



# City of San Antonio

## Agenda Memorandum

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**Agenda Date:** June 17, 2024

**In Control:** Board of Adjustment Meeting

**DEPARTMENT:** Development Services Department

**DEPARTMENT HEAD:** Michael Shannon

**CASE NUMBER:** BOA-24-10300098

**APPLICANT:** Clover Bldg LLC

**OWNER:** Clover Bldg LLC

**COUNCIL DISTRICT IMPACTED:** District 1

**LOCATION:** 1330 West Mulberry Avenue

**LEGAL DESCRIPTION:** Lot 5 and part of Lot 6, Block 85, NCB 3254

**ZONING:** "C-1 AHOD" Light Commercial Airport Hazard Overlay District

**CASE MANAGER:** Colton Unden, Planner

**A request for**

1) A variance from the fence materials to allow for a corrugated metal fence.  
Section 35-514(a)(6)(d)

2) A 5' variance from the minimum 15' clear vision to allow a 10' driveway clear vision.  
Section 35-514(a)(2)(b)

3) A 3' special exception from the maximum 3' fence height to allow a 6' privacy fence in the front yard.  
Section 35-514

**Executive Summary**

The subject property is located along West Mulberry Avenue, west of IH-10 and north of Fredericksburg Road, located within the Keystone Neighborhood Association. The applicant has

had two prior BOA cases for the property where variances were granted in 2020 and 2022 (BOA-22-10300090, BOA-20-10300104). Previous variances approved were a 5' side setback/landscape buffer, reduced parking spaces, driveway standards and building front setback. The applicant originally applied to Board of Adjustment for corrugated metal fencing they are requesting to install to assist against repeat graffiti tags against the building and a material that the applicant stated would be more cost effective in cleaning against graffiti. Upon site visits, staff identified the need for a driveway clear vision variance and fence height special exception that would be required to move forward and added them after consultation with the applicant.

### **Code Enforcement History**

INV-BLD-INV23-23203394 - Building Investigation 12/27/2023

INV-PLB -INV23-23503367 - Plumbing Investigation 12/27/2023

### **Permit History**

COM-SIT-PMT23-40100026 – Commercial Sitework Permit 01/12/2023

COM-FND-PMT23-40300006 – Commercial Foundation Permit 01/12/2023

COM-SHL-PMT23-40400008 – Commercial Shell Permit 01/12/2023

COM-PRJ-APP24-39801059 – Commercial Project Application – 05/08/2024

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and originally zoned "B" Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "B" Residence District converted to "R-4" Residential Single-Family District. The property was rezoned by Ordinance 2016-04-07-0252, dated April 7, 2016, to "C-1" Light Commercial.

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

#### **Existing Zoning**

"C-1 AHOD" Light Commercial Airport Hazard Overlay District

#### **Existing Use**

Commercial (under construction/development)

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

#### **North**

##### **Existing Zoning**

"O-2 AHOD" High-Rise Office Airport Hazard Overlay District

##### **Existing Use**

Office

#### **South**

##### **Existing Zoning**

"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

##### **Existing Use**

Church

#### **East**

**Existing Zoning**

UZROW

**Existing Use**

Interstate Highway

**West****Existing Zoning**

"R-4 AHOD" Residential Single-Family Airport Hazard Overlay District

**Existing Use**

Single-Family Dwelling

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the Near Northwest Community Plan and is designated as "Community Commercial" in the future land use component of the plan. The subject property is located within the Keystone Neighborhood Association, and they have been notified of the request.

**Street Classification**

West Mulberry Avenue is classified as a Local Road.

**Criteria for Review – Corrugated Metal Fence Material and Driveway Clear Vision**

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 fence material and driveway clear vision regulations. Staff finds this request is contrary to public interest, as the fence material could prevent free flow of drainage and the reduced clear vision will create a hazard for the residential lot as they exit their driveway.

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

Staff found no special conditions existing on the subject property that would warrant the need for the variances requested.

*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 applicant has the ability to construct the fence with permitted material and reduce the height of the fence to allow proper clear vision to the neighboring residential lot.

*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, corrugated metal fence will be installed in the front yard and clear vision will be reduced on the neighboring residential lot. Upon site visits, staff has found that the variances will 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 finds the plight of the owner of the property for which the variances are sought is not due to unique circumstances existing on the property.

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

According to Section 35-482(h) of the UDC, 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 being requested is a 6' privacy fence for the front of the yard. If granted, staff finds the request would not be in harmony with the spirit and purpose of the ordinance, as the request exceeds the maximum height requirements for a privacy fence in the front yard.

*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 proposed privacy fence does not appear to serve the public welfare and convenience, as there were no fences like the proposed design in the immediate surrounding area.

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

The fence variance does not appear to create any additional enhanced security and privacy for the subject and adjacent properties if it does not conform to the original Unified Development Code fence guidelines.

*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 appears to alter the location for which the special exception is sought, as no similar styled fences were observed to be in the immediate surrounding area.

*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 weaken the general purpose of the district as it goes against the established Unified Development Code fence standards.

**Alternative to Applicant's Request**

The alternative to the applicant's request is to conform to the Lot and Building Dimension Regulations of Section 35-310.01, Clear Vision Regulations of Section 35-514(a)(2), Buffer Regulation of Section 35-510 and Section 35-514(a)(6) as well as Fence Height Regulations of Section 35-514 of the Unified Development Code.

**Staff Recommendation – Corrugated Metal Fence Material and Driveway Clear Vision**

Staff recommends Denial in BOA-24-10300098 based on the following findings of fact:

1. The requests will alter the essential character of the neighborhood.
2. The driveway clear vision variance will hinder the neighboring residential lot.

**Staff Recommendation – Fence Height Special Exception**

Staff recommends Denial in BOA-24-10300098 based on the following findings of fact:

1. The requests will alter the essential character of the neighborhood.
2. No other similar fence height in the front yard was seen in the immediate area.