the public welfare by providing the needed security for guests and substantial justice will be served.

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

The special exception will not injure the neighboring properties as the fence height will not impede traffic or clear vision requirements as it is located a safe distance from front setback and creates enhanced security and privacy for hotel guests.

*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 in the front property line will not alter the location for which the special exception is sought, as the fence height would provide the necessary privacy from public view and access.

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

The requested special exception will not weaken the general purpose of the district as the placement of the fence will not create any clear vision issues on the lot.

### **Criteria for Review – Corrugated Metal 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 required materials for constructing a fence. 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 would permit an exception to the approved fence materials as defined in the Unified Development Code Section 35-514(a)(6). While an 6' privacy fence is permitted in the side and rear of the property, it must be constructed with permitted materials.

*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 structure 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 and alter the essential character of the district in which the property is located, as the fence is constructed of prohibited fencing materials as defined in the Unified Development Code Section 35-514(a)(6). Upon visiting the site, staff found no fences constructed of corrugated metal in the immediate surrounding area.

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 the plight of the owner of the property for which the variance is sought is not due to unique circumstances existing on the property, as there are approved fence materials for constructing a fence outlined in the Unified Development Code Section 35-514(a)(6). There are fences constructed within the Unified Development Code's guidelines in the immediate surrounding area.

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

The alternative to the applicant's request is to conform to the fence height and material requirements of the UDC Section 35-514.

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

Staff recommends Approval in BOA-24-10300034 based on the following findings of fact:

1. The fence is limited to the west side and a small portion of the front of the property, and will not impede clear vision requirements; and
2. Due to the location of the property, the fence height will provide the necessary safety and privacy screening for hotel patrons.

#### **Staff Recommendation – Corrugated Metal Variance**

Staff recommends Denial in BOA-24-10300034 based on the following findings of fact:

1. The structure appears to alter the essential character of the district as it is constructed of prohibited fence material; and
2. There are no unique circumstances on the property that merit deviation from the required fence material as there are no other similar fences in the area.