

Case Number:	BOA-23-10300183
Applicant:	Gerardo Gonzalez
Owner:	Nora Isela Gonzalez
Council District:	1
Location:	1710 McCullough Avenue
Legal Description:	The North 90 feet of Lot 1 and Lot 2, Block 2, NCB 1739
Zoning:	“C-2 UC-5 AHOD” Commercial Main Avenue/ McCullough Avenue Urban Corridor Airport Hazard Overlay District
Case Manager:	Joseph Leos, Planner

### **Request**

A request for 1) a 29'-11" variance from the minimum 30' rear setback requirement, as described in Section 35-310.01, to allow a structure to be 1" from the rear property line and 2) a variance, as described in Section 35-514 (a)(6), to allow a corrugated metal fence along the side and rear property lines.

### **Executive Summary**

The subject property is located McCullough Avenue, near East Locust Street. Currently, the subject property is a retail store. Resulting in a property setback violation (Zoning- Property Setback INV-ZPS-23-3160000780), code enforcement cited the property for a corrugated metal enclosure being constructed without building permits (PMT- Building Without a Permit- INV-PTI-23-3090001158). The enclosure is currently 1" from the rear property line and is abutting a single-family use. Upon site visits, staff observed dense foliage past the rear property line on the abutting lot. Additionally, staff did not observe other structures impeding into the rear setback. The primary structure appears to have the required 30' rear setback, however the addition and patio cover built go into the rear setback.

Confirmed by CPS, the overhead electric line in the rear of the property does not have an easement. The service wire that goes over the storage shed, should not have any structures built under it. Service wires do not require easements.

### **Code Enforcement History**

PMT- Building Without a Permit (INV-PBP-23-3100001158)- March 2023

Zoning UDC Investigation (INV-ZPS-23-3160000780)-May 2023

PMT- Building Without a Permit (INV-PBP-23-3100001610)- March 2023

PMT- Building Without a Permit (INV-PBP-23-3100001472)- March 2023

### **Permit History**

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

### **Zoning History**

The property is part of the original 36 square miles of the City of San Antonio and was originally zoned "F" Local Retail District. The property was rezoned by Ordinance 83331, dated December 14, 1995, to "B-2" Business District. Upon adoption of the 2001 Unified Development Code, dated May 3, 2001, the property converted to the current "C-2" Commercial District.

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

Existing Zoning	Existing Use
“C-2 H UC-5 AHOD” Commercial Historic Main Avenue/ McCullough Avenue Urban Corridor Airport Hazard Overlay District	Store

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

Orientation	Existing Zoning District(s)	Existing Use
North	“C-2 UC-5 AHOD” Commercial Main Avenue/ McCullough Avenue Urban Corridor Airport Hazard Overlay District	Law Office
South	“C-2 H UC-5 AHOD” Commercial Historic Main Avenue/ McCullough Avenue Urban Corridor Airport Hazard Overlay District	Restaurant
East	“MF-33 H UC-5 AHOD” Multi-Family Historic Tobin Hill Main Avenue/McCullough Avenue Urban Corridor Airport Hazard Overlay District	Single-Family Residence
West	“C-2 UC-5 AHOD” Commercial Main Avenue/ McCullough Avenue Urban Corridor Airport Hazard Overlay District	Medical Offices

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

The subject property is in the Midtown Area Regional Center Plan and is designated as “Neighborhood Mixed-Use” in the future land use component of the plan. The subject property is located within the boundary of the Tobin Hill Community Neighborhood Association, and they have been notified of the request.

### **Street Classification**

McCullough Avenue is classified as a Secondary Arterial B.  
East Locust Street is classified as a Local Street.

### **Criteria for Review – Rear Setback and Corrugated Metal 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 the adjacent neighbor and development consistency along McCullough Avenue into East Locust Street. The applicant is requesting a variance to the rear setback to allow an enclosure to be 1” from the rear property line and a corrugated metal fence. Staff finds that this is not an allowable distance and suitable material, as it will directly affect the adjacent neighbor. Additionally, setback distances are enforced to provide consistent development patterns along major arterials abutting residential development. No other developments seemed to impose into the rear setback and constructed of corrugated metal in the immediate area.

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

Staff observed no special conditions on the subject property to warrant the need for a reduced setback and use of prohibited fencing materials. A literal enforcement of the ordinance would result in the applicant altering the structure to adhere by the rear setback requirements and use allowable fencing material. This would not result in an unnecessary hardship, as it appears the structure can be altered.

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 property is abutting a residential use, which requires a minimum rear setback distance of 30'. Despite "C-2" zoned districts having the option to eliminate the rear setback distance if abutting commercial, the spirit of the ordinance will not be observed in this case. Additionally the spirit of the ordinance will not be observed as a corrugated metal fence would not create substantial justice.

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 enclosure will maintain the current 1" rear setback. This request will injure the appropriate use of adjacent conforming properties and alter the essential character of the district. This request will injure the residentially zoned districts, as the enforced minimum rear setback distance is to prevent commercial structures from encroaching into residentially zoned areas. Additionally, the use of corrugated metal will injure adjacent properties, as other properties were observed with permissible fence material.

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. Had the applicant consulted with development services, the rear setback distance and prohibited fencing material could have been thoroughly communicated.

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

The alternative to the applicant's request is to conform to the Setbacks Regulations in Section 35-310.01 and Fencing Materials of Section 35-514 (a)(6) of the UDC.

### **Staff Recommendation – Rear Setback and Corrugated Metal Variance**

Staff recommends Denial in BOA-23-10300183 based on the following findings of fact:

1. Staff finds that this a not an allowable distance, as it will directly affect the adjacent neighbor; and
2. The request will injure the residentially zoned districts, as the enforced minimum rear setback distance is to prevent commercial structures from encroaching into residentially zoned areas; and
3. Corrugated metal is a prohibited fence material.