

Case Number:	BOA-23-10300343
Applicant:	1604 HR, LLC
Owner:	1604 HR, LLC
Council District:	8
Location:	9811 Huebner Road
Legal Description:	Lot 19 and the southwest IRR 369.01 feet of Lot 18 (2.939), Block 5, NCB 14705 and the east IRR 54.99 feet of Lot 18, Block 5, NCB 14705
Zoning:	“C-2” Commercial District
Case Manager:	Melanie Clark, Planner

### **A request for**

A 2’ and fence configuration variance from the minimum 6’ privacy fence, as described in Section 35-514(d)(2), to allow a 4’ predominantly open fence.

### **Executive Summary**

The subject property is generally located on the northern intersection of Huebner Road, Encino Park Road, and Southwell Road. The applicant is requesting a 2’ fence height reduction and a fence configuration variance from the minimum 6’ privacy fence to allow a 4’ predominantly open fence. An existing business is currently on site and the applicant is proposing development expansion towards the east side of the property abutting a single-family residential property. Applicant will abide by the required 15’ landscape buffer along the residential property in conjunction with the existing 4’ open fence that runs along the residential boundary. If Board of Adjustment approves request, developer will require written permission from the residential property owner to use the existing fence as required in Section 35-514(d)(1). The fence height reduction is considered a variance as special exceptions are for an increase in fence height.

### **Code Enforcement History**

There is no code history for the subject property.

### **Permit History**

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

### **Zoning History**

The property was annexed into the City of San Antonio by Ordinance 41426, dated December 25, 1972, and 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 was converted to “R-6” Residential Single-Family District. The property was rezoned by Ordinance 2007-04-19-0473, dated April 19, 2007, from “R-6” Residential Single-Family District to “C-2” Commercial District.

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

#### **Existing Zoning**

“C-2” Commercial District

#### **Existing Use**

Medical Offices

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

#### **North**

Existing Zoning District(s)

“R-4” Residential Single-Family District

**Existing Use**

Single-Family Residences

**South**

**Existing Zoning District(s)**

“C-2” Commercial District

**Existing Use**

Strip Mall

**East**

**Existing Zoning District(s)**

“RE” Residential Estate District

**Existing Use**

Church

**West**

**Existing Zoning District(s)**

“C-2” Commercial District and “R-6” Residential Single-Family District

**Existing Use**

Medical Offices and Single-Family Residence

**Comprehensive Plan Consistency/Neighborhood Association**

The subject property is currently located in Oakland Estates Neighborhood Plan and is designated as “Mixed Use” in the future land use component of the plan. The subject property is located within the Oakland Estates Neighborhood Association and were notified of the case.

**Street Classification**

Huebner Road is classified as Primary Arterial Type A.

Both Southwell Road and Encino Park Road are classified as local roads.

**Criteria for Review – Fence Height Reduction and Configuration 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 Unified Development Code requires a minimum 6’ tall privacy fence when nonresidential uses are adjacent to an existing residential lot. The proposed 2’ height reduction and fence configuration variance are contrary to the public interest as it does not provide proper separation between residential and nonresidential properties.

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

A literal enforcement of the ordinance would not result in unnecessary hardship as the applicant could install a minimum 6’ privacy fence along the nonresidential property boundary.

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. Granting the fence variance would injure neighboring properties, as the existing 4' open fence and proposed 15' landscape buffer would not provide adequate privacy, security, or property delineation between commercial and residential use.

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 fence variance would alter the essential character of the district by not adhering to the minimum height and configuration requirements for nonresidential use to erect and maintain 6' solid fencing along the property boundaries adjacent to existing single-family residential use. The adjacent conforming property will not have privacy against the abutting nonresidential use if variances are approved.

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 6' privacy fence could be installed to comply with fence regulations.

**Alternative to Applicant's Request:**

The alternative to the applicant's request is to conform to the fence requirements of the UDC Section 35-514(d)(2).

**Staff Recommendation – Fence Height Reduction and Configuration Variance**

Staff recommends Denial in BOA-23-10300343 based on the following findings of fact:

1. The proposed 2' height and fence configuration variance are contrary to the public interest as it does not afford the general health, safety, and welfare to both the adjacent residential property and surrounding area.
2. The adjacent conforming property will not have privacy against the abutting nonresidential use if variances are approved.