

**ZONING BOARD OF ADJUSTMENTS  
MAY 21, 2014  
CITY HALL'S COUNCIL CHAMBERS**

**MEMBERS PRESENT**

Ned Sheats  
Jaime Acevedo  
Mike Friedrichs  
Kathy Olivarez  
Sam Rodio

**MEMBER ABSENT**

Raul Sesin

**STAFF PRESENT**

Daniel Tijerina  
Bobby Salinas  
Annette Zavala  
Patricio Martinez

**GUEST PRESENT**

Lourdes Lerma

**CALL TO ORDER**

Vice-Chairman Sheats called the meeting to order at 4:30 p.m.

**CITIZENS PARTICIPATION**

Vice-Chairman Sheats 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 FEBRUARY 19, 2014**

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

**ITEM #1.1**

**CONSIDER A VARIANCE REQUEST TO HAVE A 2' 4" SIDE SETBACK WHERE A 6' IS REQUIRED TO KEEP EXISTING PERGOLA, AT 2426 E., 21<sup>ST</sup> ST., BEING LOT 37, SHARY VILLAS SUBDIVISION, AS REQUESTED BY MRS. LOURDES LERMA**

Mr. Roberto Salinas mentioned that the subject site is located APPROXIMATELY 300' east of Hackberry along the south side of E. 21<sup>st</sup> St., the lot measures 70' x 123', which equates to 8,610 sq., ft. There are no unique lot features. There are no easements running along the western property line. The applicant was in process of building a new 12.5' x 22' open pergola, when the City Inspector placed a stop work order on the structure for building without a permit. After learning that they were over the side setback, the applicant filed for a variance due to the cost of having

to re-locate the 8" x 8" wooden support columns. The applicant has also provided a letter from the adjacent neighbor (Jaime and Diana Tijerina) stating that they approve of the construction and have no concerns due to the proximity of the pergola to their property. The neighbors have the minimum 6' side setback to their house, leaving the total separation between the two structures at 8' 4".

REVIEW COMMENTS: The primary intent of the side setback is to have a fire separation between structures. Article XIII, Section 1.59. 3d of the Zoning code 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 fire wall requirement or increasing the side setback to the adjoin neighbor. With the neighbor's home being 6' from the property line, the option of increasing the side setback to 12' is not available.

1<sup>st</sup> Recommendation: Denial; not unique; self-inflicted; the neighbor's existing home does not have a fire wall, thus cannot have less than a 12' separation between structures. Applicant must re-locate the support structures to meet the minimum 6' side setback.

2<sup>nd</sup> Recommendation: If ZBA is inclined to approve the variance, the following conditions should apply:

1. Owners and neighbor must sign a hold harmless agreement that would protect the City if any damage occurs due to the proximity of both structures; and
2. Signing and recording a property encumbrance document that would require the setback to be met, is the structure is removed and would require the pergola to remain perpetually open.

Vice-Chairman Sheats asked if there was any opposition.

The audience remained unresponsive.

Vice-Chairman Sheats asked if the applicant or representative were present.

Mrs. Lourdes Lerma was present to address any questions from the Board.

Vice-Chairman Sheats mentioned that would it be fair to say they have granted variance on other structures similar to this attached to house, when its closer to the neighbor by maybe certain feet or inches, have they been mainly to the rear and over and easement or an alley and placed illegally.

Mr. Salinas mentioned that in other cases if there was an open road a drainage right of way something where they had an opening where they did not have two structures in between the improvements they have approved the variances.

Vice- Chairman Sheats this is between two neighbors and the neighbor is in agreeing to the separation, and the ordinance is in effect to protect the City and also protect the public in case of a fire, and it's a shame that contractors are still doing this and not advising the home owners that they need permits.

Mrs. Olivarez mentioned if there was enough space from the pool to the rear setback, and to the house.

Mr. Salinas mentioned that they have a 5' separation minimum from the house to the pool, and need tempered windows; there have been cases where they have a 3' separation between the house and the pool, and they did not check the rear setback.

Vice- Chairman mentioned that they can't go back and make them fire rate the walls.

Mr. Tijerina mentioned that as far as the polls they were using this area before as a driveway, and decided to change it into a pergola, the polls are 2' away from the side. They have an 8' separation 6' from the neighbor and 2' from the applicant, and if the board wanted to consider the variance, and has been approved in other cases.

Mr. Acevedo mentioned that even if they move the polls to be at 6' to comply the pergola would still remain there.

Mrs. Olivares mentioned if they could move the polls to align with the pool.

Mr. Tijerina mentioned that the cool deck on the pool is at ground level and is not considered a structure so the edge is at 6', even if they move them to be at 6' they are still infringing 2 ½ ' on the side setback.

Vice-Chairman Mr. Sheats mentioned that he didn't like the idea of them being onto the setback but the issue was if they remove the polls to be in compliance or leave as is.

Mr. Friedrichs mentioned that the roof looks like if it's overhanging and encroaching on the neighbor's property.

Mr. Rodio mentioned if the pergola stays there the two columns are in the center and they have 12" to work with, and they have that separation, if there is a fire the neighbor does not have a window on the bottom floor; but they have the window on the second floor and that is fire prevention. And the only way this can catch fire is if they start it on their own. And the issue is how they are going to settle the matter.

Mr. Friedrichs mentioned what if the applicant wanted to cover the structure could staff require some sort of document stating that the material used was fire proof.

Mr. Acevedo also mentioned that they can also have it remain perpetually open.

Mr. Tijerina mentioned that they could include what the board is asking them to do in the documentation if approved, and the pergola has been completed and the applicant will do some landscaping and the neighbor has no problem with it being there and there is also a letter made out to the City of support.

Mr. Acevedo mentioned that it's already done and they need to decide if they keep it or make them remove it.

Vice-Chairman Sheats wanted to know what the separation between the two structures.

Mr. Tijerina mentioned that the neighbor has 6' to his house to the fence and the pergola is 2 ½' from the fence, and to each of the houses there are 21' between the structures.

Mr. Rodio asked if they informed the contractor.

Mr. Tijerina mentioned that they advised him that they needed permits for any construction.

Mrs. Olivares mentioned if there were any penalties to the contractor and if they were the same contractor doing the work.

Mr. Tijerina mentioned they could make notes on their system of who has been advised of the procedure, and they are not always the same contractor who commits the offense.

Mr. Rodio mentioned that they need to make some kind of regulation where any contractor has to come to the City first and get proper permits and not blame the owner, and make the contractor pay the fees and charge them a 3% fee of the total cost of the construction, and after a few penalties paid the contractor will start showing up to get permits. He asked, If these changes and regulations are to come into effect who would approve the changes.

Mr. Tijerina mentioned that based on the minutes they could approach the City Manager, and eventually and take to the Planning and Zoning for approval and then to City Council for the Ordinance approval.

Vice-Chairman Sheats mentioned that they were all in favor of an Ordinance to come into effect and hold all contractors liable for fees that need to be paid by the applicant to approach the Zoning Board of Adjustments.

Mr. Rodio mentioned that all the contractors do is go to the owner sell the product and get their down payment do the work and leave, and then the City finds the offense and charges the owner the fees.

Mr. Friedrichs mentioned that the contractor should be liable for any costs to bring the structure up to code or for its removal.

Mr. Sam Rodio mentioned that the contractor should be imposed a 3% fine.

Vice-Chairman Sheats mentioned that if the Planning Department could work on an Ordinance and be put as an agenda item to be seen by the Planning and Zoning Board.

Mr. Tijerina mentioned that he would speak to Mr. Guerra City Attorney.

There being no further discussion, Vice-Chairman Sheats entertained a motion. Mr. Friedrichs moved to "approve" the variance request for the pergola, to remain at the 2 ½' side setbacks where a 6' is required as recommended by staff Mr. Acevedo seconded the motion. Upon a vote, the motion passed unanimously

**ITEM #2.0  
OTHER BUSINESS**

There was no other business.

**ITEM #3.0  
ADJOURNMENT**

There being no further business, Vice-Chairman Sheats entertained a motion to adjourn. Mr. Friedrichs moved to adjourn. Mr. Rodio seconded the motion. Upon a vote, the motion passed unanimously at 4:47 p.m.

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Ned Sheats, Vice-Chairman  
Zoning Board of Adjustment