

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 1) 14'-11" variance from the minimum 15' side setback from the Highway 151 Gateway Corridor Overlay District, as described in Sec. 35-514(a)(6)(c)(2), to allow a fence with barbwire to be 1" from the side property lines, 2) a 23'-11" variance from the minimum 30' rear setback (with 6' credit from alley), as described in Sec. 35-514(a)(6)(c)(2), to allow a fence with barbed wire to be 1" from the rear property line, 3) a 9' variance from the minimum 25' clear vision requirement, as described in Sec. 35-514(a)(2)(a), to allow a fence to be 16' from the side curb, 4) a 12' variance from the 15' clear vision requirement, as described in Sec. 35-514(a)(2)(b), to allow a fence to be 3' from driveways, 5) a 2' special exception from the maximum 6' fence height, as described in Sec. 35-514, to allow a predominately open fence to be 8' tall along the side and rear property lines, and 6) a 3' special exception from the maximum 5' fence height, as described in Sec. 35-514, to allow a predominately open fence to be 8' tall along the front property lines.

### **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. 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' however the property is located in the Highway 151 Gateway Corridor Overlay District which requires a 15' side setback. The applicant is proposing to maintain the barbed wire fence 1" from the side and rear property lines. Additionally, the fence is encroaching into the clear vision field requiring a variance. Lastly, the fence measures 8' in height, with 6' being a chain link fence and the additional 2' being barbed wire. A commercial property may only have a 5' predominately open fence along the front and 6' on the rear and side property lines.

### **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-3R GC-2 MLOD-2 MLR-1 AHOD" General Commercial Restrictive Alcoholics Sales Highway 151 Gateway Corridor Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Long Term Parking

**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, Rear Setback, and Clear Vision 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 an 8’ predominately open fence that will contain 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.

**Maintaining a 1” side setback on S. Acme and a 1” rear setback is not contrary to the public interest due to the road classification of S. Acme and because there is an alley way located along the rear. Additionally, the proposed clear vision variance does not appear to pose any impacts on incoming traffic.**

*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 15’ from the side property lines. Maintaining the fence 15’ away from the side does not pose an unnecessary hardship as it appears that there is sufficient space to achieve this requirement.

**Having to meet the setbacks along the side (west) and rear property lines in addition to the clear vision requirements will result in an unnecessary hardship as the lot is too small to comply with all the regulations.**

*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.

**The clear vision variance being requested will not result in a complete elimination of the code requirement. An alley to the rear also aids in maintaining an adequate distance of the barbed wire fence to rear properties. Therefore, the requested variances appear to 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.*

Allowing a barbed wire fence to be 1" from a property zoned residential may weaken the general purpose of the district.

**No uses other than those allowed within the district will be allowed with the other requested variances.**

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 14' 1" variance from the side (east) 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.

**Maintaining a fence 9' from the side curb and 3' from the driveways does not appear to injure the essential character of the district as other fences in similar placements were observed in the neighborhood, including the property across the street.**

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 15' side setback on one side is feasible.

**Staff does find that the property is not large enough to meet all other requirements for the placement of the fence, including the 25' clear vision requirement from the side curb and 15' from the driveway. Additionally, having to keep the fence 30' from the rear and 10' from the side (west) would result in not being able to maintain a barbed fence on the property.**

#### Criteria for Review – 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. The applicant is requesting the special exception to allow an 8' fence along the front, side, and rear property lines. If granted, staff finds the request would be in harmony with the spirit and purpose of the ordinance as the fence will be made of predominately open materials.**

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

**In this case, these criteria are represented by fence heights to protect residential property owners while still promoting a sense of community. Installing a new 8' fence does not pose any adverse effects to the public welfare. The fence may discourage any additional**

**commercial encroachment into the residential neighborhood by providing a separation between commercials on the corner property and the residential neighborhood to the East.**

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

**The fence will provide security to the subject property. The fence may also provide a separation between the commercial uses of the subject property and the potential residential uses to the adjacent property. Additionally, the adjacent property is currently vacant and can maintain a 6' predominately open fence by right because of it being undeveloped.**

*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 along the front, side, and rear property lines will not alter the essential character of the district. The material being maintained is predominantly open, and other predominantly open fences were observed on Ardmore Street.**

*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 allows light commercial uses. The requested special exception will not weaken the general purpose of the district.**

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

The alternative to the applicant's request is to conform to the Fence Regulations per Section 35-514 of the UDC.

#### **Staff Recommendation – Side (East) Fence 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.

#### **Staff Recommendation – Side (West) Fence Setback, Rear Fence Setback, and Clear Vision Variances**

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

1. The subject property is located on a corner lot; and
2. There is an alleyway located along the rear; and
3. There is inadequate space to comply with all fencing requirements.

#### **Staff Recommendation – Front, Side, and Rear Fence Special Exception**

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

1. The fence will be made of predominately open materials; and
2. The fence does not appear to pose any adverse impacts to surrounding properties; and
3. There is an alley located to the rear.