

Case Number:	BOA-23-10300008
Applicant:	David Shlachter
Owner:	JP San Antonio I LLC
Council District:	4
Location:	5627 Sherry Street
Legal Description:	Lots P-47A and P-47E, NCB 15604
Zoning:	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District
Case Manager:	Vincent Trevino, Senior Planner

### **Request**

A request for 1) a variance from the fence materials, as described in Section 35-514 (a)(6), to allow a corrugated metal fence in the side and rear yards and 2) a 2’-2” variance to the 6’ height limitation, as described in Sec. 35-514, to allow an 8’-2” solid fence in the side and rear yards.

### **Executive Summary**

The subject property is located on Sherry Street along Old Pearsall Road. The applicant replaced an 8’ tall wooden fence with a corrugated metal fence on the side and rear yards. The corrugated metal fence and height is to ensure the property is secured due to previous break-ins into the property. Since the corrugated fence was erected there have not been any break-ins into the property. The corrugated fence and height ensure the residents of the property are safe from the surrounding areas. A Code Compliance Investigation was initiated on February 15, 2023 for building the fence without permits and with a prohibited material. The property has a registration of Nonconforming Registration last updated in January 2023.

### **Code Enforcement History**

INV-PBP-23-3100000767 – Building without a permit and prohibited material.

### **Permit History**

There are no relevant permits pulled for the subject property.

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 41429, dated December 25, 1972, and originally zoned Temporary “R-1” Single-Family Residence District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned Temporary “R-1” Single-Family Residence District converted to the current “R-6” Residential Single-Family District.

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

Existing Zoning	Existing Use
“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Mobile Home Park

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

Orientation	Existing Zoning District(s)	Existing Use
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North	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single Family Residence
South	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Drainage Easement
East	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Single Family Residence
West	“R-6 MLOD-2 MLR-1 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 1 Airport Hazard Overlay District	Vacant Commercial

### **Comprehensive Plan Consistency/Neighborhood Association**

The subject property is in the United Southwest Plan and is designated “High Density Residential” in the future land use component of the plan. The subject property is located within a boundary of People Active in Community Effort and Southwest Community; and were both notified.

### **Street Classification**

Sherry Street is classified as a local road.

Pearsall Road is classified as a Secondary Arterial A.

Van is classified as a local road.

### **Criteria for Review – Corrugated Metal and Fence Height 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 restricted fence materials to provide uniformity within a community. The variance is contrary to the public interest as the corrugated metal fencing is conflicting with the immediate property owner fence materials. Additionally, the fence exceeds the 6’ maximum height permitted by right.

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 warrant the applicant to construct a fence in the rear and side yards with prohibited fence materials. A literal enforcement of the ordinance would not result in an unnecessary hardship as the applicant would need to switch the corrugated metal with an allowable fence material. Additionally, the fence height would need to comply with the 6’ maximum height.

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. In this case, the spirit of the ordinance will not be observed, as the rules and regulations for fence materials and maximum fence heights were intended to provide consistency and uniformity within an established community.

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, the fence will be allowed the prohibited fence material. If so, this will injure the appropriate use of adjacent conforming properties and alter the essential character of the district. Upon site visits, staff did not observe any other corrugated metal fencing in the immediate area. The fences observed seemed to be constructed from wood and 6' in height.

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. If the applicant had obtained a residential fence permit before construction, they would have been informed about the restricted fence materials.

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

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

### **Staff Recommendation – Corrugated Metal and Fence Height Variance**

Staff recommends Denial in BOA-23-10300008 based on the following findings of fact:

1. There are no unique circumstances existing on the property; and
2. Upon site visits, staff did not observe any other corrugated metal fencing in the immediate area.