

**ZONING BOARD OF ADJUSTMENTS
APRIL 17, 2013
CITY HALL'S COUNCIL CHAMBERS**

MEMBERS PRESENT

Raul Sesin
Ned Sheats
Jaime Acevedo
Kathy Olivarez
Mike Friedrichs
Sam Rodio

MEMBER ABSENT

STAFF PRESENT

Daniel Tijerina
Bobby Salinas
Annette Zavala

GUEST PRESENT

Carlos Perez
Roberto Rodriguez
Sandra Puente

CALL TO ORDER

Chairman Sesin called the meeting to order at 4:40 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 MARCH 20, 2013 & MARCH 27, 2013

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

ITEM #1.1

CONSIDER A VARIANCE REQUEST TO KEEP AN 8'8" CORNER SIDE SETBACK INSTEAD OF THE PLAT REQUIRED 15' CORNER SIDE SETBACK AT 1705 MELISSA RAE DR., BEING LOT 10, CROWN POINT SUBDIVISION UNIT II, AS REQUESTED BY MR. CARLOS PEREZ

Mr. Tijerina mentioned that the site is located on the NW corner of Crown Pointe Blvd., and Melissa Rae Dr., The site measures 132' x 150' (19,800 sq. ft.) The applicant is currently constructing a new 14' x 16' (about 90% complete) open patio on his lot. The City Inspector placed a stop work order once it was learned that a permit was not acquired.

- On 3-21-13 Mr. Perez applied for a building permit, which was proposing the new open canopy/patio to be within the 15' corner side setback. He was informed by Staff that the corner side setback was a minimum of 15'.
- Staff notes that the minimum R-1 (Single Family Residential) and R-1A (Large Lot Residential) side corner setback is 10'.

- Staff also notes that there is an existing 10' "landscape easement" on the south side of the site.
- Art. XIII, Sec. 1.59 (3b) of the City's Zoning Code states the following; "No accessory building shall project into the required yard along any street."
- Art. XIII Sec. 1.59 (3c) of the City's Zoning Code also states: " A ... canopy may project into a required side yard provided every part of ... canopy is unenclosed and not less than five feet from any side lot line."

REVIEW COMMENTS: If Crown Point Subdivision did not have a higher recorded corner setback, the code would allow for the open porch/canopy to project into the corner side setback leaving a minimum of 5' from the property line, i.e. the existing open canopy would be in compliance with our Zoning Code. Staff does not feel that this proposal would be detrimental to the area and since the lot is adjacent to a 66' wide right of way street, there is plenty of separation between the structures located to the south. Staff does not believe that the minor encroachment to the side corner setback and the 10' landscape easement will have a negative impact to the area, nor will it affect the use of the landscape easement.

If ZBA is inclined to approve the variance, Staff recommends that a hold harmless agreement be recorded which will include that the canopy remains perpetually open, and double permit fee as per the City's fee policies.

Planning Director Mr. Daniel Tijerina mentioned that there are two fences, an old one and a new one. He measured from the new one to the concrete fence, no property pins exposed and him not being a professional land surveyor he measured up to the concrete slab, he might have a little more than the 8'8" maybe 11' from the corner, plus the landscaping on the outside of the old fence.

Chairman Sesin asked if there was any opposition.

Planning Director Mr. Daniel Tijerina, mentioned that they had not received anything in writing but he did have a visit from the developer around two weeks before and Mr. Chris Voss was verbally in opposition. His concerns were the concrete slab, the cantera columns, the weight of the roof, and the rebar that was in place had not being inspected. Mr. Voss asked how we could be sure that it was going to support the weight of the roof? Mr. Voss stated that the open patio is also at the entrance of the subdivision. Mr. Tijerina he wanted to ensure that this was on the records since Mr. Voss was not present.

Chairman Sesin asked if the applicant or representative were present

Mr. Carlos Perez the owner of the property was present, he mentioned that they have had a lot of problems with Mr. Voss they know him since his wife was a patient of his. There is a pergola is around 30' feet away from this structure that was built 5' from the property line. Mr. Perez came to City seven years ago and obtained the permits, and they followed all the regulations from the homeowners association. When they decided to build the second one he went ahead and did the columns and was going to use the clay tiles since he knew Mr. Voss was going to complain about it, they have had issues with them for everything. Around 8 months ago, when they were going to replace the fence at their expense, which the Home Owners Association should have fixed since, they pay their dues. Mr. Voss told them no because one of his neighbors was upset that the fences were not going to match and that if he wanted to fix both sides of the fences at his expense. Mr. Voss told him that he could build anything he wanted but for it to be inside the fence so that's why he has two fences. When it came time to build the pool, over a year ago, they were not allowed to take the back fence off to pour the concrete for the pool so their basketball court was damaged due to the weight of the concrete trucks. They had to remove the fence from the front of their property to get it done. The Perez Family have lived there 9 years and they are at a constant battle with Mr. Voss, when they came to the city they were told that as long as it was less than 250 square feet, they didn't need a permit since no electricity was proposed and its not encroaching and its matching the house. He mentioned that he told Mr. Tijerina that he didn't think it was going to be such a big issue.

Chairman Raul Sesin asked if they have a HOA.

Mr. Perez mentioned that they do have a HOA and they have been there 9 years and never have seen records of where the money goes to, and he quoted Mr. Voss saying that he owns the majority of the lots so they don't have a Vice President or a President, he told him where does the money go to, no records, he does everything, when they did the fence Mr. Voss appointed one of the neighbors as his assistant and told him the fence could not be replaced. When they took the pictures of the outside they can see that the bougainvillea's are overgrown his fence is 7 feet high and they are over his fence, when they clean his pool most of the debris is from the overgrown bougainvillea's, and they were suppose the be maintained but they are the only ones that don't get cut, everyone else's are cut, they have so many issues with Mr. Voss.

Mr. Rodio mentioned that Mr. Voss, being the developer, should be present at the meeting if he wanted to challenge this variance.

Mr. Perez mentioned that after they got their pool permit they waited 2 weeks for Mr. Voss to approve their permit.

Mr. Friedrichs asked if they have an Architectural Committee?

Mr. Perez mentioned that Mr. Voss is the ACC, and the HOA. He does everything, that's why he did this to match the house and the hurricane ties did the 24" inches around, will be installed but they stopped since they had to come before ZBA. The canteras are filled with cement and there is rebar on the floor and in the cantera columns.

Mr. Rodio asked if they were using 16 x 16 rafters, and will continue to use the 12 x 12 doubled and if he had pictures of the work before.

Mr. Perez mentioned that he didn't have pictures but the contractor is not done and will comply with all the material needed, the person doing the work is the same who did the pool and he went thru the extra expense in buying the same floor tile to match the pool.

Mr. Sheats wanted some clarification on the terms being used he heard pergola cantera what was this structure called.

Mr. Tijerina mentioned that it was an open canopy; the term cantera are the columns that is what they are called, open means open on all four sides.

Mr. Acevedo mentioned if the fence was on the property line.

Mr. Tijerina mentioned that the 8'8" was from the new fence; he might have additional 2' feet if they measure from the old fence, and counting the landscaping.

Chairman Sesin reminded the Board that what was before them was the corner setback variance. Mr. Sesin stated that the open canopy was aesthetically pleasing. He further stated that there was miscommunication between staff and Mr. Perez.

There being no further discussion, Chairman Sesin entertained a motion. Mr. Sheats moved to approve the variance request as recommended by staff. Mr. Friedrichs seconded the motion. Upon a vote, the motion passed unanimously. Subject To: Double permit fee, Hold Harmless, and that the structure remains Perpetually Open.

ITEM #1.2

CONSIDER A VARIANCE REQUEST TO KEEP AN 1' REAR SETBACK WHERE 5' IS REQUIRED AT 923 N. ST. MARIE AVE., BEING LOT 18 & N. 30' OF LOT 17 BLOCK 164, MISSION ORIGINAL TOWNSITE SUBDIVISION, AS REQUESTED BY MR. ROBERTO RODRIGUEZ

Mr. Salinas mentioned that the site is located at the SW Corner of Tom Landry and St. Marie Ave., The site measures 70' x 150' and has an existing daycare center thereon. There are no unique features as to location or orientation. The applicant's renter inadvertently installed a cloth canopy on the rear of the property without first obtaining a building permit. The canopy serves as a sunscreen for the children's play open area. This type of cloth canopy is similar to those found in Bert Ogden auto sales where they are attractive, protect the vehicles and are perpetually open.

- On 8-15-12, ZBA approved two identical cloth canopies that were located along the front of an existing cake shop on Tom Landry and Slabough Ave. The reasons given for staff's favorable recommendation on those canopies were that they would perpetually remain open and that they were not a sight obstruction.

REVIEW COMMENTS: In regards to this particular application, the canopy is located in the rear of the daycare where there is an existing alley separating the next property. It does not cause a sight obstruction and it is merely in place to protect the children from the sun. Since the canopy will remain perpetually open, it is not a sight obstruction, ZBA has approved similar others, and there is an alley separating the next property, staff does not object to this variance.

RECOMMENDATION: No Objection to the variance request to a hold harmless agreement, which will also state that the canopy will always be "open" Also, a permit must be acquired and we must levy the double fee via code.

Chairman Sesin asked if there was any opposition.

The audience remained unresponsive

Chairman Sesin asked if the applicant or representative were present.

Mr. Roberto Rodriguez was present he mentioned the lady he leases to innocently put it up she did hire a contractor and assumed he got the permits, he was not aware on any violation he mentioned that he leases the property to Mickeys Day Care.

Chairman Sesin mentioned that if they could explain how this happen.

Mr. Roberto Rodriguez mentioned that one day he drove by and saw the canopy and he thought it look good but was not aware of any permits needed, since he leases the property, and then he received the letter from the City of Mission, and right away he called Mrs. Puente the owner of the day care.

Chairman Sesin asked if Mrs. Puente contracted someone to do the work.

Mrs. Sandra Puente the owner of the day care was also present and she mentioned that she paid a contractor and assumed that he had applied for all proper permits, and obviously he didn't she also mentioned that it cost her \$4000.00 to install it, and when she called the contractor and told him about the issue he mentioned that he would charge her \$2000.00 to remove it.

Mrs. Olivares mentioned if staff was aware of how much traffic flows thru there.

Mr. Tijerina mentioned that the old fire station and DPS is stationed next to them and they are very vigilant of that area.

Mr. Friedrichs mentioned that he had been at the site for over 10 minutes and there was no traffic going thru there.

Mr. Sheats mentioned that they should include on the hold harmless if there is a change of lease or ownership or the closure of the business the canopy should be maintained or be removed.

Mr. Tijerina mentioned that they do have the property maintenance code.

Mrs. Olivarez mentioned that there should also be a document about a document where the City of Mission would not be liable if an accident should occur and a car crash into the property.

Mr. Friedrichs asked if the canopy is fire rated or fire coated.

Mr. Tijerina mentioned that they would make their notes on the building permit for it to be fire retardant, and would also have fire department look into it.

There being no further discussion, Chairman Sesin entertained a motion. Mr. Acevedo moved to approve the variance request as recommended by staff. Mr. Friedrichs 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, Chairman Segin entertained a motion to adjourn. Mr. Sheats moved to adjourn. Mr. Acevedo seconded the motion. Upon a vote, the motion passed unanimously at 5:15 p.m.

Raul Segin, Chairman
Zoning Board of Adjustments