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| Case Number: | BOA-22-10300083 |
| Applicant: | AAG All Pro Construction LLC |
| Owner: | Time Warner Cable Texas LLC |
| Council District: | 2 |
| Location: | 1278 Austin Hwy |
| Legal Description: | Lot 19 & 20, BLK, NCB 8694 |
| Zoning: | "C-3 MC-3 AHOD" General Commercial Austin Highway/Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District |
| Case Manager: | Vincent Trevino, Senior Planner |

Request

A request for 1) a 1' special exception from the maximum 6' fence height requirement, as described in Section 35-514, to allow for a 7' fence and 2) a 3' variance from the maximum 4' height requirement, as described in the MC-3 Design Standards, to allow for a 7' solid screened fence within the MC-3 Corridor Overlay.

Executive Summary

The subject property is located on the corner of Austin Hwy and North Vandiver Street. The subject property is currently a Cable TV Hub Site. The applicant is requesting to replace and existing fence on the property with a 7' wooden fence within the MC-3 Corridor Overlay. The corridor plan review was denied and the option for a variance was presented to the applicant. The denial was based on the following: The tallest element of any front yard fence/wall shall not exceed four (4) feet in height with no more than three (3) feet in height being constructed of a solid permitted building material and fences/walls shall only be constructed of or fully clad with brick, rock, stucco or ornamental metal.

The base zoning district does permit a 6' tall fence, however the MC-3 Overlay restricts the height further and will be enforced. The special exception to the height is being requested due to the height requirements in place by Section 35-514 of the UDC while the variance for the height is being requested due to the design standards in place by the adopted MC-3 Design Standards.

Section 35-514 does state that an 8' fence is permitted along the side property line along North Vandiver due to its classification of a Collector Road, however the variance from the MC-3 Design Standards is still required.

Code Enforcement History

There is no relevant code enforcement history for the subject property.

Permit History

A general electrical permit is on file. A fence permit is pending the outcome of the BOA Meeting.

Zoning History

The property was annexed into the City of San Antonio by Ordinance 1257, dated August 2, 1944, and zoned "B-3" Business District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "B-3" Business District converted to the current "C-3" General Commercial District.

Subject Property Zoning/Land Use

| Existing Zoning | Existing Use |
|--|---------------------|
| "C-3 MC-3 AHOD" General Commercial Austin Highway/Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District | Cable TV Hub Site |

Surrounding Zoning/Land Use

| Orientation | Existing Zoning District(s) | Existing Use |
|--------------------|--|----------------------|
| North | "C-2 MC-3 AHOD" Commercial Austin Highway/Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District | Restaurant |
| South | "C-2 MC-3 AHOD" Commercial Austin Highway/Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District | School |
| East | "C-2 MC-3 AHOD" Commercial Austin Highway/Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District | Commercial Uses |
| West | "C-2 Mc-3 AHOD" Commercial Austin Highway/Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay Airport Hazard Overlay District | Fast Food Restaurant |

Comprehensive Plan Consistency/Neighborhood Association

The subject property is located within the Northeast Inner Loop Community Plan and is designated Community Commercial in the future land use component of the plan. The subject property is located within the Terrell Heights Neighborhood Association and Wilshire Village Neighborhood Association, and they were notified of the case.

Street Classification

Austin Highway is classified as a Primary Type A Arterial Road.
North Vandiver is classified as a Collector Road.

Criteria for Review – Front and Side Fence Height Special Exception

According to Section 35-482(h) of the UDC, in order for a special exception to be granted, the Board of Adjustment must find that the request meets each of the five following conditions:

- 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. Staff finds the request for a 7' tall fence 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 commercial property while still promoting a sense of community. The 7' fence along the front and side portion of the yard may not pose any adverse effects to the public welfare. The existing chain link fence will be removed in order to install the new fence.

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

A new fence will create enhanced security for the subject property on the front and side yard and is unlikely to substantially injure any neighboring properties. The additional height will serve to provide additional security to the property.

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 height for the front and side yard fencing does not appear to alter the essential character of the district. The request for additional fence height is to provide additional safety.

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 permits the current use and will not weaken the general purpose of the district.

Criteria for Review – Variance from MC-3 Design Standards

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. The requested variance is from the MC-3 Overlay Design Standards in regards to the fence requirements. The maximum fence height permitted in the corridor for a solid screened fence is three (3) feet and for a predominately open fence it is four (4) feet. The proposed fence will be solid screened and seven (7) feet tall. The variance appears to be contrary to the public interest as the corridor was adopted to preserve the corridor.

There is an existing chain link fence that the applicant is proposing to replace. Chain link is not a permitted material by the MC-3 Overlay District, so staff finds an alternate recommendation to allow a 7' ornamental fence to serve the public interest.

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

A literal enforcement of the ordinance would result in the applicant having to use the proper materials as required by the MC-3 Design Standards and add additional cost to the project.

The existing chain link fence is taller than what is permitted by the corridor overlay and is non-conforming. The replacement of the fence will allow for the opportunity to replace the material and maintain the security to the property.

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 proposed 7' solid screened front yard fence will not observe the spirit of the ordinance establishing the MC-3 Overlay District.

However, it is found that a 7' ornamental fence will observe the spirit of the ordinance.

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 for a 7' solid screened fence will alter the essential character of the district in which the property is located.

The alternate recommendation is to allow a 7' ornamental fence which does not appear to alter the essential character of the district as it is a material permitted by the MC-3 Overlay 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 variance is sought is due to unique circumstances including the corner location of the lot, the pre-existing chain link fence that needs to be replaced, and it does not appear to be merely financial.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Fence Height Requirements of the UDC Section 35-514 and MC-3: Austin Highway/ Harry Wurzbach (TAPS Memorial Boulevard) Metropolitan Corridor Overlay District Design Standards Manual.

Staff Recommendation – Front and Side Yard Fence Special Exception

Staff recommends **Approval** in **BOA-22-10300083** based on the following findings of fact:

1. A 7' fence is being proposed in a portion of the front and side yard of the property;
and
2. The 7' fence will provide additional safety and security to the subject property.

Staff Recommendation – Variance from MC-3 Design Standards

Staff recommends DENIAL with an Alternate Recommendation to allow a 7' ornamental fence in the front and side yard in BOA-22-10300083 based on the following findings of fact:

1. The 7' height of the fence is being requested for more safety and security measures of the property; and
2. The existing chain link fence will be removed and the proposed fence material is one permitted by the corridor overlay; and
3. A proposed 7' ornamental fence in the front yard will observe the spirit of the design standards of the Austin Highway/Harry Wurzbach Metropolitan Corridor Overlay District.