

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
June 15, 2015**

Members Present:

Mary Rogers
Frank Quijano
Alan Neff
Gabriel Velasquez
George Britton
Maria Cruz
Jesse Zuniga
John Kuderer
Roger Martinez
Gene Camargo
Jeffrey Finlay

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Logan Sparrow, Senior Planner
Kristin Flores, Planner
Paul Wendland, City Attorney

Call to Order

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

Ms. Rogers, Vice-Chair, called the meeting to order and called roll of the applicants for each case.

CASE NO. A-15-106

Applicant – Carter Thurmond
Lots 6 & 8, NCB 14939
4041 Bluemel Road
Zoning: “C-2” Commercial District

The applicant is requesting a 140 foot variance from the 200 foot sign spacing requirement as stated in Section 28-241 (d) to allow two signs to remain 60 feet apart.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 7 notices were mailed, none were returned in favor and one was returned in opposition.

Andrew Perez, Sing Inspector, stated the existing signs are nonconforming as they sit. He also stated if the sign master plan would allow the apartments to advertise their sign.

Carter Thurmond, applicant, stated they were able to get permits for two signs but were not able to get the permit on the third sign. He also stated the third sign would need a variance for the spacing between the signs.

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-15-101 closed.

MOTION

A motion was made by **Mr. Martinez**. “Re Appeal No. **A-15-106**, variance application for a **140 foot variance from the 200 foot sign spacing requirement, as stated in Section 28-241 (d), to allow two signs to remain 60 feet apart**, subject property description **Lots 6 & 8, NCB 14939**, located at **4041 Bluemel Road**, applicant being **Carter Thurmond**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-106**, 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 Section 28-247 of Chapter 28: Signs and Billboards of the City 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. **The applicant states that the off-premise sign has been “blacked out” for a long time is not well-maintained and unattractive in appearance. According to photos taken a few weeks ago, the sign has been re-faced. The findings required to justify a variance however are either that strict enforcement of the code prohibits adequate signage or that the denial would cause a cessation of a legitimate use of the property. The variance will facilitate a solution to an off-premise sign installed in 1984. 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. The applicant asserts that the variance does not grant them a special privilege, since they are just trying to utilize the existing sign structures and clean them up and improve the overall look of the signs. Granting the variance will not have a substantially adverse impact upon neighboring properties. The applicant states that we are not asking for bigger, larger or taller signs; rather it would impact the neighboring properties in a positive way as it will clean up the overall appearance of the signs and protect the look of the area. The variance will provide a solution created by a subdivision after sign installation over 30 years ago. Granting the variance will not substantially conflict with the stated purposes of this article. The legislative purposes of the adopted sign regulations are to provide minimum standards to protect the general public by regulating the design, construction, location, use and maintenance of out-door advertising signs. The variance will allow a sign master plan to be considered and perhaps reduce the overall signage.”** The motion was seconded by **Mr. Camargo**.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-064

Applicant – Francisco Esparza
Lot 5, Block 1, NCB 14067
4050 Burning Tree Drive
Zoning: “R-6” Residential Single-Family District

The applicant is requesting a variance from the 50 percent limitation on front yard impervious cover, as described in Table 35 -515-1, to allow the front yard to be primarily concrete.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. She indicated 22 notices were mailed, 4 were returned in favor and 15 were returned in opposition and the Lauren Hills Neighborhood Association is in opposition.

Francisco Esparza, applicant, stated he had pulled permits for the construction of the concrete. He also stated he obtained permits and his construction was approved by supervisors. He further stated this project has cost him a great amount of money and time.

The following citizens appeared to speak:

Paul Mana, citizen, spoke in opposition.

Helen Hunter, citizen, spoke in opposition.

Paul Drexel, citizen, spoke in opposition.

Margaret Fernandez, citizen, spoke in opposition.

Robert Martinez, citizen, spoke in opposition.

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-15-064 closed.

MOTION

A motion was made by **Mr. Camargo**. “I would like to move that in Case No. **A-15-064**, the applicant being **Francisco Esparza**, on property described as **4050 Burning Tree Drive**, legally described as **Lot 5, Block 1, NCB 14067**, be granted a **9 percent variance, thus allowing 59 percent impervious cover within the front yard, that being 9 percent above the 50 percent**

that is allowed in the code for the following reasons. Specifically, we find that such variance will not be contrary to the public interest in that **although one of the findings of fact that we must address that of public interest and certainly there has a lot public interest from property owners, most of the opposition being from outside the 200 feet. In my opinion I think there is a large amount of misunderstanding of what this variance is about. Unfortunately because of the side and rear yards of the property also are concreted which are allowed and there is concrete on the sidewalk and area leading up to the curb line, it gives not a very pleasing affect but we must realize that we are speaking of only that portion that is from the front of the building , the residence, to the property line. Thus in my opinion it is not against the public interest if you consider only that portion which we are contending with.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **in my opinion the unnecessary hardship is that the applicant proceeded with the understanding that with the permits obtained and so forth that he was acting within the law to pave what we have seen brought to our attention.** The spirit of the ordinance is observed and substantial justice is done in that **I feel substantial justice will be done in that permeable surfaces for groundwater recharge will be allowed to stand the 41 percent of the front yard and that's all we are dealing with the front yard.** 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 only harm would be one that was brought up by an individual that owns property to the southeast and those are allegations of drainage situation which in my opinion is a civil matter that in fact the applicant is causing that situation to in fact occur is between them to correct that.** 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 **in fact the applicant has indicated and the file includes all the permits that were required for this gentleman to accomplish what he has accomplished.** 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 not allowed. This is a residential use in a residential zone and therefore not a conflict or violation of any zoning ordinance."** The motion was seconded by Mr. Velasquez.

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

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for 10 minutes.

CASE NO. A-15-104

Applicant – Dale Carse

Lot 37 EXC ARB 37A, SW 6.3 FT of 24 & W IRR 400.04 FT of 5B, NCB 8406

3481 Fredericksburg Road

Zoning: “C-3 R AHOD” General Commercial Restrictive Alcohol Sales Airport

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

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 50 notices were mailed, 2 were returned in favor and none were returned in opposition and no response from the Maverick Neighborhood Association.

Dale Carse, applicant, stated the fence would provide security for numerous break-ins and trespassers. He also stated the fence would improve the characteristic of the site to keep trespassers out of the property. He further stated they are concerned for the safety of their employees who attend late evening trainings.

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-15-104 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-104**, variance application for a **two foot variance from the four maximum front yard predominately-open fence height, as described in Section 35-514 (d) to allow a six foot tall wrought-iron fence in the front yard of the property**, subject property description being **Lot 37 EXC ARB 37A, SW 6.3 FT of 24 & W IRR 400.04 FT of 5B, NCB 8406**, situated at **3481 Fredericksburg Road**, applicant being **Dale Carse**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-104**, 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 applicant asserts that the fence is required to secure the property during training classes held in the evening. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the operations at the training center can occur in small groups at a variety of times, including late at night**. Crime has increased in the area and the staff has

been subjected to threatening harassment. A literal enforcement would result in an unnecessary hardship. 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 which balance the need for protection and the need for community. Staff was originally concerned that the fence would negatively impact the sense of community. However, understanding the customers of the location and their needs for security late in the evening is consistent with the spirit of the ordinance. 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 "C-3 R AHOD" General Commercial Restrictive Alcohol Sales 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 Fredericksburg Road corridor was once one of the busiest business corridors in the City but through normal building aging is now in need of revitalization. The planned improvements for this 13 acre site, including fencing and landscaping improvements, will contribute to these efforts. Therefore, the variance will not injure the character of the district. 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 applicant's property is affected by its mission to train employees who are also working their full time jobs. This mission requires schedules that potentially extend into the late night hours, creating the need for additional property barriers." The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-093

Applicant – Miguel A Martinez

Lot 60, Block 44, NCB 15490

7911 Westshire Drive

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

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

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 24 notices were mailed, 2 were returned in favor and none were returned in opposition.

Melinda Martinez, representative, stated there have been numerous vandalism incidents on their vehicles due to the heavy traffic from the park across the street. She also stated there has also been an issue with stray dogs on her property in which one of them bit her one year old child. She also stated the fence would provide security and protection for her family.

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-15-093 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-15-093**, variance application for a **two foot variance from the maximum four foot front yard predominately open fence height, as described in Section 35-514 (d), to allow up to a six foot tall wrought-iron fence in the front yard of the property**, subject property description being **Lot 60, Block 44, NCB 15490**, situated at **7911 Westshire Drive**, applicant being **Miguel A Martinez**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-093**, 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 applicant asserts that the fence is required to secure the property from park patrons. Reducing crime is well within the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **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. A literal enforcement would result in the reduction in fence height along the front property line and result in an unnecessary hardship.** 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. Therefore, the variance would be consistent with the spirit of the ordinance.** 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 **the fence is exactly the same as the neighbor's fence to the west. It is 5 feet in height along its length, except for the gates. Therefore, it will not alter the character of the district.** 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 applicant's property is affected by its proximity to a park, creating the need for additional property barriers. This circumstance was not created by the applicant.**" The motion was seconded by Mr. Martinez.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-095

Applicant – Debra Seidel
Lot 1, Block 12, NCB 18890
3603 Boulder Peak
Zoning: "R-5" Residential Single-Family District

The applicant is requesting a one foot variance from the maximum six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow up to a seven foot tall fence in the rear yard of the property.

Kristin Flores, Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 27 notices were mailed, 6 were returned in favor and none were returned in opposition.

Debra Seidel, applicant, stated the fence would provide some privacy for the enjoyment of their pool. She also stated the neighbors are in support of the fence.

The following citizens appeared to speak:

Norma Zepedo, citizen, spoke in favor.

Lawrence Wilson, 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-15-095 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. **A-15-095**, variance application to **one foot variance from the maximum six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow up to a seven foot tall fence in the rear yard of the property**, subject property description being **Lot 1, Block 12, NCB 18890**, situated at **3603 Boulder Peak**,

applicant being **Debra Seidel**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-095**, 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 applicant asserts that the fence is required to secure the property from trespassing patrons. Reducing crime and protection of personal property is well within the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **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. A literal enforcement would result in the reduction in fence height along the back property line and result in an unnecessary hardship.** 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. Therefore, the variance would be consistent with the spirit of the ordinance.** 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" Residential Single-Family 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 subject property fence is in keeping with adjacent property and will not alter the essential character of the district.** 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 applicant's property is affected by its experience with trespassing, creating the need for additional property barriers. This circumstance was not created by the applicant.**" The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE IS GRANTED.



CASE NO. A-15-105

Applicant – Lawrence Wilson
Lot 22, Block 10, NCB 18890
15218 Mineral Springs Drive
Zoning: “R-5” Residential Single-Family District

The applicant is requesting 1) an eight inch variance from the six foot maximum height limitation, as described in Section 35-514(d)(1), to allow a fence that is up to six feet and eight inches tall in the rear yard of the property and 2) a variance from the prohibition against corrugated or sheet metal as a fencing material, as described in Section 35 -514(6)(d).

Logan Sparrow, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 23 notices were mailed, 3 were returned in favor and one was returned in opposition.

Lawrence Wilson, applicant, stated the fence was existing when he purchased the home three years ago. He also stated the fence would provide security for this family and there are other homes in the neighborhood with the same type of fence material. He further stated he hired a contractor to install the fence.

No citizens appeared to speak.

Debra Seidel, citizen, spoke in favor.

Norma Sotello, 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-15-105 closed.

MOTION

A motion was made by **Mr., Neff**. “Re Appeal No. **A-15-105**, variance application for a **1) an eight inch variance from the six foot maximum height limitation, as described in Section 35-514(d)(1), to allow a fence that is up to six feet and eight inches tall in the rear yard of the property and 2) a variance from the prohibition against corrugated or sheet metal as a fencing material, as described in Section 35-514(6)(d)**, subject property description being **Lot 22, Block 10, NCB 18890, situated at 15218 Mineral Springs Drive**, applicant being **Lawrence Wilson**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-105**, 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 protect property owners and to contribute to a sense of community. Also, the public interest is represented by fencing material requirements to ensure that fencing across San Antonio contributes to communities, rather than detracting from them. In this case, the fence is only minimally taller, by eight inches, than what the adjacent property is permitted to have by-right. Staff finds that this additional height is hardly noticeable and certainly does not conflict with the public interest. Additionally, the fence in question is a well-built metal fence framed with stained wood. The design contributes to the home and to the unique architectural theme present within this community. Staff finds that the 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 unique condition present in this case is that the fence is permitted to be six feet tall, even in the applicant's front yard, as they share their west property line with the neighbor's rear yard. An eight inch variance is hardly noticeable from the street and does not detract from the community. Directly across the street is another wood fence of similar height. Mandating that the applicant reduce the height of the fence eight inches may result in unnecessary hardship. The spirit of the ordinance is observed and substantial justice is done in that substantial justice will be served as relaxing the height limitation to allow the additional eight inches will help to provide added screening from the neighbor's rear yard. Also, the current fence design compliments the home in architectural style and is consistent with the architecture of the community. While processing this request, staff received numerous phone calls from property owners nearby that complimented the fence. 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" Residential Single-Family 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 if the fence were built at six feet in height then it would be permitted, even in that portion of the front yard due to the shared property line with the neighbor's rear yard. An additional eight inches in height is unlikely to alter the essential character of the community, especially given that the property across the street has a fence of similar height. Lastly, staff finds that the design of the fence is consistent with the architectural theme present within 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 special condition present in this case is that the fence is permitted to be six feet tall, even in the applicant's front yard, as they share their west property line with the neighbor's rear yard. These are not the fault of the owner of the property, nor are these problems merely financial in nature." The motion was seconded by Ms. Cruz.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-099

Applicant – Patrick Hafey
Lot 10, Block 4, NCB 13831
14227 Clear Creek Street
Zoning: “R-5 AHOD MLOD” Residential Single-Family Airport Hazard

The applicant is requesting a two foot variance from the six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow an eight foot privacy fence in the rear yard of the property to remain.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. She indicated 14 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Prospect Hill Neighborhood Association.

Patrick Hafey, applicant, stated the fence would provide privacy from the business park in the rear of his property. He also stated while working out of town, his contractor suggested an eight foot fence and started the construction. He further stated he was not knowledgeable about the fence heights and permits.

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-15-099 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-099**, variance application for a **two foot variance from the six foot maximum rear yard fence height, as described in Section 35- 514 (d), to allow an eight foot privacy fence in the rear yard of the property to remain**, subject property description being **Lot 10, Block 4, NCB 13831**, situated at **14227 Clear Creek Street**, applicant being **Patrick Hafey**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-099** 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 an area for private enjoyment of outdoor living space. Because of changes in grade, additional height is warranted and not contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the rear yard slopes up 6 feet to the neighboring yard. This change in grade reduces the privacy provided by the**

normal 6 foot fence. A literal enforcement would result in an unnecessary hardship. 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 buffer conflicting uses. The adjacent office zoning includes an allowance for unlimited height. Therefore, the variance would be consistent with the spirit of the ordinance. 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 MLOD Residential Single-Family Airport Hazard Overlay Military Lighting 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 **according to the applicant there are other eight foot high fences within the neighborhood, though staff did not notice others. The fence itself though is setback 45 feet from the street, a street with mature front yard landscaping and no front fencing. Therefore, the fence will not likely alter the character of the district.** 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 applicant's property is affected by its proximity to an office park and a sloping street, both conditions unique to the location."** The motion was seconded by Mr. Neff.

AYES: Velasquez, Neff, Finlay, Quijano, Britton, Kuderer, Cruz, Rogers

NAYS: Zuniga, Martinez, Camargo

Mr. Camargo made a motion to reconsider the variance. Mr. Velasquez seconded the motion with all members voting in the affirmative.

2nd Motion

A motion was made by **Mr. Martinez.** "Re Appeal No. **A-15-099**, variance application for a **two foot variance from the six foot maximum rear yard fence height, as described in Section 35- 514 (d), to allow an eight foot privacy fence in the rear yard of the property to remain,** subject property description being **Lot 10, Block 4, NCB 13831, situated at 14227 Clear Creek Street,** applicant being **Patrick Hafey.** I move that the Board of Adjustment grant the applicant's request **with the exception of the return from the property line to the front of the house, that part of the fence to be reduced back to the 6 feet requirement and the remaining of the fence be allowed on the property line a variance up to 8 feet** 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 an area for private enjoyment of outdoor living space. Because of changes in grade, additional height is warranted and not contrary to the public interest.** Due to special conditions, a literal

enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the rear yard slopes up 6 feet to the neighboring yard. This change in grade reduces the privacy provided by the normal 6 foot fence. A literal enforcement would result in an unnecessary hardship.** 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 buffer conflicting uses. The adjacent office zoning includes an allowance for unlimited height. Therefore, the variance would be consistent with the spirit of the ordinance.** 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 MLOD" Residential Single-Family Airport Hazard Overlay Military Lighting 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 **according to the applicant there are other eight foot high fences within the neighborhood, though staff did not notice others. The fence itself though is setback 45 feet from the street, a street with mature front yard landscaping and no front fencing. Therefore, by keeping the 6 foot fence at the front of the house it will improve the visibility of the home and meet the requirements of this 6 foot fence limitation.** 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 builder of the fence built the 8 foot fence without completely reviewing the process with the current homeowner and he was stuck with what he had. 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 applicant's property is affected by its proximity to an office park and a sloping street, both conditions unique to the location.** The motion was seconded by Mr. Camargo."

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

NAYS: None

THE VARIANCE IS GRANTED.

Board members recessed for 5 minutes.

CASE NO. A-15-102

Applicant – Allstate Realty

Lot 41, Block 4, NCB 13892

5642 Ivanhoe Street

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

The applicant is requesting a two foot variance from the six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow an eight foot fence, located along the west property line in the rear yard of the property, to remain.

Margaret Pahl, Senior Planner, presented background and staff's recommendation of approval of the requested variance. She indicated 25 notices were mailed, none were returned in favor and none were returned in opposition and no response from the Thunderbird Hills Neighborhood Association.

Thomas Romo, applicant, stated with the elevation drop, the 4 four foot fence was more like a one foot fence. He also stated the 8 foot fence was constructed for security and protection of the tenants. He further stated the changes in the elevation on the property make it difficult to have a fence height according to code.

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-15-102 closed.

MOTION

A motion was made by **Mr. Kuderer**. "Re Appeal No. **A-15-102**, variance application for a **two foot variance from the six foot maximum rear yard fence height, as described in Section 35-514 (d), to allow an eight foot fence, located along the west property line in the rear yard of the property, to remain**, subject property description being **Lot 41, Block 4, NCB 13892**, situated at **5642 Ivanhoe Street**, applicant being **Allstate Realty**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-102**, 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 applicant asserts that the fence is required to secure the property from criminals. Reducing crime is well within the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **staff finds that the special condition present in this case is that the rear yard slopes toward the neighboring creek. This change in grade puts the fence significantly lower than other portions of the parcel, reducing the privacy provided by the normal 6 foot fence. A literal enforcement would result in an unnecessary hardship.** 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; it separates the home from a wide public drainage easement. Therefore, the variance would be consistent with the spirit of the ordinance.** 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 fence is similar to other fences to this corridor. Therefore, it will not alter the character of the district.** 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 applicant's property is affected by its proximity to a wide drainage easement, creating the need for additional property barriers. This circumstance was not created by the applicant."** The motion was seconded by Mr. Martinez.

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

NAYS: None

THE VARIANCE IS GRANTED.

CASE NO. A-15-088

Applicant – Jose M Gonzalez
Lot 27, Block 15, NCB 14404
5250 Grovehill Drive
Zoning: "R-5 AHOD" Residential Single-Family Airport Hazard Overlay

The applicant is requesting the elimination of the five foot side yard setback, as described in Section 35-310.01, to allow a carport with an eave overhang to remain on the side property line.

Kristin Flores, Planner, presented background and staff's recommendation of denial of the requested variance. She indicated 26 notices were mailed, none were returned in favor and one was returned in opposition and no response from the Culebra Park Neighborhood.

Jose M Gonzalez, applicant, stated he is willing to replace the eaves with gutters. He also stated the shell of the carport has been constructed for about two years and was never cited for code violations. He further stated he was not aware of obtaining building permits.

No citizens appeared to speak.

Estella Hernandez, citizen, spoke in opposition.

Joe Hernandez, citizen, spoke in opposition.

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-15-088 closed.

MOTION

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-088**, variance application for the **elimination of the five foot side yard setback, as described in Section 35-310.01, to allow a carport without an eave overhang to remain on the side property line eliminating the 5 foot yard setback and enabling a 3 foot 2 inch variance from the 5 foot setback**, subject property description being **Lot 27, Block 15, NCB 14404**, situated at **5250 Grovehill Drive**, applicant being **Jose M Gonzalez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-088**, 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 construction of this subject property is out of stucco reducing the possibility of threat of fire. The distance between neighboring properties is such that there is equal access to air and light.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the testimony of the applicant has shown that there are conflicting discussions to include that the construction was not done overnight and that it was there with ample time for city, neighboring neighbors to submit any disagreement. According to testimony was not done until four months from this date and the testimony stating the construction has been up for two years.** The spirit of the ordinance is observed and substantial justice is done in that **there are opportunities to minimize the impact on neighboring properties and the applicant has shown that he is willing to make those adjustments that may even include reducing what seems to be eighteen inches from the property line to a dimension substantially away from that.** Such variance will not authorize the operation of a use other than those uses specifically authorized for the district for which the property for which the variance is sought is located in that **there is no request for use of the property outside of the “R-5 AHOD” Residential Single-Family.** 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 images that have been presented to us are a bit misleading. If you look at the other images it becomes very apparent that the roof pitch, slope, and runoff is to the rear and front of the property with the exception to the front that has the image that is presented in this testimony or in the city’s file that shows an image indicating that the water slopes to the neighbors but in reality is a small portion that can be alleviated by the removal of the roof eaves.** 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 **we are not discussing the approval of what is being applied for but seeking to find what we might consider substantial justice in terms of the owners willingness to make alterations that this board might find acceptable.”** The motion was seconded by **Mr. Neff**.

AYES: Velasquez, Neff, Finlay, Kuderer

NAYS: Quijano, Cruz, Britton, Zuniga, Martinez, Camargo, Rogers

SUBSTITUTE MOTION

A motion was made by **Mr. Camargo**. "Re Appeal No. **A-15-088**, the property legally described as **Lot 27, Block 15, NCB 14404**, I would recommend a **2 foot variance to allow a 3 foot setback along the east property line for an open carport.**" The motion was seconded by **Mr. Velasquez**.

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

NAYS: Zuniga

THE VARIANCE IS GRANTED.

Mr. Britton departed at 5:47 p.m.

CASE NO. A-15-100

Applicant – Juan Soledad

Lot 17, Block 32, NCB 18820

8318 Terra Ferna

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

The applicant is requesting 1) a five foot variance from the ten foot front setback, as described in Section 35-310.01, to allow an existing carport to remain five feet from the front property line and 2) a request for the elimination of the five foot side yard setback, also described in Section 35-310.01, to allow an existing carport to remain on the side property line.

The following citizens appeared to speak:

Shirley Baity, 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-15-100 closed.

MOTION

A motion was made by **Mr. Kuderer to continue this case until the next regularly scheduled meeting on July 6, 2015.** The motion was seconded by **Mr. Martinez.**

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

NAYS: None

THE MOTION PASSES.

CASE NO. A-15-101

Applicant – Raymundo Martinez

Lots 7 & 8, Block 75, NCB 8046

712 Whitman Avenue

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

The applicant is requesting 1) a four foot variance from the required five foot accessory unit side yard setback, as described in Section 35-370(b)(1), to allow an existing accessory unit with an eave overhang to remain one foot from the side property line and 2) a two foot variance from the five foot rear setback, also described in Section 35-370(b) (1), to allow the same accessory unit to remain three feet from the rear property line.

Logan Sparrow, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 32 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Tierra Linda Neighborhood Association.

Raymundo Martinez, applicant, stated the accessory structure allows for the children to utilize for play area. He also stated he has not received any complaints from the surrounding neighbors.

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-15-101 closed.

MOTION #1

A motion was made by **Mr. Velasquez**. “Re Appeal No. **A-15-101**, variance application for a **four foot variance from the required five foot accessory unit side yard setback, as described in Section 35-370(b)(1), to allow an existing accessory unit with an eave overhang to remain one foot from the side property line**, subject property description being **Lots 7 & 8, Block 75, NCB 8046**, situated at **712 Whitman Avenue**, applicant being **Raymundo Martinez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-15-101**, 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 applicant’s testimony stated on the record that he has received no complaints from his neighbors and in fact the public around his**

neighborhood utilizes the game structure. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **the applicant and application are not requesting zero lot line. From the illustrations show to us today they are an adequate distance from the fences and no complaints have been received from any neighbors.** The spirit of the ordinance is observed and substantial justice is done in that **the existing structures have been in existence and have not shown to be of any nuisance or created any detriment to any of the properties adjacent.** 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 application does not request any use outside of 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 **from the applicant's illustrations and staff's illustrations there is nothing that indicates that there has been any injury done to any of the adjacent conforming property.** 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 site plan submitted to us by the applicant indicates that the existing structures that are seeking variances consistence with the other structures in the property."** The motion was seconded by Ms. Cruz.

AYES: Velasquez, Cruz, Finlay, Quijano, Neff, Zuniga, Kuderer, Martinez, Camargo, Rogers
NAYS: None

THE VARIANCE IS GRANTED.

MOTION #1

A motion was made by **Mr. Velasquez.** "Re Appeal No. **A-15-101**, variance application for a **two foot variance from the five foot rear setback, also described in Section 35-370(b) (1), to allow the same accessory unit to remain three feet from the rear property line,** subject property description being **Lots 7 & 8, Block 75, NCB 8046,** situated at **712 Whitman Avenue,** applicant being **Raymundo Martinez.** I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-15-101,** 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 **Staff finds that the request to reduce the rear setback to three feet is not contrary to the public interest as the three foot setback provides adequate distance for fire prevention, especially considering that the two story structure is nearly 70 feet from the nearest residence.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **because the rear setback is at least three feet from the rear property line, and because the nearest structure to the rear of the subject property is 70 feet away, staff finds that this is a condition which may warrant the relaxation of the rear**

setback requirement. The spirit of the ordinance is observed and substantial justice is done in that **Substantial justice will be served by relaxing the rear setback as the structure poses no conceivable fire risk to properties behind the structure.** 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 **the structure as it exists is not outside the character of the neighborhood in 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 variances are requested because the structure was built without a building permit."** The motion was seconded by Ms. Cruz.

AYES: Velasquez, Martinez, Finlay, Quijano, Cruz, Neff, Zuniga, Kuderer, Rogers

NAYS: Camargo

THE VARIANCE IS GRANTED.

The June 1, 2015 Board of Adjustment minutes were approved with all members voting in the affirmative.

There being no further discussion, meeting adjourned at 6:09 pm.

APPROVED BY:

Andrew Ozuna, Chairman

OR

Mary Rogers, Vice-Chair

DATE:

7/6/15

ATTESTED BY:

Executive Secretary

DATE:

7-6-15