

Case Number:	BOA-22-10300225
Applicant:	Daryl Shelton
Owner:	Daryl Shelton
Council District:	6
Location:	258 Ardmore Street
Legal Description:	The south 120 feet of Lots 1 and 2, Block 13, NCB 8997
Zoning:	"C-1 GC-2 MLOD-2 MLR-1 AHOD" Light Commercial Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Rebecca Rodriguez, Senior Planner

Request

A request for a 9' 11" variance from the minimum 10' side setback, as described in Sec. 35-514(a)(6)(c)(2), to allow a fence with barbwire to be 1" from the side property line.

Executive Summary

The subject property is located at the corner of South Acme Road and Ardmore Drive. The property was rezoned in 2015 from "R-4" Residential Single-Family District to "C-1" Light Commercial District with the intention to develop a Food Service Establishment. The applicant has since installed a mobile food truck which is considered a Food Service Establishment. In 2019, the applicant was granted a variance by the Board of Adjustment for a reduction on the Type B landscape buffer requirement to the rear, a side setback variance, and a rear setback variance. A building permit application for the construction of two structures was submitted soon after the variance was granted. In 2022, the applicant submitted an Administrative Exception Variance Request (AEVR) to allow the property to maintain a barbed wire fence. Per Sec. 35-514(a)(6)(c)(2), a barbed wire fence must be located behind the minimum setback. A property zoned "C-1" Light Commercial District has a side setback of 10'. The applicant is proposing to maintain the barbed wire fence 1" from the side property line.

Code Enforcement History

A code investigation, INV-PBP-21-3100004483, was opened November 2021 for commercial work being done without a permit. The investigation was closed out as there were active permits on file. Another code investigation, INV-PBP-21-3100004483, was opened the same month, November 2021 for installing barbed wire without obtaining a variance.

Permit History

A building permit for the construction of two (2) restrooms was granted on September 20, 2021. The issuance of the fence permit is pending the outcome of the Board of Adjustment hearing for the setback requirement and an Administrative Exception Variance Request for the barbed wire material.

Zoning History

The property was annexed into the City of San Antonio by Ordinance 1448, dated October 12, 1944 and zoned "F" Local Retail District. The property was rezoned by Ordinance 68428, dated December 01, 1988, to "R-7" Small Lot Home District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned "R-7" Small Lot Home District converted to "R-4" Residential Single-Family District. The property was rezoned by Ordinance 2015-12-17-1090, dated December 17, 2015, to the current "C-1" Light Commercial District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"C-1 GC-2 MLOD-2 MLR-1 AHOD" Light Commercial Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Food Truck (Food Service Establishment)

Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"C-2NA GC-2 MLOD-2 MLR-1 AHOD" Commercial Nonalcoholic Sales Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Commercial Service & Repair Business
South	"R-4 GC-2 MLOD-2 MLR-1 AHOD" Residential Single-Family Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single-Family Residence
East	"R-4 GC-2 MLOD-2 MLR-1 AHOD" Residential Single-Family Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Vacant Lot
West	"C-3 R GC-2 MLOD-2 MLR-1 AHOD" General Commercial Restrictive Alcoholic Sales Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Vacant Lot

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the West Sector Plan and is designated “General Urban Tier” in the future land use component of the plan. The subject property is located within the Los Jardines Neighborhood Association and within 200’ of the Community Workers Council were notified of the case.

Street Classification

Ardmore is classified as a local road.

Criteria for Review – Side 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. The applicant is proposing to install a 6' chain link fence that contains barbed wire, on the subject property. The code requires that such fences be located behind the minimum setback. There is an established single-family neighborhood to the east of the subject property therefore the request appears to be contrary to 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 install the fence 10' from the side property line. Maintaining the fence 10' away from the side does not pose an unnecessary hardship as it appears that there is sufficient space to achieve this requirement.

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. Maintaining 1" from the side property line does not observe the spirit of the ordinance as it is too close to a residential zoned property.

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 9' 11" variance from the side setback requirement could injure the appropriate use of the adjacent property as the barbed wire fence will be too close to a residential zoned property.

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. The property measures 50' in length, therefore maintaining a 10' side setback is feasible.

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Fence Regulations per the UDC Section 35-514(a)(6)(c)(2).

Staff Recommendation – Side Setback Variance

Staff recommends Denial in BOA-22-10300225 based on the following findings of fact:

1. The abutting property is zoned "R-4" Residential Single-Family District; and
2. The fence location and material could be capable of inflicting significant physical injury to the general public.

