

Case Number:	BOA-21-10300166
Applicant:	Paco Felici
Owner:	Felici Corporation LLC
Council District:	1
Location:	1606 Fulton Avenue
Legal Description:	West 51 feet of Lot 5, Lot A1, Block 19, NCB 666
Zoning:	"C-1 UC-3 AHOD" Light Commercial Fredericksburg Road Urban Corridor Airport Hazard Overlay District
Case Manager:	Roland Arsate, Planner

Request

A request for 1) a 4' 10" variance from the 10' minimum side setback requirement, as described in Section 35-310, to allow an awning with 1' of overhang to be 5' 2" from side property line and 2) a variance from the fencing material requirement, as described in Section 35-514, allow a solid screened cast iron metal fence.

Executive Summary

The subject property is located along Fulton Street near Fredericksburg Road. The applicant has constructed an awning without a permit on his commercial property. The awning is 5' 2" away from the side property line. The UDC requires a 10' setback from side property lines abutting residentially zoned property. The applicant is also requesting a variance for the solid screened cast iron metal fence located along the front property line of the subject property. Cast iron fencing is not an approval material for fencing nor is it considered a prohibited material for fencing as well. The awning on the front façade of the structure was observed to be within the Right-Of-Way (ROW). The applicant submitted a permit application to Public Works in order to maintain the awning within the ROW.

Code Enforcement History

April 2015 – Working without permits on electrical

A Permit Investigation was created on September 10, 2021 for Zoning Setbacks.

A Permit Investigation was created on October 8, 2021 for Building Without a Permit.

Permit History

April 2017 – Electrical Permit

January 2020 – Building Remodel Permit

June 2020 – Electrical Permit

Zoning History

The subject property was located within the Original City Limits of San Antonio and was zoned "B" Residence District. Upon adoption of the 2001 Unified Development Code, the zoning converted from "B" Residence District to "R-4" Residential Single-Family District, established by Ordinance 93881, dated May 3, 2001. The subject property was rezoned by Ordinance 2010-05-20-0461 dated May 20th, 2010 to "C-1" Light Commercial District.

Subject Property Zoning/Land Use

Existing Zoning	Existing Use
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"C-1 UC-3 AHOD" Light Commercial Fredericksburg Road Urban Corridor Airport Hazard Overlay District	Vacant Commercial Building
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Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"R-4 H UC-3 AHOD" Residential Single-Family Historic Fredericksburg Road Urban Corridor Airport Hazard Overlay District	Single-Family Residence
South	"C-2NA UC-3 AHOD" Commercial Nonalcoholic Sales Fredericksburg Road Urban Corridor Airport Hazard Overlay District	Commercial Building
East	"R-4 H UC-3 AHOD" Residential Single-Family Historic Fredericksburg Road Urban Corridor Airport Hazard Overlay District	Single-Family Residence
West	"C-2 UC-3 AHOD" Commercial Fredericksburg Road Urban Corridor Airport Hazard Overlay District	Commercial Building

Comprehensive Plan Consistency/Neighborhood Association

The subject property is in the Near Northwest Community Plan and is designated “Neighborhood Commercial” in the future land use component of the plan. The subject property is located within the Keystone Neighborhood Association and were notified of the case.

Street Classification

Fulton Avenue is classified as a Collector Road.

Criteria for Review - 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. The applicant is requesting a variance to the side setback for an awning detached from the existing structure. The applicant is also requesting a variance for a solid screened cast iron metal fence along the front property line.

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

A literal enforcement of the ordinance would result in the applicant having to move the post of the structure to 10’ away from side property lines which would create a hardship for the structure. A literal enforcement of the ordinance would result in the property owner possibly having to replace the solid screened cast iron fence to an alternate material.

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. A 4' 10" variance to a side setback will observe the spirit of the ordinance, as it has addressed water runoff and is constructed of fire-rated materials. The variance for the solid screened cast iron metal fence was erected as more of an art piece purchased by the owner of the property and will not adversely affect surrounding properties in the immediate area.

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 request for a 4' 10" variance for a side setback provides adequate space away from the adjacent property line and is not likely to negatively affect the adjacent neighboring property. Staff finds that the cast iron solid screened fence is not out of character for the neighboring properties.

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 due to unique circumstances existing on the property such as the small amount of available space, with the actual commercial property set below grade level and the solid screened fence acts as an art piece in this area of San Antonio known as the "Deco District".

Alternative to Applicant's Request

The alternative to the applicant's request is to conform to the Setbacks per 35-310 and the fence regulations in 35-514 in the UDC Code.

Staff Recommendation – Side Setback and Metal Fencing Material Variance

Staff recommends **Approval** in **BOA-21-10300166** based on the following findings of fact:

1. There is no issue for water runoff in that there is plenty of space between the awning and the neighboring property and drainage is provided; and
2. The structure will not negatively affect neighboring properties; and
3. The awning is constructed of fire-rated materials; and
4. The solid screened fencing is more decorative than a fence; and
5. The fence will not negatively affect neighboring structures.