

Case Number:	BOA-23-10300333
Applicant:	Mauricio Conchas
Owner:	Mauricio Conchas
Council District:	5
Location:	4419 West Commerce Street
Legal Description:	Lots 30-34, Block 15, NCB 8254
Zoning:	“C-2 MLOD-2 MLR-2 AHOD” Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District
Case Manager:	Mirko Maravi, Principal Planner

### **Request**

A request for a variance from the fence materials, as described in Section 35-514(a)(6), to allow for a corrugated metal fence in the side and rear yard.

### **Executive Summary**

The subject property is located on West Commerce Street, just west of Our Lady of the Lake University. The property was recently rezoned as part of a Large Area Rezoning to the “C-2” base zoning district. The current structure is a commercial building, for furniture sales. The property owner built a 6’ privacy fence made of corrugated metal on the side and rear of the property without a permit. The property is required to have a 6’ privacy fence as there is a residential lot behind the property, however it must be built without any prohibited material.

### **Code Enforcement History**

INV-PBP-23-3100004041 – Building without a Permit – Corrugated Metal Fence – Pending Resolution

### **Permit History**

SIG-PMT-APP23-20803123 – Sign Permit - 12/13/2023 – On Premise Sign

MEP-MEC-PMT23-339380 – Mechanical Permit – 12/12/2023 - HVAC

### **Zoning History**

The subject property was annexed into the City of San Antonio by Ordinance 1258, dated August 2, 1944, and zoned “J” Commercial District. Under the 2001 Unified Development Code, established by Ordinance 93881, dated May 03, 2001, the property zoned “J” Commercial District converted to the “I-1” General Industrial District. The property was rezoned by Ordinance 2023-08-03-0516, dated August 3, 2023, to the current “C-2” Commercial District.

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

Existing Zoning	Existing Use
“C-2 MLOD-2 MLR-2 AHOD” Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Furniture Sales

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

Orientation	Existing Zoning District(s)	Existing Use
North	“R-4 MLOD-2 MLR-2 AHOD” Residential Single-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District and “R-2 MLOD-2 MLR-2 AHOD” Single-Family Residential Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling and Vacant Lot
South	“C-2 MLOD-2 MLR-2 AHOD” Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Food Service Establishment
East	“I-1 MLOD-2 MLR-2 AHOD” General Industrial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
West	“C-2 MLOD-2 MLR-2 AHOD” Commercial Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Vacant Lot with Billboard Sign

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

The subject property is not under any land use plan. The subject property is located within the boundary of the Prospect Hill Neighborhood Association and Las Palmas Neighborhood Association, and they have been notified of the request.

### **Street Classification**

West Commerce is classified as a Primary Arterial Type B.

### **Criteria for Review – Corrugated Metal Variances**

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 required materials for constructing a fence. The applicant is requesting an exception to the approved fence materials as defined in the Unified Development Code Section 35-514 to allow for a corrugated metal fence. The request is contrary to the public interest, as corrugated metal is a prohibited material for fence construction and would be uncharacteristic of the surrounding area if allowed.

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 permit an exception to the approved fence materials as defined in the Unified Development Code Section 35-514(a)(6).

While there is a requirement for the commercial property to have a 6' privacy fence along adjacent residential lot, it must be constructed with permitted materials.

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 structure does not appear to observe the spirit of the ordinance, as it is constructed from prohibited fencing materials.

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.*

Staff finds the granting of the variances will substantially injure the appropriate use of adjacent conforming properties or alter the essential character of the district in which the property is located, as the fence is constructed of prohibited fencing materials as defined in the Unified Development Code Section 35-514(a)(6). Upon visiting the site, staff found no fences constructed of corrugated metal in the immediate surrounding area.

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, as there are approved fence materials for constructing a fence outlined in the Unified Development Code Section 35-514(a)(6). There are fences constructed within the Unified Development Code's guidelines in the immediate surrounding area.

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

The alternative to the applicant's request is to conform to the Fence Material Requirements of the UDC Section 35-514(a)(6).

### **Staff Recommendation – Corrugated Metal Variance**

Staff recommends Denial in BOA-23-10300333 based on the following findings of fact:

1. The structure appears to alter the essential character of the district as it is constructed of prohibited fence material.
2. There are no unique circumstances on the property that merit deviation from the required fence material and there are no other similar fences in the area.