



## AGENDA ITEM SUMMARY FORM

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**MEETING DATE:** September 20, 2023

**PREPARED BY:** Kandice Haseloff-Bunker, Development Coordinator

**AGENDA CONTENT:** Conduct a public hearing, discussion, and possible action on a request for a variance to Sec. 28-104. - Fencing, walls and screening requirements.b.1.c., (Fence Height) to allow for fence to be placed in rear yard with an increased height of nine (9) feet to provide a visual barrier screen between the residential district properties and commercial property. The subject property is located at 512 W. Mulberry Street, oriented north-east of the intersection of W. Mulberry Street and N. Columbia.

**AGENDA ITEM SECTION:** Public Hearing and Action

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**BUDGETED AMOUNT:** None

**FUNDS REQUESTED:** None

**FUND:** None

**EXECUTIVE SUMMARY:**

A variance request has been submitted to the City of Angleton Development Services Department for construction of a new fence with a height of nine (9) feet, to be built on an existing lot of property more commonly known as 512 W. Mulberry.

Staff has identified a variance of the fencing, walls and screening requirements as necessary to process the potential building permit application. This variance is to the maximum height of a fence.

This commercial property has had a building existing on the property since 1998 according to Brazoria County Tax Appraisal records. The business has 8 ½ foot tall conex containers currently used for product and equipment storage.

There is no additional concrete flatwork proposed to widen or change the existing driveway or walkway.

Applicant is required to satisfy the following:

**Sec. 28-104. - Fencing, walls and screening requirements.b.1.c.**

Any screening wall or fence required under the provisions of this section or under a specific use permit, planned development district, or other requirement shall not be less than six feet nor more than eight feet in height and constructed of masonry, reinforced concrete, wood, or other

similar suitable permanent materials which do not contain openings. All wall or fence openings shall be equipped with gates equal in height and screening characteristics to the wall or fence.

## **ANALYSIS:**

*The lots in this section of Mrs. Cora L. Erskines Addition were created by plat recorded in 1897 (V1P5, 1897000005). Brazoria County Appraisal District indicates that the commercial building was constructed in 1998 and met all requirements at that time.*

*The proposed new fence will fully screen the conex storage units on Commercial-General zoned property from the abutting Single-Family 6.3 zoned residential neighborhood. The change between zoning districts is not a self-created condition. Since 2009, Ord. No. 2009-O-4A requires a screening fence for any new development along shared property lines between single-family or two-family districts and multifamily, manufactured home park, or nonresidential districts. These properties were both developed prior to the ordinance. The Applicant's optional installation of a fence would result in the property's substantial compliance with the most current ordinances. The Applicant's property is in the Commercial-General Zoning District which specifically calls for Commercial use. Applicant's use as a business remains in compliance with this designated zoning use. Relocation would be ineffectual as all surrounding properties conform with their appropriate zoning use. The proposed construction represents a less intrusive solution. The proposed fence height will better screen the tall unappealing storage containers from view, provide utilitarian safety, security, and privacy for both the Applicant and the surrounding residential homes. The proposed fence will not only improve the visual aesthetic and appeal of the neighborhood but, will also provide some additional sound buffer between the arterial traffic traveling along W. Mulberry and the residential zoned neighborhood. The variance will be a reasonable accommodation that will improve the visual appeal for the area.*

*There are no proposed changes to the setbacks of this property. The triangle of visibility will remain the same at the intersection, offering the high visibility needed for retail traffic.*

*There is not financial consideration present as the requested increased height fence is expected to actually cost more than a typical 8 foot fence. The hardship will deprive the Applicant and the surrounding property owners of their land's value and use in an egregious way, either completely or almost completely.*

**Pursuant to Chapter 28, Section 28-23(h)(3) of the Code of Ordinances of the City of Angleton (Code), notice was published in the "Facts," on August 02, 2023 and mailed to all property owners within two-hundred feet of the subject property on September 5, 2023.**

**Pursuant to Section 28-23(h)(4): The board of adjustment shall not grant a variance unless it finds, based upon compelling evidence provided by the applicant, that each of the conditions of subsection (f) have been satisfied..."**

**Pursuant to Section 28-23(f)(2): No variance shall be granted without first having given public notice and having held a public hearing on the variance request in accordance with subsection (h) of this section and unless the board of adjustment finds:**

- a. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his/her land;**

Imposing the current fence height regulations will limit, prevent, or significantly impede the development, safety and use of this lot. There are existing residential homes abutting the area and Applicant's intended fence will better screen between the zoning change. The proposed fence will play an important role in protecting all properties' privacy and security. Fully screening the accessory structures will create a more visually appealing barrier than the existing openly viewable storage conex structures. Approving this request will provide substantial justice to the landowner and surrounding neighbors. There is not a way to fully screen the conex storage without granting a variance. The request is not based on inconvenience or expense for the applicant. While a fence does not come with a 100%-guarantee against all crime, it does act as an effective deterrent to trespassers and intruders. An unfenced yard gives people easy access to the commercial workspace and belongings. The fence will keep the public safe and secure and out of the commercial work area.

**b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.**

Applicant owns the commercial business that occupies this lot. The current fence height restriction would allow visibility of the conex storage structures that are necessary for the operation of this commercial business. Strict application of the requirements of this applicable zoning chapter would deprive the existing property owner of rights and privileges to be enjoyed on this site and currently enjoyed by other property owners in the same zoning district. The proposed fence will improve and preserve the protected property interests for the Applicant and for the abutting neighborhood.

**c. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;**

Staff feels that the nature of the variance will not be detrimental to the area as the proposed fence does not obstruct traffic's field of view or interfere with public health or safety. All setbacks are to be adhered to. The variance will not cause changes to the Right-of-Way nor to traffic conditions in the area. The proposed fence will be a reasonable opportunity to provide an additional layer of public safety and security for the commercial storage and work area.

**d. That the granting of the variance will not have the effect of preventing the orderly use of the other land within the area in accordance with the provisions of this chapter; and**

There are existing residential homes abutting the commercial zoned area, the general objective of Angleton's fencing ordinance is to provide a visual buffer between single-family or two-family districts and nonresidential districts. The suitable use of the property will preserve the appearance and ambience of the existing residential neighboring properties. The fence will shield the commercial work zone to improve the visual aesthetic of the homes in the neighborhood and will be well within the spirit of the street and community. The proposed construction will not alter the essential character of the neighborhood nor interfere with or prevent the orderly use of other properties in the area from doing the same.

**e. That a finding of undue hardship exists.**

The hardship is imposed only by conditions that are existing outside the property owner's control. Due to the pre-existing location combined of the development with the two abutting zones, an undue hardship exists pursuant to Section 28-23(f)(3). Granting a variance would allow for the

*best and most reasonable use of this property. The proposed fence will be reasonable accommodation that will enable the Applicant's to improve the visual appeal in the area.*

**Pursuant to Section 28-23(f)(3): In order to grant a variance, the board of adjustment must make written findings that an undue hardship exists using the following criteria:**

**a. That literal enforcement of the controls will create an unnecessary hardship in the development of the affected property;**

*There are existing residential homes in the area with open visuals of the commercial building, storage, supplies and equipment. The commercial business and the existing homes were platted and built according to the regulations in place at that time. Imposing the current fence height restriction will limit, prevent, or significantly impede the development and use of this lot, creating an unnecessary hardship in the development of the affected property. It will also impede the improvement of the area's visual appeal.*

**b. That the situation causing the hardship or difficulty is neither financial in nature, self-imposed nor generally affecting all or most properties in the same zoning district;**

*The configuration and zoning changes that create the necessity for fully shielding the conex container style structures is not a condition generally present in a majority of the overall district. The hardship is not financial, self-imposed nor generally affecting all or most properties in the same zoning district.*

**c. That the relief sought will not injure the permitted use of adjacent conforming property; and**

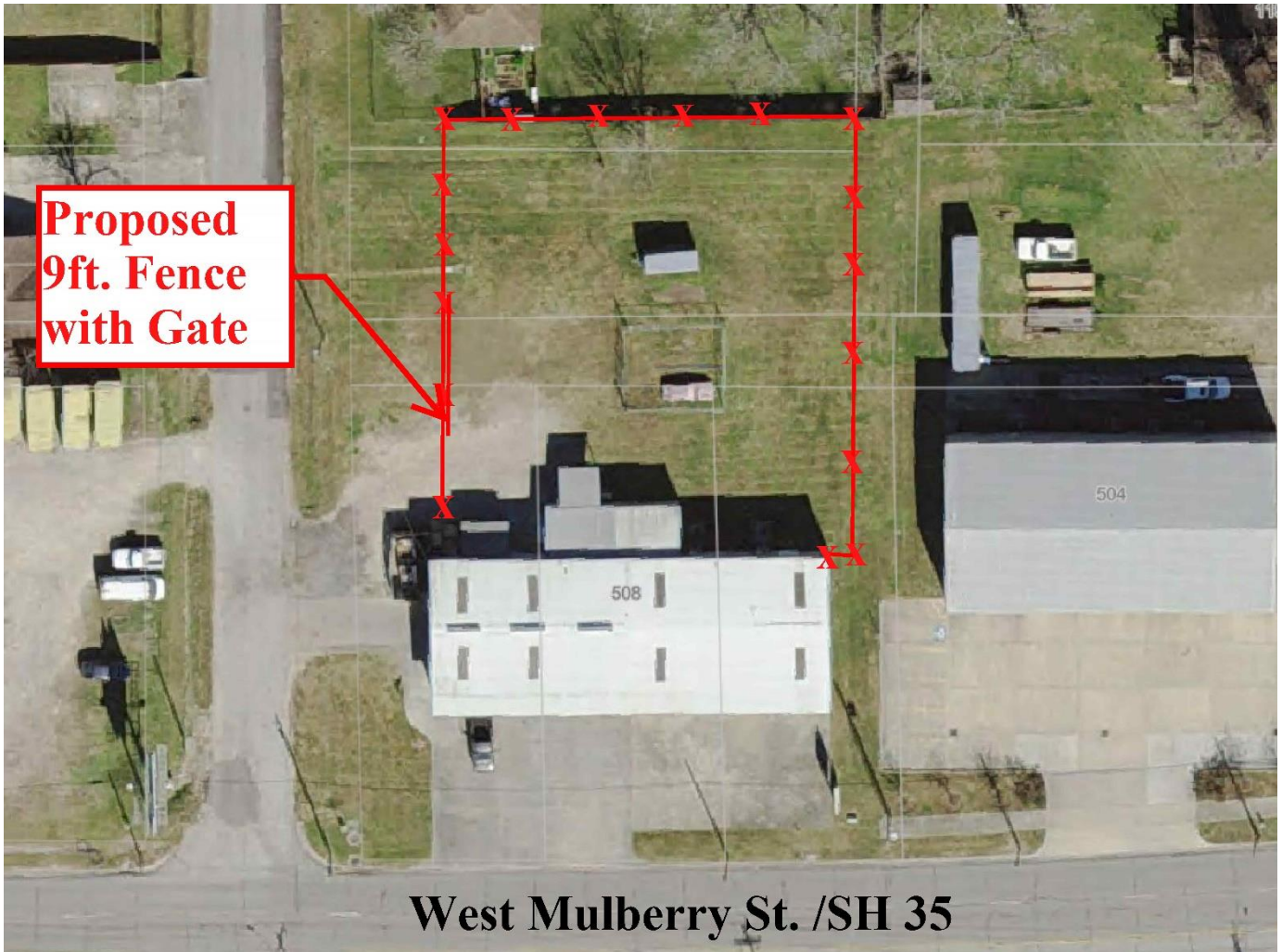
*Lots within this subdivision are already utilizing fencing in a similar manner to beautify and elevate a yard and without injury to the permitted use of adjacent conforming properties. The relief sought for 1 foot of additional height is not expected to injure the permitted use of adjacent conforming property.*

**d. That the granting of a variance will be in harmony with the spirit and purpose of these regulations.**

*Granting of a variance will be in harmony with the spirit and purpose of these regulations.*

Pursuant to Section 28-23(f)(4); A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely upon economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by this chapter to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.





### **Proposed Fence Layout Map**

#### **RECOMMENDATION:**

Staff recommends that the Board of Zoning Adjustment grants the variance to allow for a fence to be placed in rear yard with an increased height of nine (9) feet to provide a visual barrier screen between the residential district properties and commercial property.

**SUGGESTED MOTION:** I move we that we find that the criteria of Sections 28-23(f)(2) and the findings of 28-23(f)(3) of the Code of Ordinances are met and that we grant the requested fence to be placed in rear yard with an increased height of nine (9) feet.

**(Site photograph pages follow)**

## SITE PHOTOGRAPHS

512 W. Mulberry



View of site showing business front





**View facing East, showing business driveway**



**View facing East, showing behind business**





**View facing North, showing behind business**



**View facing South, showing behind business**





**View of 8.5 foot conex storage containers and 6 foot fence**



**View facing East, showing residence directly abutting business**