

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
April 20, 2015**

Members Present:

Mary Rogers
Frank Quijano
Alan Neff
George Britton
Maria Cruz
Jesse Zuniga
John Kuderer
Roger Martinez
Chris Garcia
Henry Rodriguez
Jeffrey Finlay

Staff:

John Jacks, Assistant Director
Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Logan Sparrow, Planner
Paul Wendland, City Attorney
Christopher Looney, Policy Administrator
Tony Felts, Senior Planner

Call to Order

Pledge of Allegiance to the U.S. and Texas Flags.

Mr. Ozuna, Chair, called the meeting to order and called roll of the applicants for each case.

Christopher Looney, Policy Administrator, summarized the recommendations made by the Board during the two previous work sessions held. Mr. Looney stated a motion by the Board is needed to recommend the amendments relating to fence regulations, special exceptions, uses, and Board Procedures to the Planning Commission Technical Advisory Committee for inclusion in the 2015 Unified Development Code update program.

A motion was made by Mr. Rodriguez to approve the recommendations. The motion was seconded by Mr. Quijano with all members voting in the affirmative

Mr. Neff made a motion to move Case No A-15-066 to the beginning of the agenda. Mr. Quijano seconded the motion with all members voting in the affirmative.

CASE NO. A-15-066

Applicant – Chris Plauche

E. 10.52 feet of Lot 5 & W. 54.16 feet of Lot 6, Block 1, NCB 561

626 Nolan Street

Zoning: “R-6 H AHOD” Residential Single-Family Dignowity Hill Historic Airport Hazard Overlay District

The applicant is requesting for an appeal of the Director's decision of denial of the request to allow the use of an accessory structure in the rear yard for laundry, rest room and food storage purposes, identifying these uses as an expansion of a nonconforming use in an "R-6" Residential Single-Family zoning district.

Catherine Hernandez, Planning Manager, presented background and staff's recommendation of denial of the appeal. Ms. Hernandez provided a zoning history of the property, the registration of the nonconforming use based on the rezoning, and the applicant's proposal to build an accessory structure for laundry, rest room and food storage purposes. Ms. Hernandez provided information regarding the need to relocate the appliances from 622 Nolan and stated that 622 Nolan did not have a registered nonconforming use and that any use other than a residential home would have been in violation. Ms. Hernandez provided information to the Board regarding the Nonconforming Regulations in 35-702 related to enlargement. Ms. Hernandez stated that to reverse the decision, the Board must find that the Director's decision that the addition of the accessory structure for office, accessory meeting and laundry facilities was an expansion of the primary structure's nonconforming use for the office, accessory meeting and laundry facilities, was incorrect; to affirm the decision, the Board can find that use of the accessory structure for laundry, restroom, kitchen appliances and food storage items is an expansion of the office, accessory and laundry facilities. Ms. Hernandez stated that an option the applicant has was that the use may be extended throughout the building, provided there are no structural alterations or additions to the structure. Another option was provided as per Section 35.709, an application for a specific use authorization by requesting a rezoning in order to expand the office, accessory meeting and laundry facilities into the accessory structure. She indicated 27 notices were mailed, none were returned in favor and 4 were returned in opposition and no response from the Dignowity Hill Neighborhood Association.

Chris Plauche, applicant, stated they are requesting the appeal so that they may be able to build a storage shed to store items and appliances that are used to provide meals to citizens who are in need of assistance as well as provide bathrooms. She also stated these individuals are monitored when they use the facilities.

Mr. Zuniga asked about 622 Nolan and whether the owners were out of compliance with zoning. Ms. Plauche acknowledged that they were not conforming since the house had the extra refrigerators and freezers. Mr. Zuniga asked why they didn't rezone the property instead and Mr. Plauche stated that the original rezoning occurred when she was out of the country and admitted to continuing to stay open serving people even though they were violating zoning, however, they were protected under the Religious Freedom and Protection Act.

Ms. Cruz asked if the neighbors complained about trash and Ms. Plauche stated they try to keep the debris down to a minimum and clean up the park and alley. Ms. Cruz asked if the people hang out in the neighborhood and Ms. Plauche stated that they try to provide water, snacks movies and bathrooms all day in addition to the feeding times.

Mr. Kuderer asked why they chose a neighborhood rather than a commercial area and Ms. Plauche stated they chose a residential home so it created an inviting atmosphere.

The following citizens appeared to speak:

Lulu Francois, citizen, spoke in opposition due to the negative impact to the neighborhood and crime problems. Mr. Rodriguez asked if the problems have been reported to the police and Ms. Francois responded they had reported them.

Mark Wittig, citizen, spoke in favor of the organization and the work they provided.

Linda Torres, citizen, spoke in opposition regarding the crime in the neighborhood and the lack of support and services that should be provided to help the people get off the streets. Mr. Rodriguez asked about the crime coming from the people served and Ms. Torres responded that she had proof. Mr. Quijano clarified that the Board was only discussing the accessory structure.

Anthony Franks, citizen, spoke in favor of the organization and the work they provided.

Carmen Torres, citizen, spoke in opposition stating that the expansion would just cause more problems than what they experienced now.

Nettie Hinton, citizen, spoke in favor of the organization and the support they provided to the people they served. Mr. Rodriguez asked if Ms. Hinton agreed with the neighborhood's concerns about feeling unsafe and Ms. Hinton responded with she felt safe as a resident of the neighborhood. Mr. Zuniga asked about the use of the accessory structure and Ms. Hinton stated that they needed the space to put the appliances and bathrooms since the 2 story structure was being demolished.

Roland Estrada, citizen, spoke in opposition stating his house was broken into. Ms. Rogers asked if he had reported the issues to the police and he responded that he had.

Debbie Mayor, citizen, spoke about the people loitering in the neighborhood and how it negatively impacted the neighborhood.

Ruby Castillo, citizen, spoke in opposition stating that the area was a residential area and further infringement is a problem. Ms. Castillo also stated that they currently violate occupancy as they have more than the 70 allowed.

Sister Jo Mary, citizen, spoke in favor of the organization and the addition of the accessory structure as well as the good work to provide food and services to the clients.

Mary Ellen Hardee, citizen, spoke in opposition about the problems created in the neighborhood and that if they didn't want to be rezoned originally, they could have done that just as she had for her properties. Ms. Hardee stated that they should find an appropriate building and land to continue their mission.

Brian Dillard, citizen, spoke in opposition regarding the negative impact to the neighborhood as a result of the use.

Melissa Marsh, citizen, spoke in opposition regarding the negative impact to the neighborhood.

Liz Franklin, citizen, spoke in opposition regarding the impact to the neighborhood with the organization increasing its capacity by expanding the use.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-066 closed.

MOTION

A motion was made by **Mr. Martinez**. **“Re Appeal No. A-15-066, an appeal of the Director’s decision of a denial of request to allow the use of an accessory structure in the rear yard for laundry, rest room and food storage purposes, identifying these uses as an expansion of a nonconforming use in an “R-6” Residential Single-Family zoning district, subject property description being the E. 10.52 feet of Lot 5 & W. 54.16 feet of Lot 6, Block 1, NCB 561, located at 626 Nolan Street, applicant being Chris Plauche. I move we uphold the Director’s decision and deny the construction and use of the proposed accessory structure as proposed by the Catholic Worker’s House because the testimony we have heard and the evidence we have gathered do not support the use of this structure in excess of the city’s use and the prohibition against enlarging the nonconforming use of such accessory dwellings.”** The motion was seconded by **Mr. Kuderer**.

Mr. Martinez stated he was not in support of reversing the decision due to the undue burden to the neighborhood’s infrastructure with the additional electrical and plumbing loads and that it was in the best interest of the neighborhood to comply with the ruling.

Mr. Kuderer stated that although the organization had a noble cause, he could not support reversing the decision due to the impact to the neighborhood.

Mr. Rodriguez stated that his vote would not reflect his personal feelings.

Mr. Quijano stated that this was about an accessory structure and not about the organization.

Mr. Neff stated he could not support reversing the decision based on the evidence presented.

Mr. Garcia asked about the options the applicant had available and Ms. Hernandez stated that if the board’s motion was to deny their appeal, the applicant’s could apply for a rezoning under 35.709 to expand the non-conforming use by seeking a rezoning for a specific use authorization.

Mr. Quijano stated that he could not support reversing the decision since an option to rezone was available.

Ms. Rogers stated that this was an expansion of a non-conforming use and could not support reversing the decision.

AYES: Quijano, Cruz, Neff, Velasquez, Britton, Zuniga, Kuderer, Martinez, Camargo, Rogers, Ozuna

NAYS: None

THE MOTION PASSES.

Board members recessed for 10 minutes.

Mr. Neff and Mr. Kuderer departed at 3:10 p.m.

CASE NO. A-15-063

Applicant – AM Signs & LED

SW IRR 364 ft of Lot 4, NCB 14978

9837 IH 10 W

Zoning: "C-3 AHOD" General Commercial Airport Hazard Overlay District

The applicant is requesting a 7 foot variance from the minimum 200 foot spacing between two signs in an Urban Corridor, as described in Chapter 28-220, to allow 2 signs which are 193 feet apart.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 6 notices were mailed, none were returned in favor and none were returned in opposition and response from the Vance Jackson Neighborhood Association.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-063 closed.

MOTION

A motion was made by **Mr. Quijano to continue this case until the next regularly scheduled meeting on May 4, 2015.** The motion was seconded by **Mr. Garcia.**

AYES: Quijano, Garcia, Britton, Cruz, Zuniga, Rodriguez, Martinez, Finlay, Fehr, Rogers

NAYS: None

THE MOTION PASSES.

CASE NO. A-15-073

Applicant – Brown & Ortiz, PC

Lots 10 & 12 & SW IRR 296.14 feet of NE IRR 471.50 feet of Lot 11, NCB 12103

3175 Nacogdoches Road

Zoning: “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a twelve foot variance from the minimum 150 foot spacing requirement, as described in Section 28-241(c)(1), to allow two signs to be 138 feet apart

Logan Sparrow, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 6 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Forest Oak Neighborhood Association.

Andrew Perez, Sign Inspector, stated because of the sign master plan the signs have to be one hundred and fifty feet spacing between signs. He also stated if there wasn’t a sign master, the signs would be allowed to be five feet apart but because there is a sign master plan they would have to do away with lot lines.

James Griffin, applicant, stated the sign master plan is the biggest factor that caused for them to seek the variance. He also stated without the sign master plan the signs would be allowed to be five feet apart. He further stated the code allows twelve signs but the sign master plan makes the amount of signs more compact.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-073 closed.

MOTION

A motion was made by **Mr. Finlay**. “Re Appeal No **A-15-073**, variance application for a **twelve foot variance from the minimum 150 foot spacing requirement, as described in Section 28-241(c)(1), to allow two signs to be 138 feet apart**, subject property description **Lots 10 & 12 & SW IRR 296.14 feet of NE IRR 471.50 feet of Lot 11, NCB 12103**, located at **3175 Nacogdoches Road**, applicant being **Brown & Ortiz, PC**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-073**, application for a sign variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that the variance is necessary because strict enforcement of this article prohibits any reasonable opportunity to provide adequate signs on the site, considering the unique features of a site such as its dimensions, landscaping, or topography. A denial of the variance would probably cause a cessation of legitimate, longstanding active commercial use of the property. **Considering the unique features of this site, a literal**

enforcement of the ordinance, making the applicant relocate the sign to 150 feet from the other, would be contrary to the public interest as it would be located on top of existing utility easements. Additionally, the property is subject to a Sign Master Plan which has already removed several signs in lieu of a cleaner, less clustered multi-tenant sign model. If not for the Sign Master Plan, the request would be permitted by right as the second sign is located on a different lot. The Sign Master Plan essentially removes lot lines within the development and treats the area as one large parcel. After seeking one or more of the findings set forth in (1) or (2), the board finds that granting the variance does not provide the applicant with a special privilege not enjoyed by others similarly situated or potentially similarly situated. Unlike similarly situated properties, the subject property contains a unique situation in that existing utility easements mandate a relocation of the second sign on the property. Placing the sign within these easements bars access for utility maintenance. A literal enforcement of the ordinance constitutes a severe, unnecessary hardship. Allowing the applicant to relocate the secondary sign 138 feet from the first to avoid utility easements does not grant a privilege not enjoyed by others. Granting the variance will not have a substantially adverse impact upon neighboring properties. The ordinance intends to protect the public from over-crowding of signage, and provides businesses opportunity to advertise. The property in question has utility easements that run along the location opportunity to advertise. The property in question has utility easements that run along the location where the second sign would be located, without the variance. By granting the variance, businesses will be able to adequately advertise without compromising access for utility companies to maintain utility lines. The requested variance is not likely to harm the use of adjacent property, especially considering that the multi-tenant signage advertises for several adjacent properties. Granting the variance will not substantially conflict with the stated purposes of this article. The requested variance does not conflict with the stated purpose of this chapter as the request is a minor deviation from the requirement so that a sign does not create a barrier to adequate utility maintenance. Additionally, an eight percent variance from the 150 foot spacing requirement, equally only twelve feet, is hardly noticeable to passersby." The motion was seconded by Mr. Martinez.

AYES: Finlay, Martinez, Quijano, Britton, Cruz, Fehr, Rodriguez, Zuniga, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-069

Applicant – Irma De Hoyos
Lot 2, Block 52, NCB 15335

714 Singing Wind

Zoning: "R-6 AHOD" Residential Single-Family Airport Hazard Overlay

The applicant is requesting a one foot variance from the four foot maximum front yard fence height, as described in Section 35-514, to allow a five foot tall wrought iron fence in the front yard of the property.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 21 notices were mailed, 4 were returned in favor and none were returned in opposition and the Meadow Village Neighborhood Association is in opposition.

Irma De Hoyos, applicant, stated the fence would provide security and protection for her property especially since she lives alone. She also stated she has several police reports of vandalism and theft to her property.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-069 closed.

MOTION

A motion was made by **Mr. Finlay**. "Re Appeal No. **A-15-069**, variance application for a **one foot variance from the four foot maximum front yard fence height, as described in Section 35-514, to allow a five foot tall wrought iron fence in the front yard of the property**, subject property description **Lot 2, Block 52, NCB 15335**, situated at **714 Singing Wind**, applicant being **Irma De Hoyos**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-069**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by fence height limitations to provide for safety, and also to promote a sense of community. In visits to the field, staff noted that the fence, which measures only five feet in height, did not immediately offer the look of a fence that was in violation. Several homes in the community, though not many, have four foot tall front yard fencing. Because it is not a clear violation of the code, staff finds that it is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the applicant has been the victim of theft and property damage multiple times in the past. As the applicant lives alone, she constructed the fence to secure the home to prevent further incidents of the kind. Staff finds that the special condition present in this case is that the request serves to mitigate criminal activities which have been inflicted upon the applicant's property in the past. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance provides fencing height and design requirements to protect homes and also to encourage a sense of community. This fence does not detract from the residential nature of the community, nor does its design conflict with the spirit of the ordinance. The applicant is seeking a minimal height deviation to allow for one extra foot for added protection. Granting the variance will result in substantial justice. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that the requested variance will not authorize the operation of a use on the subject property other**

than those specifically permitted in the "R-6 AHOD" Residential Single-Family Airport Hazard Overlay District. 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 in that **as the current fence seeks only a minimal variance to the four foot height limitations and is hardly noticeable to passersby, staff finds that the variance will not substantially alter the character of the district of which it is located.** 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 in that **the unique circumstance present in this case is that the applicant has been the victim of criminal activity that has removed or damages her property multiple times over the past years. As she lives alone, the applicant is seeking a variance to allow her to secure her home criminal activity. This problem is not merely financial, nor is this the fault of the applicant.**" The motion was seconded by Ms. Cruz.

AYES: Finlay, Cruz, Quijano, Garcia, Britton, Zuniga, Rodriguez, Fehr, Rogers

NAYS: Martinez

THE VARIANCE IS GRANTED.

CASE NO. A-15-070

Applicant – Juan A & Guillermina Hinojosa

Lots 17-20, Block 42, NCB 8657

714 Singing Wind

Zoning: "R-4 AHOD" Residential Single-Family Airport Hazard Overlay

The applicant is requesting a two foot variance from the four foot maximum front yard fence, as described in Section 35-514, to allow a six foot tall wrought iron fence in the front yard of the property.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 35 notices were mailed, none were returned in favor and none were returned in opposition.

Juan Hinojosa, applicant, stated he is requesting the fence for security and protection of his property. He also stated he has numerous police reports of break-ins on his property.

The following citizens appeared to speak:

Guillermina Hinojosa, citizen, spoke in favor.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-070 closed.

MOTION

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-15-070**, variance application for a **two foot variance from the four foot maximum front yard fence, as described in Section 35-514, to allow a six foot tall wrought iron fence in the front yard of the property**, subject property description **Lots 17-20, Block 42, NCB 8657**, situated at **432 and 438 S San Dario**, applicant being **Juan A & Guillermina Hinojosa**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-070**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by fence height limitations to provide for safety, and also to promote a sense of community. In visits to the field, staff noted that almost all properties have a front yard fence. While the majority of these fences are predominately open, at four feet in height, some fences exceed this maximum and have fences that are five feet tall in the front yards. Staff was unable to find any variances granted for these properties. However, as the fence serves to protect the family from criminal activity in the community, staff finds that the requested variance is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the applicant has been the victim of theft and property damage multiple times in the past. The special condition present in this case is the abnormally high occurrences of theft. The applicant states that several items including expensive lawn tools and other items of sentimental value have been taken from the home. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance provides fencing height and design requirements to protect homes and also to encourage a sense of community. As the fence is a predominately open design it does not detract from the residential nature of the community, nor does its design conflict with the spirit of the ordinance. The applicant is seeking a two foot height deviation to allow for added protection of the home. Granting the variance will result in substantial justice. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “R-4 AHOD” Residential Single-Family Airport Hazard Overlay District. 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 in that during field visits, staff noted the presence of other fences that exceed the four foot maximum front yard fence height, even though staff could find no record of other variances having been granted. Almost all properties within this community benefit from front yard fencing and, as such, the request for a six foot tall fence would not alter the character of the district nor would it detract from the residential nature of this community. 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 in that the unique circumstance present in this case is that the applicant**

has been the victim of criminal activity that has removed or damages their property multiple times over the past years. The applicant's are seeking a variance to allow them to secure their home to prevent criminal activities from affecting their property. This problem is not merely financial, nor is this the fault of the applicants." The motion was seconded by Mr. Rodriguez.

AYES: Martinez, Rodriguez, Zuniga, Finlay, Fehr, Cruz, Britton, Garcia, Quijano, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-074

Applicant – David Alvarado

E. 12 ft. of Lot 12 & W. 42 ft. of Lot 13, Block 35, NCB 3438

1314 W Theo Avenue

Zoning: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay

The applicant is requesting a one foot variance from the four foot maximum front yard, predominately open fence height, as described in Section 35-514, to allow a five foot tall wrought iron fence in the front yard of the property.

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 33 notices were mailed, 3 were returned in favor and none were returned in opposition and no response from the Palm Heights Neighborhood Association.

David Alvarado, applicant, stated the fence would provide security and protection of his property. He also stated there have numerous break-ins in the neighborhood with one neighbor being robbed at gunpoint. He further stated the neighbors are in favor of the fence.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-074 closed.

MOTION

A motion was made by **Mr. Rodriguez**. "Re Appeal No **A-15-074**, variance application for a **one foot variance from the four foot maximum front yard, predominately open fence height, as described in Section 35-514, to allow a five foot tall wrought iron fence in the front yard of the property**, subject property description being the **E. 12 ft. of Lot 12 & W. 42 ft. of Lot 13, Block 35, NCB 3438**, situated at **1314 W Theo Avenue**, applicant being **David Alvarado**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-074**, application for a variance to the subject property as described above, because the

testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by fence height limitations to provide for safety, and also to promote a sense of community. Properties adjacent to the subject property, and along the street, and others, also enjoy five foot tall, predominately open fencing. As such, staff finds that the requested variance is not contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the special condition present in this case is the uniquely high crime rates within this community. A literal enforcement of the ordinance would restrict the applicant to a four foot tall wrought iron fence, which is inadequate for reasonable protection of the home and property.** The spirit of the ordinance is observed and substantial justice is done in that **the spirit of the ordinance intends to provide conditions for home owners to protect their property while maintaining a sense of community. The requested five foot fence height is already enjoyed by many other properties along the street.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-5 AHOD" Residential Single-Family Airport Hazard Overlay District.** 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 in that **the requested variance is not likely to harm adjacent property owner, nor will it alter the essential character of the district. Five foot tall wrought iron fencing is so common in this community that it constitutes a defining characteristic within the area.** 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 in that **the unique circumstance present in this case is the uniquely high rates of crime within the community. This is not the fault of the owner of the property, nor is this problem merely financial in nature."** The motion was seconded by Mr. Martinez.

AYES: Rodriguez, Martinez, Zuniga, Finlay, Fehr, Cruz, Britton, Garcia, Quijano, Rogers

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-071

Applicant – Graciela Guerra

Lot 146, Block E, NCB 11546

4211 E Horseshoe Bend

Zoning: "R-20 NCD-3 AHOD" Residential Single-Family Ingram Hills

The applicant is requesting a two foot variance from the Ingram Hills Neighborhood Conservation District's design guidelines four foot limitation on front yard fencing, as found within the Residential Design Standards section of the NCD, to allow a six foot tall wrought iron fence in the front yard of the property

Logan Sparrow, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 16 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Ingram Hills Neighborhood Association.

Ignacio Perez, representative, stated the fence would provide security and protection for his property. He also stated the fence would enhance the characteristic of the neighborhood.

No citizens appeared to speak.

Everyone present for or against having been heard and the results of the written notices having been received, the Chair declared the public hearing of Case No. A-15-071 closed.

MOTION

A motion was made by **Mr. Rodriguez**. "Re Appeal No **A-15-071**, variance application for a **two foot variance from the Ingram Hills Neighborhood Conservation District's design guidelines four foot limitation on front yard fencing, as found within the Residential Design Standards section of the NCD, to allow a six foot tall wrought iron fence in the front yard of the property**, subject property description **Lot 146, Block E, NCB 11546**, situated at **4211 E Horseshoe Bend**, applicant being **Graciela Guerra**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-071**, application for a variance to the subject property as described above, because the testimony presented to us, and the facts that we have determined, show that the physical character of this property is such that a literal enforcement of the provisions of the Unified Development Code, as amended, would result in an unnecessary hardship. Specifically, we find that such variance will not be contrary to the public interest in that **the public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by fence height limitations to provide for safety, and also to promote a sense of community. The home is located at the northern border of the neighborhood conservation district and enjoys a very rural atmosphere when compared to the rest of the NCD. Properties adjacent to the subject property also enjoy large lots which, save for the NCD, would be permitted a six foot tall wrought iron fence by right. Due to its large lot and rural character, staff finds that granting the fence request is not contrary to the public interest. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the special condition present in this case is that when the current owner purchased the home, the previous owner had already installed the tall, wrought iron support columns for a wrought iron fence. The applicant has been waiting since July of 2012 to install the fence to complete her home. Because the subject property is on the border of the NCD, and because of its very rural nature, staff finds that not granting the variance will result in an unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that the spirit of the ordinance, in this**

case the Ingram Hills Neighborhood Conservation District, already provides relief for owner of large-lot residential properties for some fencing. Properties zoned anything other than "RE" Residential Estate or "R-20" Residential Single-Family are not permitted front yard fencing, however, these two zones allow front yard fencing. The applicant is seeking a two foot variance from the permitted four foot maximum to complete the fence in her front yard that was started by the previous owner of the home. Staff finds that granting the variance will result in substantial justice. Such variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located in that **the requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the "R-20 NCD-3 AHOD" Residential Single-Family Ingram Hills Neighborhood Conservation Airport Hazard Overlay District.** 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 in that **unlike most of the Ingram Hills Neighborhood Conservation District, the subject property, and adjacent properties, enjoy large lots which contribute to a very rural character within this section of the community. Other communities in San Antonio that are similar in image are permitted the requested fencing design by right.** 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 in that **the unique circumstance present in this case is that when the applicant purchased the home the prior owner had started construction of the six foot tall wrought iron fence. She has had these posts in the ground for several years and, to date, have not generated any complaints from neighbors that staff was able to identify. The applicant wishes to complete the fence to enhance the look of the property, which would benefit the community. The plight of the owner is not merely financial in nature, nor is it the fault of the applicant."** The motion was seconded by Mr. Zuniga.

AYES: Rodriguez, Zuniga, Martinez, Finlay, Fehr, Cruz, Britton, Garcia, Quijano, Rogers

NAYS: None

THE VARIANCE IS GRANTED

The April 6, 2015 minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 4:44 pm.

APPROVED BY: _____
Andrew Ozuna, Chairman

OR

Mary Rogers, Vice-Chair

DATE: 5/4/15

ATTESTED BY: _____
Executive Secretary

DATE: 5-4-15