

Case Number:	BOA-23-10300179
Applicant:	Arihan, LLC DBA; Fantastic Sam's
Owner:	Vasanti, LLC
Council District:	2
Location:	2203 East Commerce Street
Legal Description:	Lots 31 and 32, Block 7, NCB 1440
Zoning:	"IDZ-2 MLOD-3 MLR-2 AHOD" Medium Intensity Infill Development Zone Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District with uses permitted in "C-2" and a Hotel
Case Manager:	Joseph Leos, Planner

### **Request**

A request for a one and a half story variance from the maximum 2.5 stories, as described in Section 35-517, to allow a building with 4 stories.

### **Executive Summary**

The subject property is located along East Commerce Street, adjacent to its intersection with North New Braunfels Avenue. The applicant is seeking a variance from the maximum height limitation for properties adjacent to residentially zoned uses, to allow for a four-story structure that will be used as a hotel. Despite the subject property being located on a major intersection, the portion where the four-story development will be located is between two properties that are currently being used as single-family residential uses. Resulting, the maximum height is limited to 35' or 2 ½ stories. The maximum height of any portion of a commercial, office or multi-family zoning district located within fifty (50) linear feet of the property line of an established single-family residential use shall be limited to the maximum height of the single-family district.

### **Code Enforcement History**

Complaint- February 2023

Fire General Investigation- February 2023

Property Maintenance Investigation – Structure Exterior- May 2023

### **Permit History**

The issuance of a building permit is pending the outcome of the Board of Adjustment

Fire Sprinkler Permit- June 2021

Fire Alarm Permit -May 2021

Plumbing General Permit-April 2021

Plumbing Sewer Permit-April 2021

MEP Trade Permit- April 2021

Fire Underground Fire Line Permit- April 2021

Fire Systems Permit-February 2021

Commercial New Building Permit- February 2021

Commercial Foundation Permit- December 2020

Commercial Site Work Permit- December 2020

### **Zoning History**

The subject property was located within the original 36 square miles of the City of San Antonio and was originally zoned "J" Commercial District and "B" Residence District. Under the 2001

Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “J” Commercial District converted to "I-1" General Industrial and the previous "B" Residence District converted to "R-4" Single-Family Residential District. The property was then rezoned to "AE-1" Arts and Entertainment District and "AE-1 S" Arts and Entertainment District with a Specific Use Authorization for a Motel by Ordinance 2008-12-04-1128, dated December 4, 2008. The property was then rezoned by Ordinance 2020-06-18-0435, dated June 18, 2020, to the current “IDZ-2” Medium Intensity Infill Development Zone with uses permitted in “C-2” Commercial District for a Hotel.

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

<b>Existing Zoning</b>	<b>Existing Use</b>
“IDZ-2 MLOD-3 MLR-2 AHOD” Medium Intensity Infill Development Zone Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District with uses permitted in “C-2” and a Hotel	Hotel

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

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“I-1 MLOD-3 MLR-2 AHOD” General Industrial Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District and “R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Vehicle Service Shop and Single-Family Residence
South	“AE-1 S MLOD-3 MLR-2 AHOD” Arts and Entertainment Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District with a Specific Use Authorization for a Motel	Motel
East	“R-4 MLOD-3 MLR-2 AHOD” Residential Single-Family Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Residence
West	“R-4 HS MLOD-3 MLR-2 AHOD” Residential Single-Family Historic Significance Martindale Army Airfield Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Historic Cemetery

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

The subject property is in the Arena District/ Eastside Community Plan and is designated as “Mixed Use” in the future land use component of the plan. The subject property is located within the boundary of the Jefferson Heights Neighborhood Association, and they have been notified of

the request. Additionally, the subject property is located less than 200' from the boundaries of Denver Heights Neighborhood Association and they have been notified of the request.

### **Street Classification**

Ease Commerce Street is classified as a Primary Arterial B.  
Belmont is classified as a Local Street.

### **Criteria for Review – 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. For this case, the public interest is represented by height requirements for the protection of view for the adjacent residential uses. The applicant is requesting to deviate from the maximum 2 ½ stories permitted if adjacent to residential uses, to allow a structure to be 4 stories tall. Staff finds this request is contrary to public interest of the abutting properties, as a towering structure can impose onto the interest of the single-family residential uses.

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

There are no special conditions on the subject property that would warrant the need for a deviated height. A literal enforcement of the ordinance would result in the applicant altering the building plans to abide by the 35' or 2 ½ story height requirements. The property is already zoned "IDZ", which already allows for flexible building standards. Abiding by the height ordinance will not result in an unnecessary hardship in this case.

*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 maximum height requirements are enforced for standards to protect access of light and air to public streets and adjacent buildings.

*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.*

The granting of this variance will allow for the structure to be 4 stories. This will injure the appropriate use of adjacent conforming properties, as both abutting residential uses are currently 1 story. The towering structure will impose onto the abutting properties by providing inadequate access to light and air. Staff does recognize that the maximum height permitted

within the current zoning district is 4 stories, however the granting of the variance 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 variance is sought is not due to unique circumstances existing on the property. Since the structure has not been constructed yet, the applicant has the option to alter building plans to abide by the height requirement.

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

The alternative to the applicant's request is to conform to the Building Height Regulations of the UDC Section 35-517.

### **Staff Recommendation – Height Variance**

Staff recommends Denial in BOA-23-10300179 based on the following findings of fact:

1. The request is contrary to public interest of the abutting properties, as a four-story structure can impose onto the interest of the single-family residential uses; and
2. Maximum height requirements are enforced to protect access of light and air to public streets and adjacent buildings.