

**ZONING BOARD OF ADJUSTMENTS
AUGUST 15, 2012
CITY HALL'S COUNCIL CHAMBERS**

<u>MEMBERS PRESENT</u>	<u>MEMBERS ABSENT</u>	<u>STAFF PRESENT</u>	<u>GUESTS PRESENT</u>
Kathy Olivarez		Bobby Salinas	Oscar Aguilar
Raul Sesin		Sergio Zavala	George Rodriguez
Danny Tijerina		Annette Zavala	
Jorge Garcia			
Jon Lown			
Mike Friedrichs			
Ned Sheats			

CALL TO ORDER

Chairwoman Olivarez called the meeting to order at 4:30 p.m.

CITIZENS PARTICIPATION

Chairwoman Olivarez asked if there was anyone in the audience that had anything to present or express that was not on the agenda. The audience remained un-responsive.

APPROVAL OF MINUTES FOR AUGUST 1, 2012

Chairwoman Olivarez asked if there were any corrections to the minutes. There being none, Mr. Lown moved to approve the minutes as presented. Mr. Tijerina seconded the motion. Upon a vote, the motion passed unanimously.

ITEM #1.1

CONSIDER A VARIANCE REQUEST TO HAVE A 0' SIDE SETBACK INSTEAD OF THE REQUIRED 6' SIDE SETBACK AT 3414 N. BRYAN RD., BEING THE SW 1.00 AC. FOR H/S – N 224.05' – 944.40' OUT OF LOT 29-11, WEST ADDITION TO SHARYLAND SUBDIVISION, AS REQUESTED BY MRS. MARIA ELIA AGUILAR

Mr. Salinas explained that the subject property is ¼ mile north of 2 Mile Rd. along the east side of Bryan Rd., the total lot measures approximately 224.05' x 944.40' where the home is located on the westernmost part of the acreage and there are no unique lot features as to location or orientation. There are no easements along the northern property line. The applicant was in the process of building a new 33' x 36.6' structure when Staff received a complaint regarding the building being 0' from the side property line. Upon review, staff found that no permit was issued; thus Staff sent a letter on 7-20-12 citing the encroachment onto the side setback, & that a permit was required. The applicant has submitted a plan for a new game room showing

a 1' 2" side setback with a block wall serving as the building's wall. The roof is made of wood and is not considered a fire-rated wall. The primary intent of the side setback is to have a fire separation between structures. Article XIII, Section 1.59, 3d states: "Side yard setback requirements may be increased where necessary to provide a minimum of 12 feet between structures on abutting lots where a firewall is not provided". ZBA has approved previous side setback variances in the past using either a firewall requirements or increasing the side setback to the adjoining neighbor (with his recorded consent). The neighbor's home is approx. 75' from this common side boundary; thus, he could easily steer away from Aguilar's structure; a recorded encumbrance agreement would mandate a perpetual 12' side yard setback at this juncture (and encumbering future owners, too).

Presented the board with 2 options as follows: 1ST Recommendation: Denial; not unique; self-inflicted; property's been annexed since 2008 and, if in the County's jurisdiction, a building permit would still be mandated with a similar side yard setback.

2nd Recommendation: If ZBA is inclined to approve the variance, the following conditions should apply: Reconstruct structure to include but not be limited to entirely fire-rating the northern side; installing rain gutters along the north property line to be approved by the City Inspector; The Reyna's signing & recording a property encumbrance document that would require them and future owners to not build within 12' of Mrs. Aguilar's structure.

Chairwoman Olivarez asked if there was any public opposition to the request.

The audience remained un-responsive.

With the Applicant being present, Chairwoman Olivarez asked the applicant what the room was going to be used for and why he built it so close to the fence.

Mr. Oscar Aguilar mentioned that it was game room, and since he had one wall already all he did was add three more.

Chairwoman Olivarez mentioned that there are rules and regulations and one of them mentioned that you have to have a minimum of 6' feet from the side, even if the neighbors house is not right next to his. We know if his neighbor wants to build along that side also. She mentioned that the reason they have setbacks is for fire safety.

Mr. Friedrichs asked if the structure was built using the wall, was the foundation built to take the weight of the structure.

Mr. Aguilar mentioned that the foundation was deep enough.

Vice Chairman Sesin ask if the person that was accompanying Mr. Aguilar could state his name for the record.

Mr. George Rodriguez of 3414 N Bryan Rd, Mission Texas, mentioned that the foundation was sturdy enough to hold the roof structure, and the architect designed the plan before they built it and the building is safe. The City required them to get the plans done for the meeting.

Chairwoman Olivarez mentioned that if they had the money to hire an architect why didn't they get the permit.

Mr. Rodriguez mentioned that it was an oversight.

Vice Chairman Sesin asked how they got electrical and water. Was it run from the house? Does the structure have a septic system?

Mr. Rodriguez mentioned that they got services from the existing house, and they connected to City sewer.

Vice Chairman Sesin asked if they had original plans drawn for the foundation, and if the fence was part of the structure. He also asked if the fence carried any weight on it.

Mr. Rodriguez mentioned that roof overhangs and is not on the fence itself, it's on the structure.

Mr. Friedrichs mentioned that the roof joists are resting on the exterior wall.

Mr. Rodriguez mentioned that there is cement going through each of the cement blocks.

Vice Chairman Sesin mentioned that there was some weight on the wall from the structure.

Mr. Rodriguez said that some of the beams rest on the fence but they are reinforced, they are 30" deep and sturdy enough for the weight.

Chairwoman Olivarez how could it be independent if they are using it as a wall.

Vice Chairman Sesin mentioned that they poured concrete on the blocks and built a wall and then added the foundation independent from each other, they are just abutting, each are tied together by the surface structure.

Chairwoman Olivarez asked if besides that, would the wall be strong enough to hold up the side of the building incase there is strong rain or a hurricane.

Vice Chairman Sestin mentioned that if they built the wall solid it probably would be.

Mr. Rodriguez mentioned that it's 30" and sturdy enough since normally a house is 36" deep on the exterior and 24" in the interior. This is a simply a playroom.

Chairwoman Olivarez mentioned that the issue was that they had a complaint and the structure is built on the setback. They have to consider that and also the drainage from the roof. She asked if it is contained on his property or does it go into the neighbor's house.

Mr. Rodriguez mentioned that the neighbor provided a letter in favor of the variance.

Vice Chairman Sestin mentioned that if the engineer knew they didn't follow the plans, and they had a signed windstorm.

Mr. Rodriguez mentioned that the engineer knew they built on the setback and they did the windstorm after the fact since the City required them to file a permit and obtain a windstorm so they followed the adequate steps.

Vice Chairman Sestin asked if they told the engineer they used an independent wall not the actual wall of the structure.

Mr. Rodriguez mentioned that when they did the windstorm they mentioned they were right on the property line and they were using the back fence wall for the building.

Mr. Friedrichs asked how the roof was anchored to the foundation. The plans show anchor bolts on the silt and on the roof with the back wall.

Mr. Garcia asked if the person who signed the letter was on the mailing list.

Mr. Salinas mentioned that he was a property owner but did not receive a notice for the meeting.

Mr. Tijerina mentioned that it was self inflicted, they didn't approach the City to ask questions, the area is zoned AO-I, and to the west there is a neighbor who has a drive way that also serves the home in the back, so they might not build next to the structure. He mentioned that the recommendations by staff were, denial; not unique; self-inflicted; property's been annexed since 2008 and, if in the County's jurisdiction, a building permit would still be

mandated with a similar side yard setback. If ZBA is inclined to approve the variance, the following conditions should apply: Reconstruct structure to include but not be limited to entirely fire-rating the northern side; installing rain gutters along the north property line to be approved by the City Inspector; and for the Reyna's to sign & record a property encumbrance document that would require them and future owners to not build within 12' of Aguilar's structure.

Chairwoman Olivarez mentioned that one concern she had was where was the water going to go to when it rained.

Mr. Rodriguez mentioned that if approved they would use industrial gutters instead if the regular ones.

Vice Chairman Segin asked how would they fire rate the roof.

Mr. Tijerina mentioned that they would need to have an inspector present to answer the questions.

Mr. Tijerina asked if the property was platted and if they would see any other permits would this be an issue.

Vice chairman Segin asked when the property was annexed to the City and when was the house built.

Mr. Tijerina mentioned that it was annexed in 1998.

Mr. Aguilar mentioned that the house was built in 1983 and the playroom was built recently.

Mr. Tijerina motioned for denial self inflicted it was annexed since 98, even in the county they have building setbacks, the motion was seconded by Mr. Friedrichs.

Mr. Zavala mentioned that the motion made has to be seconded by a member and could not be made by an alternate board member.

Vice Chairman Segin asked who the alternates were and who was a member.

Mr. Zavala replied that Mr. Ned Sheats was a member and Mr. Friedrichs and Mr. Jon Lown were the alternates.

Mr. Tijerina moved to deny and Mr. Sheats seconded the motion.

Vice Chairman Segin wanted to discuss the item a little further. He mentioned the board had been consistent with their decisions, but he recalls

another item that was worse and it was in a populated area and it was a smaller structure and it could off been removed and they considered it, and this is a bigger area and less populated, and he wants the board to be consistent.

Mr. Zavala mentioned that there was a motion and it was seconded but for the discussion purposes, he mentioned that it was one thing to send a letter saying it was ok to have the structure next to them, and his name does not appear on the mailing list, but when explained to him that he's going to have a 12' foot setback it might change his mind, maybe the item could be put on the table and see if the neighbor can be reached.

Chairwoman Olivarez asked if the room was safe.

Vice chairman Sesin mentioned that the engineer who signd the windstorm should prepare a written document saying that its meets windstorm requirements.

Chairwoman Olivarez mentioned that they would prefer both the engineer and the neighbor be present to better evaluate the item.

Mr. Zavala wants the board to have all facts, and for the neighbor to fully understand the encumbrance, get the engineers to present the letter to better make a determination and they would want to go inside and see if there was electrical work done and did they obtain a permit.

Mr. Friedrichs mentioned that if he got the engineered plans after the construction was built, how was it done.

Chairwoman Olivarez mentioned that there was a motion and a second and asked if they were going to withdraw the motions or proceed.

Mr. Tijerina mentioned that he would withdraw the motion for denial and table the item, and Mr. Ned Sheats withdrew his motion also, and to have the City building inspector, the engineer and the neighbor present.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Sesin moved to Table the variance request as proposed. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

ITEM #1.2

CONSIDER A VARIANCE REQUEST TO HAVE A 13' FRONT SETBACK INSTEAD OF THE REQUIRED 30' FRONT SETBACK AT 1312 N. CONWAY AVENUE, BEING LOT 3, BLOCK 216, MISSION ORIGINAL TOWN SITE SUBDIVISION, AS REQUESTED BY MR. MR. JOSE L. PEDROZA

Mr. Salinas mentioned that the site is located on the SE area of Conway and 14th St., the original lot size was 50 x 150', however when TxDOT widened Conway a total of 10' was purchased on both sides of Conway, leaving the lot lengths at 140', thus the 30' front setback rather than the code required 40'. The applicant seeks to construct a 20'x 50' OPEN carport to help protect most of the parking area from extreme heat, hail, etc., Viewing the aerial ZBA can witness that there all the buildings in the commercial side of this block have much lower front setback. Front setback range from 0' to 16' to 24'. This proposal would be for an "OPEN" carport effect. Being the middle of the Block, there will be NO site obstruction.

Staff recommended: No objection; open structure requests seems reasonable and will better acclimate to the surroundings buildings; subject to recording encumbrance agreement mandating that the carport remain perpetually open and compliance with Ordinance 3602, which requires new structure along Conway to have front facades to be of a stucco finish.

Chairwoman Olivarez asked if there was any public opposition to the request.

The audience remained un-responsive.

Chairwoman Olivarez asked if the applicant or representative were present.

The audience remained un-responsive

Mr. Garcia mentioned that the building has to have all the front facades to be of a stucco finish.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Garcia moved to approve the variance request as recommended by staff. Mr. Sheats seconded the motion. Upon a call for a vote, the motion passed unanimously.

ITEM #1.3

CONSIDER A VARIANCE REQUEST TO HAVE A 6' FRONT SETBACK INSTEAD OF THE REQUIRED 15' FRONT SETBACK AND TO HAVE A 6.11' SIDE SETBACK INSTEAD OF THE REQUIRED 10' SIDE SETBACK AT 1004 W. KIKA DE LA GARZA, BEING LOT 5 & 6, BLOCK 177, MISSION ORIGINAL TOWN SITE SUBDIVISION, AS REQUESTED BY JORGE CONTRERAS

Mr. Salinas mentioned that site is located on the NE corner of Tom Landry and Kika De La Garza. The lot measures 100' x 150' and has an existing cake shop thereon; there are no unique lot features as to location or

orientation. The applicant's agent inadvertently installed two new cloth canopies on the property without first obtaining a building permit. The canopies are similar to those found in Bert Ogden auto sales where they are attractive, protect the vehicles, and are perpetually open. The subject intersection is signalized, and since the canopies will always be open (there will be no site obstruction), traffic is maximized and there is no effect of the canopies to this criterion.

Staff recommended: No objection; to always be 'open'; levy the double permit fee via code.

Chairwoman Olivarez asked if there was any public opposition to the request.

The audience remained un-responsive.

Chairwoman Olivarez asked if the applicant or representative were present.

The audience remained un-responsive.

Mr. Sheats mentioned the banners and that they should be removed.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Sheats moved to approve the variance request as recommended by staff subject to banners be removed. Mr. Tijerina seconded the motion. Upon a call for a vote, the motion passed unanimously.

**ITEM #2.0
OTHER BUSINESS**

**ITEM #3.0
ADJOURNMENT**

There being no further business, Chairwoman Olivarez entertained a motion to adjourn. Mr. Lown moved to adjourn. Mr. Garcia seconded the motion. Upon a call for a vote, the motion passed unanimously at 5:17 p.m.

Chairwoman Olivarez
Zoning Board of Adjustments