



# City of San Antonio

## Agenda Memorandum

**File Number:**15-3163

**Agenda Item Number:** 4.

**Agenda Date:** 5/18/2015

**In Control:** Board of Adjustment

**Case Number:** A-15-082  
**Applicant:** Luisa Munoz  
**Owner:** Luisa Munoz  
**Council District:** 6  
**Location:** 8626 Midnight Moon  
**Legal Description:** Lot 2, Block 12, NCB 17872  
**Zoning:** "RM-4 AHOD" Residential-Mixed Airport Hazard Overlay District  
**Case Manager:** Logan Sparrow, Planner

### Request

A request for a one foot variance from the four foot 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.

### Executive Summary

The subject property is located at 8626 Midnight Moon approximately 308 feet west of Horal Drive. The applicant constructed a five foot tall wrought iron fence in the front yard of the property. The fence was constructed to protect the family and their property as, per the applicant, several homes within this community have been broken into. Staff noted that the property immediately to the east of the subject property also has a five foot tall wrought-iron fence. Staff found one other home within the community with a front yard fence.

### Subject Property Zoning/Land Use

Existing Zoning	Existing Use
"RM-4 AHOD" Residential-Mixed Airport Hazard Overlay District	Single-Family Dwelling

### Surrounding Zoning/Land Use

Orientation	Existing Zoning District(s)	Existing Use
North	"MI-1 AHOD" Mixed Light Industrial Airport Hazard Overlay District	Single-Family Dwelling
South	"RM-4 AHOD" Residential-Mixed Airport Hazard Overlay District	Single-Family Dwelling

East	“RM-4 AHOD” Residential-Mixed Airport Hazard Overlay District	Single-Family Dwelling
West	“RP AHOD” Resource Protection Airport Hazard Overlay District	Single-Family Dwelling

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

The property is within the boundaries of the West/Southwest Sector Plan and designated Suburban Tier in the land use component of the plan. The subject property is not located within the boundaries of any registered neighborhood association.

### **Criteria for Review**

According to Section 35-482(e) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

1. *The variance is not contrary to the public interest.*

**The public interest is defined as the general health, safety, and welfare of the public. In this case, these criteria are represented by fence height limitations to protect home owners, and also to provide for a sense of community. The applicant had a five foot tall wrought-iron fence constructed in the front yard of the property without a fence permit and was cited by a Code Enforcement officer. The five foot tall fence was built to deter thefts and home burglaries which, per the applicant, have affected the neighborhood on multiple occasions, recently. Staff finds that the additional one foot is not contrary to the public interest.**

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

**The special condition present in this case is the occurrence of criminal activity within this community. The applicant had the fence built to protect the home from such crime. The additional one foot of height will serve to protect the home more adequately from such activity.**

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

**Granting the requested variance would result in substantial justice as the variance would allow the family to adequately protect their home from crime in the community.**

4. *The variance will not authorize the operation of a use other than those uses specifically authorized for the district in which the property for which the variance is sought is located.*

**The requested variance will not authorize the operation of a use on the subject property other than those specifically permitted in the “RM-4 AHOD” Residential-Mixed Airport Hazard Overlay District.**

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

**Staff noted that the neighboring property immediately to the east of the subject property also has a five foot tall wrought-iron fence in the front yard of the property. Staff was able to find one additional home in this community with a similar five foot tall fence. Staff does not find that the request detracts from the character of the community.**

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and*

*are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

**The unique circumstance present in this case is that the neighborhood has been negatively affected by criminal activity. Staff finds that the request for one additional foot of fence height to protect the home is a legitimate request that is not merely financial in nature, nor the fault of the owner of the property.**

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

The applicant needs to remove one foot of the fence to come into compliance with the four foot height limitation, as described in Section 35-514.

#### **Staff Recommendation**

Staff recommends **APPROVAL of A-15-082** based on the following findings of fact:

1. The existing fence serves to protect the family from crime in the community;
2. Adjacent property have the same fencing design, other homes in the community have similar fencing.