

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
May 6, 2013**

Members Present:

Michael Gallagher
Frank Quijano
George Britton
Brian Smith
Jesse Zuniga
John Kuderer
Gene Camargo
Henry Rodriguez
Maria Cruz

Staff:

Margaret Pahl, Senior Planner
Tony Felts, Planner
Paul Wendland, City Attorney

Call to Order

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

Mr. Gallagher, Chairman, called the meeting to order and called roll of the applicants for each case.

Mr. Smith made a motion to postpone Case A-13-037 to the June 3, 2013 meeting. Ms. Cruz seconded the motion with all members voting in the affirmative.

CASE NO. A-13-034

Applicant – Manuel Sanchez
Lot 30, Block 37, NCB 15345
7203 Camino Grove
Zoned: “R-6 AHOD” Residential Airport Hazard Overlay District

The applicant is requesting a special exception to allow an ornamental iron fence, 5-feet in height, in the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested special exception. She indicated 25 notices were mailed, 5 were returned in favor and none were returned in opposition and no response from the Meadow Village Neighborhood Association.

Manuel Sanchez, applicant, stated the fence would provide security for his property. He also stated he hired a contractor to construct the fence. He further stated the contractor was to take care of everything associated with the construction 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-13-034 closed.

MOTION

A motion was made by **Mr. Quijano**. Re Appeal No. **A-13-034**, application for a **special exception to allow an ornamental iron fence, 5-feet in height, in the front yard**, subject property description is **Lot 30, Block 37, NCB 15345**, located at **7203 Camino Grove**, the applicant is **Manuel Sanchez**. I move that the Board of Adjustment grant the applicant's application for a Special Exception for the subject property as described above, because the testimony and evidence presented to us and the facts that we have determined show that this Special Exception meets the requirements listed in UDC 35-399.04. Specifically, we find that the following conditions have been satisfied. The special exception will be in harmony with the spirit and purpose of the chapter in that **the UDC allows fences taller than four feet in the front yard as a special exception, authorized under certain circumstances in accordance with specific factors as described in this report. The applicant has a fence that satisfies the established criteria and as such would be in harmony with the spirit and purpose of the ordinance if the exception were granted.** The public welfare and convenience will be substantially served in that **the property owner has experienced several burglaries and hopes the installation of the fencing will deter crimes in the future. The public welfare and convenience can be served by the added protection of front yard fencing, allowing the owner to protect the property from future home invasions.** The neighboring property will not be substantially injured by such proposed use in that **neighboring property owners have responded to the notice of public hearing by expressing support and appreciation for the requested fencing. In addition, attractive fencing can improve the appearance of the neighborhood in general. For these reasons, the neighboring properties will not be injured if the special exception is granted.** The special exception will not alter the essential character of the district and location in which the property for which the special exception is sought in that **a tour through the surrounding neighborhood showed several other ornamental iron fences in the front yard; most however were built within the four-foot limitation. Nevertheless, the presence of other iron fencing in the front yards has established a character feature which permits the proposed special exception to be consistent. Therefore, granting the exception will not be detrimental to the character of the district.** The special exception will not weaken the general purpose of the district or the regulations herein established for the specific district in that **the purpose of the single-family residential zoning districts is to encourage patterns of residential development that provide housing choices and a sense of community. Fencing is restricted in height and transparency to allow visibility between the private property and the public property. This visibility enhances the sense of community. In this case, even though the fence is higher than allowed by right, this visibility is preserved. Therefore, the requested special exception will not weaken the general purpose of the district.** The motion was seconded by **Ms. Cruz**.

AYES: Quijano, Cruz, Briton, Camargo, Rodriguez, Kuderer, Smith, Zuniga, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-035

Applicant – Landis & Azalia Wolfe
Lot 62, Block 19, NCB 15789
7430 Midcrown Drive
Zoned: “R-6 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting **1) a 2-foot 2-inch variance from the maximum 6-foot fence height to allow an 8-foot 2-inch tall fence in the rear and side yards; and 2) a variance from the prohibited materials to allow corrugated metal as an acceptable fencing material.**

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the approval of the height variances and staff’s recommendation of the denial of the materials variance. She indicated 21 notices were mailed, 2 were returned in favor and 3 were returned in opposition and no response from the Camelot Neighborhood Association.

Landis & Azalia Wolfe, applicant, stated the fence would provide security for the property. He also stated there is alley behind the home which consumes heavy traffic with both vehicles and transients. They also stated the metal would diminish the scaling from vandals.

The following citizens appeared to speak:

Connie Meiners, representing the Camelot Neighborhood Association, spoke in opposition.

Billy Langley, citizen, spoke in opposition.

Kay Polansky, 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-13-035 closed.

MOTION

A motion was made by **Mr. Camargo**. I would move that in Case **A-13-035**, the applicant being **Landis & Azalia Wolfe**, on property that is addressed **7430 Midcrown Drive**, legally described as **Lot 30, Block 2, NCB 12260**, be granted item number one, **a 2-foot 2-inch variance from the maximum 6-foot fence height to allow an 8-foot 2-inch tall fence in the rear and side yards of the above described property**. Such variance will not be contrary to the public interest in that **the public interest in this case is represented by the allowance for privacy fencing in the side and rear yards**. **The 6-foot maximum height does not guarantee complete privacy that the residents in this particular application have requested**. Due to

special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a literal enforcement of the ordinance would deprive the applicant of a similar property right of privacy enjoyed by others spending time in their rear yard and this is mainly due to the topographical description that has been presented to us and the difference in elevation between this property and the adjoining property to the north.** The spirit of the ordinance is observed and substantial justice is done in that **the Board is directed to weigh the competing interests of the property owner and the community. The intent of allowing additional height in side and rear yard fencing is to increase privacy and in this case security and enjoyment in the use of private property.** 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 **it will not authorize the use that is not allowed in the zoning classification which is that of a single-family residence.** 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 this member's opinion, one of the most important ones is the change in grade between the properties along the side property line is a unique circumstances on this property that justifies the modifications to the maximum fence height.** The motion was seconded by **Mr. Zuniga.**

AYES: Camargo, Zuniga, Smith, Kuderer, Britton, Cruz, Quijano, Rodriguez, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-036

Applicant – Pape-Dawson Engineers, Inc.
Lots 3 & 4, Block 1, NCB 16828
5103 Rittiman Road

Zoned: “I-1 AHOD” General Industrial Airport Hazard Overlay District; “C-3 NA AHOD” General Commercial Non-Alcoholic Beverage Sales Airport Hazard Overlay District; “C-3 AHOD” General Commercial Airport Hazard Overlay District; “C-2 AHOD” Commercial Airport Hazard Overlay District

The applicant is requesting a 4-foot fence/wall height variance to allow a fence/wall up to 12 feet in height.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 75 notices were mailed, 5 were returned in favor and one was returned in opposition.

Frank Cory, applicant, stated this variance would provide some shelter from the noise of the vehicles of the HEB employees. He also stated these vehicles come in and out of the parking lot at the different times since these employees work different shift hours.

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-13-036 closed.

MOTION

A motion was made by **Mr. Quijano**. Re Appeal No. **A-13-036** variance application for a **request for a 4-foot fence/wall height variance to allow a fence/wall up to 12 feet in height which should be solid and built according to site plans**, subject property description is **Lots 3 & 4, Block 1, NCB 16828**, situated at **5103 Rittiman Road**, applicant is **Pape-Dawson Engineers, Inc. for H.E. Butt Grocery Company**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-036**, 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 **usually, fence and wall height restrictions are put into place in order to provide orderly development and encourage a sense of community. In this case, a large industrial warehouse and processing complex located adjacent to single-family residences has created issues of noise and light pollution. In an effort to be a good neighbor, and in conjunction with the neighbors, the applicant has proposed the subject wall as a means of mitigating some of the negative impacts of their operation. As such, the 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 **a literal enforcement of the ordinance would provide inadequate buffering and screening of the industrial use from the single-family residential homes adjacent to it, and as such would result in an unnecessary hardship to the residents of those homes.** The spirit of the ordinance is observed and substantial justice is done in that **the UDC contemplates that higher fences are sometimes required to protect and segregate incompatible land uses; the applicant's proposal is such a case. Because of this, the spirit of the ordinance will be observed and substantial justice done.** 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 Industrial and Commercial zoning districts.** 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, if approved, will not injure the appropriate use of adjacent conforming properties but rather the variance would likely have the effect of enhancing the quality of life for the residents of the adjacent single-family residences by reducing noise and light pollution.** 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 circumstances existing on the property were not caused by the applicant, but rather they are the result of a conforming use on the subject property**

adversely impacting adjacent single-family properties. The motion was seconded by **Mr. Rodriguez.**

AYES: Quijano, Rodriguez, Camargo, Britton, Kuderer, Smith, Cruz, Zuniga, Gallagher
NAYS: None

THE VARIANCE WAS GRANTED.

Approval of the Minutes

The April 1, 2013 minutes were approved with all members voting in the affirmative.
