

**ZONING BOARD OF ADJUSTMENTS  
JANUARY 15, 2014  
CITY HALL'S COUNCIL CHAMBERS**

**MEMBERS PRESENT**

Ned Sheats  
Jaime Acevedo  
Mike Friedrichs  
Raul Sesin  
Kathy Olivarez

**MEMBER ABSENT**

Sam Rodio

**STAFF PRESENT**

Daniel Tijerina  
Bobby Salinas  
Annette Zavala

**GUEST PRESENT**

Vickie Godlien  
Jean Wolfe  
Jeanette Gillund  
Walter McGee  
Rossana Hernandez  
Wayne Godlien  
Lyle Lerbakken  
Rose Lerbakken  
Douglas Hooper  
Steven Hooper  
Anita V. Smith  
Kathy Snyder  
Les Snyder  
Bruce Albert  
Sue Doffer  
Tom Smith  
David Russell

**CALL TO ORDER**

Chairman Sesin called the meeting to order at 4:31 p.m.

**CITIZENS PARTICIPATION**

Chairman Sesin 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 DECEMBER 4, 2013**

Chairman Sesin asked if there were any corrections to the minutes. There being none, Mr. Sheats moved to approve the minutes. Mr. Friedrichs seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #1.1**

**APPOINTMENT OF ZONING BOARD OF ADJUSTMENTS CHAIRMAN AND VICE CHAIRMAN FOR 2014**

Chairman Mr. Sesin stated that the appointment of Chairman and Vice-Chairman is up for consideration.

Mr. Friedrichs moved to keep the present officers, Mr. Sestin as Chairman and Mr. Sheats as Vice-Chairman. Chairman Sestin entertained a motion. Mr. Friedrichs moved to approve the motion. Mr. Acevedo seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #1.2**

**CONSIDER A VARIANCE REQUEST TO KEEP A 1' SIDE AND REAR SETBACK INSTEAD OF THE REQUIRED 5' SIDE SETBACK AND THE 10' REAR SETBACK AT 3406 SAN BENITO DR., LOT 65, LOS NOGALES SUBDIVISION PH. 1, AS REQUESTED BY MR. & MRS. JOSE & ROSSANA HERNANDEZ**

Mr. Daniel Tijerina mentioned that the site is located on the SW corner of Santa Sofia and San Benito Dr. This corner lot measures 70' x 110' and there are no unique lot features as to location or orientation. On 8-6-13, staff sent the applicant a letter in regards to building a gazebo without a permit. On 8-22-13, staff re-inspected the site to see if the owner had filed for an application for the gazebo. Staff filed a complaint against Mr. & Mrs. Hernandez with the municipal court for building without a permit. On 11-6-13, the applicant appeared before the Judge and was given an opportunity to apply for the building permit. The applicant filled out our building permit application showing us the dimensions on the site plan. However, upon a field inspection of the gazebo, staff found it to be only 1' from the side and rear property lines. Staff denied the application due to the setbacks and the lack of the approval from HOA. On 12-4-13, the applicant decided to apply for the variance to allow the gazebo to remain as is.

**REVIEW COMMENTS:** ZBA has seen several accessory structures cases throughout the years where setbacks are not being met. This is normally due to not acquiring the required permits or simply trusting that the contractor knew what they were doing. Ultimately, the responsibility for acquiring a permit in order to ensure that the setbacks are being met falls on the owner. Furthermore, as with other similar accessory structure variance requests, staff believes that the structure can be modified to meet the minimum 6' side and the 10' rear setback. Since the lot is not unique or irregular and we have precedence when it comes to similar types of cases, it is very difficult to recommend in favor for such a request. Staff also received a letter against the request.

**Recommendation:**

Staff recommends denial due to: the structure can be modified to meet the setbacks; the lot is not unique or irregularly shaped; allowing the structure to remain as is will merely serve as a convenience to the applicant; similar

cases have had to re-locate their accessory structures to comply with setbacks; and approval would set precedence that will have a negative impact on future variance requests.

Chairman Sesin asked if there was any opposition.

The audience remained unresponsive

Chairman Sesin asked if the applicant or representative were present.

Mrs. Rossana Hernandez was present to address any questions from the Board. She mentioned that her ex-husband built this in 2001, without a permit. She stated that they had never had any problems with their neighbors or with the association until now. She mentioned that she applied for a permit and that she was not aware of the violation. She is asking for the board's approval to keep the gazebo the way it is; she said that the structure does not affect any utilities and that she understood that if in the future, they need to go in and fix the lines, the structure will be removed. She also mentioned that the structure was too big to be removed.

Chairman Sesin asked if the structure was built in 2001 and if the complaint was just brought up now. Also if the HOA submitted something in writing saying they didn't approve the structure. Chairman Sesin mentioned that it would be very hard for the board to approve something like this, since the board has been very consistent with their variances.

Mr. Acevedo asked if the HOA was the one that made the complaint.

Mrs. Rossana Hernandez replied saying that more than sure it was them making the complaint.

Mr. Salinas mentioned that there was no letter submitted, but the HOA is aware of the violation and would not sign off on the permit.

Mr. Tijerina mentioned that the subdivision had deed restrictions and covenants that had to be complied with.

Vice-Chairman Sheats mentioned that their HOA has very similar ordinances as the City's and this structure should be brought up to code.

Mr. Friedrichs wanted to know if they knew what the depth of the columns was.

Mrs. Hernandez mentioned that she did not know the depths of the columns but that she will be responsible if needed to be removed.

There being no further discussion, Chairman Sestin entertained a motion. Mr. Sheats moved to deny the variance request as recommended by staff. Mr. Friedrichs seconded the motion. Upon a vote, the motion to deny passed unanimously.

**ITEM #1.3**

**CONSIDER A VARIANCE REQUEST TO KEEP A 5.6" SIDE SETBACK WHERE A 6' SIDE SETBACK IS REQUIRED AT 2320 W. PALM CIRCLE, BEING LOT 44, PALM ACRES #2 SUBDIVISION, AS REQUESTED BY MR. & MRS. TOM & ROSE SMITH**

Mr. Daniel Tijerina mentioned that the site is located on the SE corner of W. Palm Cir. and Palmetto Dr.

**REVIEW COMMENTS:** The side setback for the subdivision is 6' as per the Zoning Code.

The applicant recently applied for a new addition where he showed the side setback to be 6' 7". The owner had a survey done of the property that revealed the home to be at 5' 7", instead of the required 6'. According to the HCAD records the home was originally constructed in 1984. He is now proposing his new addition to be in the line with the existing home.

Staff has seen where 5' setback seems to work well within residential neighborhoods such as those found in Sharyland Plantation. Also, according to the 2012 IRC a fire resistant rated wall is only required, if the separation is less than 5'. Since the home is already at 5' 7", staff does not believe that the new addition being at the same alignment would be a detriment to the surrounding homes and we have not received any comments for or against request.

**Recommendation:** No objection, but subject to recording a hold harmless agreement. (This approval would also be deemed as favoring the existing home 'as is').

Chairman Sestin asked if there was any opposition.

The audience remained unresponsive

Chairman Sestin asked if the applicant or representative were present.

Mr. Tom Smith was present to address any questions from the Board. Mr. Smith stated that he had hired Mr. Douglas Hopper. Mr. Hopper stated that he will be representing his client. Mr. & Mrs. Smith mentioned that they did obtain a permit; they were not sure where the property lines were located. Also they clarified that the home was built in 1975 not in 1984, and that they have been living there over 40 years. They appreciate the board's recommendation. Mr. Hopper stated that the venire will be brick, and that the neighboring home is at 11' 8" away from the property line, and that the proposed addition would be an expansion for their bedroom.

Chairman Sesin mentioned that the 5' separation is required for fire code and he had no objection.

There being no further discussion, Chairman Sesin entertained a motion. Mr. Acevedo moved to approve the variance request as recommended by staff. Mrs. Olivarez seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #1.4**

**CONSIDER A VARIANCE REQUEST TO HAVE A 6' CORNER SETBACK WHERE A 10' IS REQUIRED TO ENCLOSE EXISTING CARPORT, AT 201 RIM, BEING LOT 27, BLOCK C, WAGON CITY SUBDIVISION, AS REQUESTED BY MR. & MRS. LYLE & ROSE LERBAKKEN**

Mr. Daniel Tijerina mentioned that the subject site is located on the SW corner of Rim and Boot Dr., within Wagon City Subdivision (a 55 and older community). The RV lot measures 37' x 45'. There is currently an RV with a 'grandfathered' open carport on the lot that is encroaching within the side corner setback a total of 4', i.e the carport is 6' from the property line. The enclosure would be for a living area. We have seen several cases where ZBA has approved open carports within side corner setbacks, however; such carports were not to be enclosed due to concerns for visibility. Upon reviewing the Wagon City file there have been no variances granted for enclosed additions. The applicant has submitted a petition with 9 signatures out of 30+ surrounding property owners supporting the variance request. Since precedence had been set in other cases, staff cannot support the enclosure of the existing carport, but can support the approval of the existing 6' side corner setback for the open carport to remain.

If approved, as with others, an **Agreement for Deferred Building Setback Compliance and Structural Encumbrance** should be linked to any such motion.

Chairman Sesin asked if there was any opposition.

The audience remained unresponsive

Chairman Sesin asked if the applicant or representative were present.

Mr. and Mrs. Lyle Lerbakken were present to address any questions from the Board. She mentioned that they were not requesting to go out of the footprint. She stated that they took measurements of other RV lots that have Texas Rooms already built. On the existing corner lot, directly across from them, there is a Texas room that measures 18.4' and on the property behind them there is a Texas room that has a 16' from the curb and they have a 6' variance; on the opposite corner they have a 15' 6" Texas room and a variance of 5' 6". She mentioned that she didn't see a problem with the variance that they were requesting and if approved it would not affect visibility.

Chairman Sesin asked where the stop sign was on that corner.

Mrs. Lerbakken mentioned that there were no stop signs in their subdivision.

Mr. Acevedo mentioned that if there were any other homes not in compliance, and if the variance would be granted, would they have adequate parking for two (2) vehicles.

Mrs. Lerbakken mentioned that there were a few mobile homes not in compliance, and that they parked their vehicles on the front of the mobile home parallel to the street, immediately in front of the mobile home, and they don't use the carports. She also mentioned that in the future they would like to add a deck in the front of the mobile home, if allowed, parallel to the side of the mobile home.

Mr. Tijerina mentioned that these particular lots were smaller since they are RV spaces not mobile home spaces. He stated that the subdivision plat was from 1978 and there were no records of any variances being done in this subdivision. On the other lots behind Rim Dr. are the mobile home lots which are larger; and also there were some encroachments on some of the required setbacks along City's ROW's, which are 50' B-B street and the 10' corner setback.

Vice Chairman Sheats mentioned that it seems that the HOA is not providing the proper information to all the property owners. He also stated that if the HOA allowed them to do it; staff has no records of any variances. Now because of all the encroachments they don't have the proper parking and they built on setbacks and it's wrong.

Mrs. Lerbakken mentioned that the HOA had signed her permit.

Mrs. Olivarez asked if the Texas room was a solid structure.

Mrs. Lerbakken replied that it was.

Mr. Friedrichs asked if this was going to be used as a living area or an enclosed patio and on the decking that Mrs. Lerbakken mentioned if it would be elevated to meet the mobile home height and if it would meet the front setback.

Mrs. Lerbakken mentioned that it would be a covered patio and the deck would be the same height as the mobile home and they measured from the curb line.

Chairman Sestin mentioned if the front setback is 15'.

Mr. Salinas mentioned that the setback to Rim St. is to be 13' and to Boot St. is to be 16', minus the 10' ROW from each would be 3' to Rim St. and 6' to Boot.

Mr. Tijerina mentioned that the mobile home was further up since it's placed on a RV lot, not a mobile home lot.

Mrs. Vicky Godlien, who lives on 102 Rim, mentioned that the park does have stop signs, and that a lot people don't have space to park their cars in front of their homes. She also stated that if staff or anyone else drives by their subdivision when there is an event, they would see that there is no parking space available in the rec hall and people park along the street.

Mr. Lerbakken said that 90% of the blocks were not in compliance and what was the City going to do about it; and he asked when the Ordinance changed from not allowing them to build on setbacks.

Chairman Sestin mentioned that the City will address that issue, and if needed, the Board would recommend that staff go out to the location and put red tags on non-compliant properties.

Mr. Salinas mentioned that Wagon City has been in existence since the 70' and that some of the violations have been there for ages and some were done without permits and over the weekends. In a lot of cases they don't report them. In this case, this is a mobile home parked on a RV space; if it would have been an RV this issue wouldn't have to be seen by the Board.

The City has done Heritage Square where staff went in and found numerous violations on setbacks encroachments and those violations were taken through ZBA for variance approvals; the City is not afraid to go in and bring of those violations for compliance. It all depends when the complaint is made, staff will be seen on a one to one basis. He also stated that if a property owner desires to continue building on an encroachment, there might be issues, and it will prolong the non conforming use.

Mr. Friedrichs asked if the deck was not built, would it then be in compliance with the front setback.

Mr. Salinas mentioned that this was a unique situation where a mobile home was placed on a RV lot, which it reduced the available space to add on, and even if they exclude the decking it still won't be in compliance because they have 13' and 10' is ROW and they don't have enough space for a car.

Chairman Sesin mentioned that a similar item was brought to ZBA and there was opposition.

Mr. Salinas mentioned that it was a front setback variance for an open carport and it was for a wheel chair ramp wanted to use it for shade, and there was opposition from Heritage Square.

Chairman Sesin mentioned that staff was recommending denial.

Mr. Tijerina stated that if this is allowed it will prolong the non-conforming use and it will continue not meeting the 10' corner setback and the 15' front setback.

Vice Chairman Sheats asked if the lots were grandfathered and if so, how would staff determine which ones are grandfathered, if it would be based on the date they bought their property or the date they moved in their unit.

Mr. Tijerina mentioned that staff would visit with City Attorney for advice, and would do the research on some of the RV lots to see the history of when they bought the property; he mentioned it will take some time to do all the research. He stated that if desired the park could do a mass variance or on a one to one basis.

Mr. Friedrichs mentioned that maybe the item should be tabled so that staff can meet with City Attorney to discuss the possibility of the existing structures being grandfathered.

Mr. Acevedo mentioned that if they have a 6' side setback since 1978 will that be legal.

Mr. Salinas mentioned that staff would need to look up old ordinances and see what they required back then. He stated that the City Ordinance has been in existence since 1989 and Wagon City has been there since 1978, if staff looks at the appraisal database, they would probably go back to the 1980's or 1990's, but they could go either way they can do what they did at Heritage Square and require the enforcement on all the corners.

Mr. Tijerina mentioned that staff has made their recommendation or they could table the item and gather more information.

Vice-Chairman Sheats stated that they don't want to make it harder for people, but they also don't want to create more problems to the subdivision. He stated that he was inclined to Table the item, and have staff do some research on maybe two blocks and get construction dates.

Mr. Tijerina mentioned that if the item is to be tabled staff would have no problem gathering information for the Board, but in his opinion the unit that is in question is larger for the lot where it's placed and having a living addition would be an immediate denial.

Mr. Acevedo asked if that the owner could move the unit back or maybe have an entrance thru the rear of the lot like the lot behind this mobile home.

Mr. Salinas mentioned that the rear lot was a mobile home lot and therefore was bigger in size than an RV lot. He also stated that they can do research on the RV portion of the subdivision.

Mr. Friedrichs, also asked if the owner could the mobile home be moved back to meet front setbacks, and if staff could also ask the City Attorney about the enclosure of the footprint; since they are not increasing the setback and encroachment already exists.

Mr. Tijerina replied that it would be a costly move the mobile home but it would not make a difference, since it that was placed on an RV lot.

There being no further discussion, Chairman Sestin entertained a motion. Mr. Friedrichs moved to Table the variance request as recommended by staff and to review the corner lots and get legal advice on the footprints. Mr. Acevedo seconded the motion. Upon a 2-2 vote, with Mrs. Olivarez and Mr. Sheats against the item being tabled. Being that the vote was tied,

Chairman Sesin moved to table the item and break the tie. A 3 to 2 vote to table the item.

**ITEM #2.0  
OTHER BUSINESS**

There was no other business.

**ITEM #3.0  
ADJOURNMENT**

There being no further business, Chairman Sesin entertained a motion to adjourn. Mr. Acevedo moved to adjourn. Mr. Friedrichs seconded the motion. Upon a vote, the motion passed unanimously at 4:50 p.m.

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Raul Sesin, P.E., Chairman  
Zoning Board of Adjustment