

**BOARD OF ADJUSTMENT
OFFICIAL MINUTES
October 21, 2013**

Members Present:

Michael Gallagher
Andrew Ozuna
Frank Quijano
Helen Dutmer
George Britton
Jesse Zuniga
John Kuderer
Gene Camargo
Harold Atkinson
Maria Cruz

Staff:

Catherine Hernandez, Planning Manager
Margaret Pahl, Senior Planner
Tony Felts, Planner
Osniel Leon, 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.

Cases A-13-083, A-13-088, and A-13-091 were moved to the end of the agenda with all members voting in the affirmative.

CASE NO. A-13-084

Applicant – Top Golf International, Inc.

A portion of Lot 1, Block 1, NCB 14853

Approximately 5539 N Loop 1604 W

Zoned: “MPCD, ERZD, GC-1, MLOD, AHOD” Master Planned Community, Edwards Recharge, Gateway Corridor, Military Lighting Overlay, Airport Hazard Overlay Districts

The applicant is requesting a special exception from the provisions of the Military Lighting Overlay District to extend the hours of illumination, as specified in Section 35-339.04 (b) 6, every week until midnight Sunday through Thursday and 1:00 am Friday and Saturday

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variances. She indicated 6 notices were mailed, none were returned in favor and none were returned in opposition.

Trey Jacobson, representative, briefed the board members on the history of the MLOD ordinance and explained how his client, Top Golf International, Inc., had complied with all the provisions except the hours of illumination. He also stated that had met with the Camp Bullis personnel and received their approval.

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-13-084 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. A-13-084, application for a **special exception from the provisions of the Military Lighting Overlay District to extend the hours of illumination, as specified in Section 35-339.04 (b) 6, every week until midnight Sunday through Thursday and 1:00 am Friday and Saturday**, subject property described as a **portion of Lot 1, Block 1, NCB 14853, located at approximately 5539 N Loop 1604 W**, applicant being **Top Golf International, Inc.** I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-084**, 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 Section 35-339.04. 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 applicant has selected a light fixture with a very specific directional control, widely used for sports applications. The fixture has no light trespass beyond the property line. Because the plan complies with the other performance standards of the overlay district, and the reviewers at Camp Bullis have no concerns, the special exception will be in harmony with the spirit and purpose of the section.** The public welfare and convenience will be substantially served in that **the applicant has shortened their typical hours of operation in order to accommodate the goals of the MLOD. However, they could not succeed and discontinue their operations at 11:00 every evening. They have incorporated every other mitigation measure available to honor the overlay district intent.** The neighboring property will not be substantially injured by such proposed use in that **much of the neighboring commercial property is exempt from the provisions of the overlay district, because it was approved as a master development plan prior to the adoption of the district regulations in December of 2008. Therefore, granting the special exception will not injure neighboring property.** 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 **the essential character of the district is created and reinforced by the Rim Shopping and Entertainment enterprises. The proposed golf facility will enhance this area as a regional entertainment destination. It does not appear that the granting of the special exception will alter the essential 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 MLOD was adopted to protect and promote Camp Bullis as a premier night time training facility for the military. The most critical components of dark sky initiatives are the type and location of light fixtures, not necessarily the hours of illumination. With the elimination of light trespass by using the**

selected fixtures, aimed in the proposed direction, the additional hours of illumination will not weaken the purpose of the overlay district. The exception is granted with the condition that the lighting to be installed will be in accordance with the presentation by the applicant including the shielding and so forth.” The motion was seconded by Ms. Dutmer.

AYES: Quijano, Dutmer, Kuderer, Atkinson, Camargo, Britton, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-081

Applicant – Dessy & Sylvia Garcia

Lots 1 & 2, Block 19, NCB 8554

1002 Fitch Street

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

The applicant is requesting a 5-foot variance from the minimum 5-foot side yard setback, as detailed in Table 35-310-1, to allow a carport on the property line.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of denial of the requested variance. She indicated 31 notices were mailed, one was returned in favor and none were returned in opposition.

Dessy Garcia, applicant, stated the carport is needed to provide some kind of shelter from the weather for his wife’s medical condition. He also stated when he purchased the property, it had an existing driveway. He further stated he was not aware that he needed permits to construct a carport. Carports are common in this 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-13-081 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-081**, variance application for a **5-foot variance from the minimum 5-foot side yard setback as detailed in Table 35-310-01 to allow a carport on the property line**, subject property description **Lots 1 & 2, Block 19, NCB 8554**, situated at **1002 Fitch Street**, applicant **Dessy & Sylvia Garcia**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No.**A-13-081**, 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 has provided testimony to us that there is an easement over the adjoining property owner which was a no build zone so anything that the applicant is to build will not have any kind of meaningful impact in terms of light or fire going across because of that easement that is across the back property line. Additionally, the applicant provided pictures and testimony of similar type carports situated within the neighborhood. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that the applicant's hardship would be that he spent energies and effort to build this carport with an adjoining firewall for protection for his wife who has had some health issues. So he is merely trying to protect his family and his property by constructing this garage to provide that safety. The spirit of the ordinance is observed and substantial justice is done in that the variance will not alter in any way the existing zoning classification of "R-4 AHOD" Residential Single-Family Airport Hazard Overlay District. 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 there is no proposed change to the existing zoning use of the property. 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 applicant showed us and the city sent out notifications to the adjacent property owners with only one notice coming back in favor in support of the project. Additionally, the easement provides protection for the adjoining property owner. 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 for this property I would say is the easement on the adjacent property which provides a no build zone which provides the needed setbacks for light and fire safety, therefore it complies. Additionally, I would say the owner would need to comply with all building codes including fire and electrical codes to confirm that what he has built is within the building code of the City of San Antonio."** The motion was seconded by Mr. Camargo.

AYES: Ozuna, Camargo, Atkinson, Kuderer, Quijano, Cruz, Dutmer, Zuniga, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-082

Applicant – Susan M Mossberger

S 118.06 ft of Lot 25, & N IRR 14.374 ft of N 1/2 of Lot 26, Block 3, NCB 14703

10011 Southwell Road

Zoned: "RE" Residential Estate District

The applicant is requesting a 3-foot variance from the 3-foot maximum fence height to allow a solid fence 6 feet in height in the front yard.

Tony Felts, Planner, presented background and staff's recommendation of denial of the requested variance. He indicated 9 notices were mailed, one was returned in favor and none were returned in opposition and no response from the Oakland Estates Registered Neighborhood Association.

Susan Mossberger, applicant, stated variance is needed to allow some sort of privacy from the nearby traffic. She also stated the fence would provide protection for her family. She further stated she was unaware of the rules and regulations of the construction of a 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-13-082 closed.

MOTION

A motion was made by **Mr. Camargo**. "Re Appeal No. **A-13-082**, the request of **Susan M Mossberger**, on property address is **10011 Southwell Road**, also know as **S 118.06 ft of Lot 25, & N IRR 14.74 ft of N 1/2 of Lot 26, Block 3, NCB 14703**, the request being presented by **Ms. Mossberger** is for a variance for a **3-foot variance from the 3-foot maximum fence height to allow a solid wall 6 feet in height within the front yard setback**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-082**, 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 **although there were no notices returned in opposition from property owners within 200 feet, it is this members opinion though that the surrounding property owners as well as the general public may not be in the best public interest of the people that live in the area**. Due to special conditions, a literal enforcement of the ordinance would not result in unnecessary hardship in that **therefore with very much due consideration should be given on your vote to approve this motion**. The spirit of the ordinance is observed and substantial justice is done in that **by granting the variance, the spirit of the ordinance will not be observed and substantial justice will not be done for this particular 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 is not because the variance that is being requested for the 6-foot wall is contrary to the ordinance and therefore is not a use to the ordinance and there is not a use that would be normally allowed on this property**. Such variance will 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 **it has been shown that no other properties on this estate zoning classification housing area that are similar to that which has been constructed without a permit**. 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 plight of the owner of the property for which the variance is sought is not due to any unique circumstances in that there are other means other than construction of a**

solid wall contrary to the ordinances of the city that can be used to provide the visual protection that the applicant seeks in this particular case.” The motion was seconded by Mr. Zuniga.

AYES: Dutmer, Kuderer, Atkinson, Britton, Quijano, Ozuna, Gallagher

NAYS: Camargo, Zuniga, Cruz

THE VARIANCE WAS NOT GRANTED.

CASE NO. A-13-089

Applicant – Bailey Porter

Lo W 41.6 feet of A19, NCB 2739

632 Leigh Street

Zoned: “R-5 H AHOD” Residential Single-Family Historic Airport Hazard Overlay District

The applicant is requesting 1) a 2-foot variance from the minimum 5-foot side yard setback; 2) an 8-foot variance from the minimum 20-foot rear yard setback as detailed in Table 35-310-1 to allow construction of a new residence 3 feet from the side property line and 12-feet from the rear property line.

Osniel Leon, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 43 notices were mailed, one was returned in favor and one was returned in opposition.

Bailey Porter, applicant, stated they have been working extensively with HDRC on the design of a home with accordance with what is allowed in the neighborhood, which included not having a garage in the front of the house. He also stated a carport would be constructed in the back and to have a narrow width of the building. He further stated they have already received approval from the HDRC for the design and were instructed to go before the Board of Adjustment for the setback change. They tried to move the whole building away from the neighbor who didn’t want the setback, so the building has a large driveway independent of their adjacent 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-13-089 closed.

MOTION

A motion was made by **Mr. Quijano**. “Re Appeal No. A-13-089, variance application for 1) a 2-foot variance from the minimum 5-foot side yard setback; 2) an 8-foot variance from the minimum 20-foot rear yard setback as detailed in Table 35-310-1 to allow construction of a new residence 3 feet from the side property line and 12-feet from the rear property line, subject property description lot W 41.6 feet of A19, NCB 2739, situated at 632 Leigh Street, applicant being **Bailey Porter**. I move that the Board of Adjustment grant the applicant’s request

regarding Appeal No. **A-13-089**, 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 **building setbacks are designed to maintain orderly and safe development, and ensure access to air and light. New construction would have to meet all building and fire safety codes in order to be granted a building permit. The 2-foot variance is not contrary to the public interest as the proposed structure will not infringe upon the abutting properties to an extent detrimental to the health, safety, or general welfare of the public.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **because of the age of the subdivision, a special condition exists that would cause a literal enforcement of the ordinance to result in an unnecessary hardship. The buildable area is only 32 feet wide.** The spirit of the ordinance is observed and substantial justice is done in that **the granting of the variance would observe the spirit of the ordinance and do substantial justice. The subject property's shape and size restrains the owner to develop a structure within the development guidelines for the "R-5" zoning district. According to the submitted site plan, the home will maintain the ten-foot setback in the front yard. In "in-fill" development, flexibility is often needed to create investment opportunities. Therefore, allowing the new structure to be built with the requested setbacks will observe the spirit of the Code.** 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" 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 **staff believes the essential character of the district will not be altered. Several lots nearby have less than 5,000 square feet in lot area; the character of the neighborhood is a variety of small and larger lots on this block. Since the property is zoned Historic, all new construction will have to be reviewed and approved by the HDRC and Historic Preservation Officer prior to construction, guaranteeing its compatibility with the Historic District. The applicant has received conceptual approval, pending the Board's decision. Therefore, the requested variance will not injure adjacent property nor detract from the essential character of the neighborhood.** 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 plight of the owners is based on unique circumstances not created by them, namely the size and shape of the lot is unique within this district.**" The motion was seconded by Ms. Dutmer.

AYES: Quijano, Dutmer, Camargo, Atkinson, Kuderer, Britton, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

Board members recessed for 10 minutes

CASE NO. A-13-085

Applicant – Ernesto Narvaiz
Lot 57, Block 5, NCB 14513
5427 Grey Rock Drive
Zoned: “C-3 AHOD” General Commercial Airport Hazard Overlay District

The applicant is requesting a 1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 38 notices were mailed, 3 were returned in favor and none were returned in opposition.

Ernesto Narvaiz, applicant, stated he is requesting this variance for security purposes. He also stated there have numerous burglaries in the area. He further stated he fence would also avoid trespassers from entering his 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-13-085 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-085**, variance application for a **1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard**, subject property description **Lot 57, Block 5, NCB 14513**, situated at **5427 Grey Rock Drive**, applicant **Ernesto Narvaiz**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-085**, 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 **fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. Front yard fences of varying materials are common in this area as the applicant provided testimony to us today. Additionally on a number of these cases the applicant did provide permit for the fencing but the fence height was built factually higher than what the permit allowed.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a review of the City of San Antonio’s online crime tracking tool, which was presented to us today, showed that there has been instances of burglary, theft, and assault in the area of the subject properties.** The applicants are trying to protect not only their physical selves and their properties. 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 properties. The city's online crime tracking tool reveals that there have been crime issues in the immediate vicinity. Additionally, the applicants are trying to protect their family and some have special needs and their children they are trying to contain in yard to protect them.** 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 General Commercial base zoning districts, specifically the "C-3 AHOD" Commercial zoning that is applied to the property.** 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 applicant and staff have provided pictures to us today of various fences that are predominantly in the neighborhood, which are in character of the neighborhood. Additionally of the notices sent forth, there no neighbors or notifications received in opposition of the requested variance.** 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 the circumstances resulting from crime in the area."** The motion was seconded by **Mr. Zuniga.**

AYES: Ozuna, Zuniga, Atkinson, Camargo, Quijano, Kuderer, Dutmer, Cruz, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-087

Applicant – Adriana Rodriguez

Lot 1, Block 4, NCB 14512

5251 Marconi Drive

Zoned: "R-5 AHOD" Residential Single Airport Hazard Overlay District

The applicant is requesting a 1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 31 notices were mailed, 3 were returned in favor and none were returned in opposition.

Adriana Rodriguez, applicant, stated she is requesting this fence would provide security for 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-13-087 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-087**, variance application for a **1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard**, subject property description **Lot 1, Block 4, NCB 14512**, situated at **5251 Marconi Drive**, applicant **Adriana Rodriguez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-087**, 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 **fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. Front yard fences of varying materials are common in this area as the applicant provided testimony to us today. Additionally on a number of these cases the applicant did provide permit for the fencing but the fence height was built factually higher than what the permit allowed.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a review of the City of San Antonio’s online crime tracking tool, which was presented to us today, showed that there has been instances of burglary, theft, and assault in the area of the subject properties. The applicants are trying to protect not only their physical selves and their properties. 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 properties. The city’s online crime tracking tool reveals that there have been crime issues in the immediate vicinity. Additionally, the applicants are trying to protect their family and some have special needs and their children hey are trying to contain in yard to protect them.** 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 General Commercial base zoning districts, specifically the “C-3 AHOD” Commercial zoning that is applied to the property.** 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 applicant and staff have provided pictures to us today of various fences that are predominantly in the neighborhood, which are in character of the neighborhood. Additionally of the notices sent forth, there no neighbors or notifications received in opposition of the requested variance.** 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 the circumstances resulting from crime in the area.”** The motion was seconded by **Mr. Kuderer**.

AYES: Ozuna, Kuderer, Atkinson, Camargo, Quijano, Zuniga, Dutmer, Cruz, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-090

Applicant – Blanca Acuna
Lot 31, Block 4, NCB 5235
5235 Marconi Drive
Zoned: “R-5 AHOD” Residential Single-Family Airport Hazard Overlay District

The applicant is requesting a 1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 32 notices were mailed, 3 were returned in favor and none were returned in opposition.

Blanca Acuna, applicant, stated this fence would provide security for her family. She also stated the fence would allow some sort of protection for her special needs child.

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-13-090 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-090**, variance application for a **1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard**, subject property description **Lot 31, Block 4, NCB 14512**, situated at **5235 Marconi Drive**, applicant **Blanca Acuna**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-090**, 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 **fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. Front yard fences of varying materials are common in this area as the applicant provided testimony to us today. Additionally on a number of these cases the applicant did provide permit for the fencing but the fence height was built factually higher than what the permit allowed.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **a review of the City of San Antonio’s online crime tracking tool, which was presented to us today, showed that**

there has been instances of burglary, theft, and assault in the area of the subject properties. The applicants are trying to protect not only their physical selves and their properties. 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 properties. The city's online crime tracking tool reveals that there have been crime issues in the immediate vicinity. Additionally, the applicants are trying to protect their family and some have special needs and their children they are trying to contain in yard to protect them. 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 General Commercial base zoning districts, specifically the "C-3 AHOD" Commercial zoning that is applied to the property.** 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 applicant and staff have provided pictures to us today of various fences that are predominantly in the neighborhood, which are in character of the neighborhood. Additionally of the notices sent forth, there no neighbors or notifications received in opposition of the requested variance.** 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 the circumstances resulting from crime in the area."** The motion was seconded by Ms. Cruz.

AYES: Ozuna, Cruz, Dutmer, Camargo, Atkinson, Kuderer, Quijino, Zuniga, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-092

Applicant – Angelica Vasquez

Lot 30, Block 4, NCB 14512

5239 Marconi Drive

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

The applicant is requesting a 1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard.

Tony Felts, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 30 notices were mailed, 3 were returned in favor and none were returned in opposition.

Angelica Vasquez, applicant, stated the fence would provide protection for small children from going out into the street. She also stated the fence would provide security 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-13-092 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-092**, variance application for a **1-foot, 1-inch variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet 1 inch in height in the front yard**, subject property description **Lot 30, Block 4, NCB 14512**, situated at **5239 Marconi Drive**, applicant **Angelica Vazquez**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-092**, 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 **fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. Front yard fences of varying materials are common in this area as the applicant provided testimony to us today. Additionally on a number of these cases the applicant did provide permit for the fencing but the fence height was built factually higher than what the permit allowed.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a review of the City of San Antonio’s online crime tracking tool, which was presented to us today, showed that there has been instances of burglary, theft, and assault in the area of the subject properties. The applicants are trying to protect not only their physical selves and their properties. 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 properties. The city’s online crime tracking tool reveals that there have been crime issues in the immediate vicinity. Additionally, the applicants are trying to protect their family and some have special needs and their children hey are trying to contain in yard to protect them. 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 General Commercial base zoning districts, specifically the “C-3 AHOD” Commercial zoning that is applied to the property.** 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 applicant and staff have provided pictures to us today of various fences that are predominantly in the neighborhood, which are in character of the neighborhood. Additionally of the notices sent forth, there no neighbors or notifications received in opposition of the requested variance.** 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 the circumstances resulting from crime in the area.” The motion was seconded by Mr. Kuderer.

AYES: Ozuna, Kuderer, Dutmer, Camargo, Atkinson, Cruz, Quijano, Zuniga, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-093

Applicant – Luz Castillo
Lot 9, Block 8, NCB 14516
5427 Grey Rock Drive
Zoned: “C-3 AHOD” General Commercial Airport Hazard Overlay District

The applicant is requesting a 1-foot 2 inch variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet 2 inches in height in the front yard.

Tony Felts, Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 30 notices were mailed, none were returned in favor and none were returned in opposition.

Luz Castillo, applicant, stated the fence would provide protection and security for her family. She also stated there have been numerous break-ins in 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-13-093 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-093**, variance application for a **1-foot, 2-inch variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet, 2 inches in height in the front yard**, subject property description **Lot 8, Block 8, NCB 14516**, situated at **5410 Bakersfield Street**, applicant **Luz Castillo**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. **A-13-093**, 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 **fence height restrictions are put into place in order to provide orderly development and encourage a sense of community. Front yard fences of varying materials are common in this area as the applicant provided testimony to us today.**

Additionally on a number of these cases the applicant did provide permit for the fencing but the fence height was built factually higher than what the permit allowed. Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that a review of the City of San Antonio's online crime tracking tool, which was presented to us today, showed that there has been instances of burglary, theft, and assault in the area of the subject properties. The applicants are trying to protect not only their physical selves and their properties. 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 properties. The city's online crime tracking tool reveals that there have been crime issues in the immediate vicinity. Additionally, the applicants are trying to protect their family and some have special needs and their children hey are trying to contain in yard to protect them. 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 General Commercial base zoning districts, specifically the "C-3 AHOD" Commercial zoning that is applied to the property. 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 applicant and staff have provided pictures to us today of various fences that are predominantly in the neighborhood, which are in character of the neighborhood. Additionally of the notices sent forth, there no neighbors or notifications received in opposition of the requested variance. 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 the circumstances resulting from crime in the area." The motion was seconded by Ms. Cruz.

AYES: Rodriguez, Quijano, Camargo, Dutmer, Kuderer, Britton, Rogers, Cruz, Zuniga, Ozuna, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-083

Applicant – Santos. A. Gonzalez

Lot 14, Block 2, NCB 12810

3838 Motes Drive

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

The applicant is requesting a 1 ½-foot variance from the 4-foot maximum fence height as specified in Section 35-514 (d) to allow a 5 ½-foot ornamental iron fence in the front yard.

Osniel Leon, Planner, presented background and staff's recommendation of approval of the requested variance. He indicated 36 notices were mailed, one was returned in favor and none were returned in opposition.

Santos Gonzalez, applicant, stated he is requesting this fence for security reasons. He also stated the fence would provide protection for his family. He further stated due to his blindness on one eye, he feels the fence would provide a sense of security.

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-13-083 closed.

MOTION

A motion was made by **Mr. Quijano**. "Re Appeal No. A-13-083, variance application for a 1 ½-foot variance from the 4-foot maximum fence height as specified in Section 35-514 (d) to allow a 5 ½-foot ornamental iron fence in the front yard, subject property description Lot 14, Block 2, NCB 12810, situated at 3838 Motes Drive, applicant being Santos A. Gonzalez. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. A-13-083, 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 at large. The UDC does contemplate that increased fence heights are occasionally appropriate for security or to reduce negative visual or noise-related impacts on the enjoyment of one's property. In this request, negative impact on these goals is minimal. Therefore, the variance would not be contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **as currently configured and developed, the property has no existing special conditions warranting any variances to allow increased fence heights except for the fact that the applicant has medial issues. The existing fence provisions do not prevent the applicant from developing and using their property in a manner similar to that of other property owners whose properties have the same zoning classification. The applicant has stated that the primary reason for having the fence is for security reasons due to the crime in the area. The applicant also adds that he is blind from one eye and had surgery on the other making him about 70% blind. A literal enforcement of the City's fence provisions requires the applicant reduce the height of the fence by just 1 ½-feet but due to his security reasons I feel that that would probably be a hardship because of the fact that reducing it would probably make it easier for the people to get into the yard. The spirit of the ordinance is observed and substantial justice is done in that perimeter fencing is a common and generally accepted improvement to one's property. In addition to security, fencing also controls ingress and egress and serves as a visual delineation between properties and property boundaries. In this case, substantial justice is done by encouraging the applicant to comply with the existing regulations but according to this board member that would be a**

hardship. 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 principle and accessory uses permitted by right in the “R-5” zoning 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 **staff believes the essential character of the district will not be altered since all properties are developed with single-family dwellings. Additionally, many of these dwellings have perimeter fencing that varies in heights, materials, and purpose.** 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 **relief from the fencing provisions is more difficult to justify as a variance than as a special exception, as there must be a unique property-related feature that distinguishes it from others in the area. The unique circumstances existing on the property were not caused by the applicant, but rather the circumstances result from crime in the area and of the applicant of having a vision disability.”** The motion was seconded by Mr. Dutmer.

AYES: Quijano, Dutmer, Camargo, Atkinson, Cruz, Britton, Zuniga, Ozuna, Kuderer, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-088

Applicant – Joshua Calzada
The Southwest irregular 241.04 Feet of Lot 48, NCB128558
8650 Fredericksburg Road
Zoned: “C-3 AHOD” General Commercial Airport Hazard Overlay District

The applicant is requesting a 1-foot variance from the 4-foot maximum fence height to allow a predominantly open fence 5 feet in height in the front yard.

Osniel Leon, Planner, presented background and staff’s recommendation of denial of the requested variance. He indicated 11 notices were mailed, none were returned in favor and none were returned in opposition.

Jose Calzada, representative, stated they wanted to construct a pedestrian friendly building. He also stated the parking in the rear would enhance the characteristic of the property. He further stated the building would be used for classroom training for the employees at IBC bank.

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-13-085 closed.

MOTION

A motion was made by Mr. Kuderer. “Re Appeal No. A-13-088, variance application for a **2-foot variance from the 4-foot maximum fence height as described in Section 35-514 (d) to allow a 6-foot ornamental iron fence in the front yard**, subject property description **the southwest irregular 241.04 feet of Lot 44, NCB 12858, situated at 8650 Fredericksburg Road**, applicant being **Joshua Calzada**. I move that the Board of Adjustment grant the applicant’s request regarding Appeal No. A-13-088, 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 public interest is defined as the general health, safety and welfare of the public at large. The UDC contemplates that increased fencing height is occasionally appropriate and sometimes necessary in order for security or to reduce negative visual or noise-related impacts on the enjoyment of one’s property. In this case, allowing a 6-foot fence along the south corner of the lot 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 subject property is not subjected to unique or oppressive conditions that prevent the applicant from erecting a 4-foot predominantly open fence or wall within the front yard of the property. A literal enforcement of the City’s fence provisions does not prohibit the applicant from constructing a fence or wall in the proposed location.** The spirit of the ordinance is observed and substantial justice is done in that **in the spirit of the ordinance, variances from city code should be granted on properties with unique oppressive conditions where the literal enforcement of the fence provisions create undue hardship and deny the reasonable use of a property.** Such variance will authorize the operation of a use other than those uses specifically authorized for the district in which the subject property is located. 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 **fence heights are restricted within the front yard of commercial properties to maintain the interconnectivity and relationship between the right-of-way, pedestrian and commercial uses. The subject property is surrounded by other similar commercial and service type use properties, the majority of which do not have fences within the front yard, however this one will.** 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 motion was seconded by Mr. Camargo.

AYES: Kuderer, Camargo, Dutmer, Cruz, Quijano, Zuniga, Atkinson, Ozuna, Britton, Gallagher

NAYS: None

THE VARIANCE WAS GRANTED.

CASE NO. A-13-091

Applicant – Sherry Chaudhry

Lot 33, Block 1, NCB 17035

200 Bluffknoll

Zoned: “R-6 AHOD MLOD” Residential Single-Family Airport Hazard Overlay District
Military Lighting Overlay Districts

The applicant is requesting 1) a 3-foot variance from the 3-foot maximum height for a solid screen fence to allow a 6-foot wall in the front yard and 2) a 5-foot variance from the 4-foot maximum height for a predominately open fence as described in Section 35-514 (d) to allow a 9-foot high gate in the front yard.

Margaret Pahl, Senior Planner, presented background and staff’s recommendation of approval of the requested variance. He indicated 14 notices were mailed, 4 were returned in favor and 3 were returned in opposition and the Bluffview of Camino HOA is in support.

Sherry Chaudhry, applicant, stated that when moved in, she didn’t realize she didn’t know that there would be issue because there is an existing wall all around the house and she was just adding a 32 inch elevation from the street. She also stated if the house was sitting on the same topography as the other houses in her neighborhood, the house would be at street level, which would put the house within in without requiring a variance. She further stated this would provide some security from any trespassers trying to access the 10-foot pool on her property.

The following citizens appeared to speak:

Frances Lehrman, citizen, spoke in opposition

Betty Martin, 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-13-091 closed.

MOTION

A motion was made by **Mr. Ozuna**. “Re Appeal No. **A-13-091**, variance application for **1) a 3-foot variance from the 3-foot maximum height for a solid screen fence to allow a 6-foot wall in the front yard and 2) a 5-foot variance from the 4-foot maximum height for a predominately open fence as described in Section 35-514 (d) to allow a 9-foot high gate in**

the front yard, subject property description **Lot 33, Block 1, NCB 17035**, situated at **200 Bluffknoll**, applicant being **Sherry Chaudhry**. I move that the Board of Adjustment grant the applicant's request regarding Appeal No. **A-13-091**, 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 at large. Front yard fencing regulations are adopted to encourage a sense of community, connecting the view between the public street and the interior living space. Because the first floor of the house is partially below grade, the height of this wall does not significantly reduce the shared views. Therefore the variance would not be contrary to the public interest.** Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship in that **section 35-514 (d) 1 states that the height shall be the vertical distance measured from the lowest adjacent ground level (either inside or outside the fence) to the top of the tallest element of the fence material. This literal enforcement prevents the applicant from installing any fencing along this sunken courtyard. The Board must determine if literal enforcement of the ordinance results in an unnecessary hardship.** The spirit of the ordinance is observed and substantial justice is done in that **the Board must determine the "spirit" of the ordinance as contrasted with the "strict letter" of the law for each unique case. In this case, the applicant asserts the spirit of the ordinance is the height of wall visible to the public, rather than the height measured from inside the gate. In addition, the applicant determined that a dominant entry feature was required to direct a visitor toward the hidden front door. The Board must determine if the proposed wall and gate observe the spirit.** 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 MLOD" zoning 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 proposed architectural solution seems to compliment the character of this district as shown by examples submitted by the applicant. Decorative masonry walls seem to be a repeating theme in this upscale established neighborhood. The variance will not injure the adjacent property or alter the character.** 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 existing on the property is the hidden front door accessed from the sunken courtyard. Additionally, the applicant is seeking some protection to the swimming pool in the back and fencing to prohibit pedestrians or the general public from making their way to the pool in the backyard. The applicant is seeking the relief from specific regulations in order to direct visitors to the front entrance of the home."** The motion was seconded by Mr. Quijano.

2nd MOTION

Mr. Camargo made a motion to continue this case until the November 18, 2013 regularly scheduled meeting so that the applicant, in conjunction with working with the staff, give us more legible detailed information on the wall height. The motion was seconded by Mr. Zuniga.

AYES: Camargo, Quijano, Kuderer, Cruz, Dutmer, Zuniga, Britton, Ozuna, Gallagher
NAYS: Atkinson

THE MOTION CARRIES.

Approval of the Minutes

The September 16, 2013 minutes were approved with all members voting in the affirmative.

Approval of the Meeting and Deadlines Dates for Calendar Year 2014

The 2014 Board of Adjustment Calendar was approved with all members voting in the affirmative.



There being no further discussion, meeting adjourned at 4:48 pm.

APPROVED BY: _____ OR _____
Michael Gallagher, Chairman Andrew Ozuna, Vice-Chair

DATE: _____

ATTESTED BY:  _____ DATE: 11-6-13
Executive Secretary