

**ZONING BOARD OF ADJUSTMENTS
JUNE 15, 2011
CITY HALL'S COUNCIL CHAMBERS**

MEMBERS PRESENT

Kathy Olivarez
Jon Lown
Ned Sheats
Keri Aman
Danny Tijerina

MEMBERS ABSENT

Jorge Garcia
Raul Sesin

STAFF PRESENT

Bobby Salinas
Sergio Zavala
Annette Zavala
Sonia Carnes
Roberto Salinas
Gilbert Sanchez

GUESTS PRESENT

Orlando Leal
Yesenia Rodriguez
Gabriela Silva
Ken De Jarnett
Sally Frausto Cuellar
Sergio Salinas
Blanca Salinas
Leo Montalvo

CALL TO ORDER

Chairwoman Kathy Olivarez called the meeting to order at 4:44 p.m.

CITIZENS PARTICIPATION

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

APPROVAL OF MINUTES FOR APRIL 27, 2011

Chairwoman Olivarez asked if there were any corrections to the minutes. Mr. Sheats moved to approve the minutes as presented. Mr. Lown seconded the motion. Upon a vote, the motion passed unanimously.

ITEM #1.1

CONSIDER A VARIANCE REQUEST TO HAVE A 2' SIDE SETACK INSTEAD OF THE REQUIRED 6' SIDE SETBACK AT 2503 SEQUOIA DR., BEING LOT 48, LOST PINES SUBDIVISION PHASE II, AS REQUESTED BY MR. SERGIO SALINAS

Mr. Roberto Salinas mentioned that the site was located 84.5' east of Torrie Ln. along the north side of Sequoia. This lot measures 81' x 125' and there are no unique lot features as to location or orientation. The applicant was in the process of building a new 6'x8' pool house (changing room) when 'stopped'; also there is a desire to have a 6'x12' barbeque/bar area. Section 1.17 (2) Powers of Board of Adjustment: The board shall have the power to authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest, where *owing to special conditions*, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance

shall be observed and substantial justice done. Such variances from the strict application of the terms of this ordinance must be in harmony with its purpose and intent, and shall be authorized only when this board is satisfied that the applicant has proven the following conditions exist: *(f) that the variance will **not** merely serve as a convenience to the applicant.* The primary intent of the side setback is to have a fire separation between structures. The neighbor's home is approx. 6' from the property line, leaving only 8' of separation. Staff met with the owners on 6-6-11 to see if there were any other areas that may be used. Two other locations (L1 & L2 on the site plan) were pointed out: 1) Adjacent to the side of the house and 2) West of the patio. On the 1st location, the owners stated that it would be "a long walk" for their grandchildren from the pool to the changing area, though it's approximately an additional 10'; and it is where they want to place a future swing set for the kids. On the 2nd location, the owners stated that it would cover their view from the patio. It seems that this location is palatable though since the side setback would be complied with, and it would be the same distance from the pool as currently proposed, which allays their *distance* concern.

Staff Recommendation: Denial due to: The structure's location can obviously be modified to meet the 6' side setback. The lot is not unique; there is 18'-3" on that side that can be used. The structure would not be meeting the fire separation requirement, where others are in compliance. Identical lots have complied with the City's regulations at Lost Pines.

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.

Mr. & Mrs. Salinas, the applicants, passed out a letter to the board, and Mrs. Salinas read it, see Exhibit "A".

Chairwoman Olivarez mentioned that in this country they were required to get building permits and follow rules, and if not informed, they could call and ask questions. She asked them if they were from Mexico and if they had just moved here. Chair Olivarez said that ZBA was very rigid on their regulations. She added that if the lot had been an irregular lot, there would have been some kind of consideration.

Mrs. Salinas mentioned that they were from Mexico but lived in the United States but recently moved to Lost Pines. Mr. Salinas mentioned that there were other neighbors that had the same structures as he did and asked what would happen to them?

Mr. Daniel Tijerina replied that they could speak to the Planning Department at a later date, to make their complaints and the City would take the proper steps to address them.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Lown moved to deny the variance request as recommended by staff Mr. Sheats seconded the motion; upon a called vote, the motion for denial was approved.

ITEM #1.2

CONSIDER A VARIANCE REQUEST TO HAVE A 3.5' REAR SETBACK INSTEAD OF THE REQUIRED 4' REAR SETBACK AT 1517 OAK DR., BEING LOT 60, ORANGE BLOSSOM SUBDIVISION, AS REQUESTED BY MR. ADVENTO SALINAS

Mr. Roberto Salinas mentioned that the site was located on the NW corner of Dora Jeanne Dr. and Oak Dr. The lot measures 67' x 118', There are no unique features as to the lot location or orientation. There is a 10' utility easement along the north (rear) lot line. The 'proposed' 12' x 12' (144sqft.) shed has a 3.5' rear setback. The min. rear setback for an accessory structure is 4'. A storage room under 200 sq. ft., does not require a building permit; however we do require that they meet minimum setback requirements. The applicant is requesting to keep the storage room *as is*.

Similar requests include:

- 1.) 2-17-10 approval of a 3.5' rear yard setback for a pergola at 4102 San Roman. (Adjoined ditch to the rear side)
- 2.) 10-21-09 approval of a 2' rear yard setback for a storage shed at 2809 Santa Olivia. (Adjoined a 20' alley to the rear side)

Staff Recommendation: Approval; fire-rate the infringing wall due to minimal encroachment; sign/record Hold Harmless Agreement to potentially remove entire building off of easement.

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 applicant was not present.

Chairwoman Olivarez asked if there were utilities running within the 10' u.e.

Mr. Bobby Salinas replied that there were cable and telephone lines running through there.

Mr. Tijerina mentioned that 'if approved', he would recommend the owner obtain letters of approval from the utility companies. He observed in the power point that there were some support poles that needed to be removed.

Mr. Sheats mentioned that if the driveway was into the setback.

Mr. Salinas mentioned that the poles were removed and they had obtained a permit to pour concrete on the property; they could be up to 2' ft from the property line.

Chairwoman Olivarez mentioned that if the variance would get approved with all the requirements what would be needed to fire rate the wall, and if this was a new construction.

Mr. Salinas mentioned that adding fire rated sheet rock in the interior walls, and inspection of the work to be done and obtain pictures could do it. Staff was not sure if this was new construction.

Mr. Sheats mentioned that there was an expert in the audience, and if sheet rock on the interior of a construction is that usually used to prevent fire.

Fire Marshal Gilbert Sanchez mentioned that even they usually require drywall on both sides. If the structure has electrical outlets within the void of the exterior wall, that means a fire could occur because it is a combustible material and would spread.

Chairwoman Olivarez mentioned that the house next to it seemed to be on the setback also.

Mr. Bobby Salinas mentioned that it would be seen at a later time.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Sheats moved to deny the variance request. Mrs. Aman seconded the motion. Upon a vote, the motion was denial was approved by a 5-0 vote.

ITEM #1.3

CONSIDER A VARIANCE REQUEST TO HAVE A 2.2' SIDE SETACK INSTEAD OF THE REQUIRED 5' SIDE SETBACK AT 1906 SPARROW, BEING LOT 83, TANGLEWOOD AT BENTSEN PALM SUBDIVISION PHASE I, AS REQUESTED BY INTERNATIONAL BANK OF COMMERCE c/o DAVID GUERRA

Mr. Roberto Salinas mentioned that the site was located on 415' north of Green Jay Dr. along the west side of Sparrow Ln. The lot measures 65' x 125', there are no unique features as to the lot location or orientation. Staff brought attention to the 'off-set' property lines from the lots west of the subject site. Applicant recently acquired this home, built in 2008 by Jimco Homes

The home was supposed to be built with at least 10' on each side. Evidently, the foundation was placed by the contractor using the wrong rear pins from Lot 17, (lot north of 83), which are off-set by approx. 12'. By using Lot 17's rear pins and Lot 83's front pins, it created a new *irregular* lot that was difficult to see by the City inspector while in the field.

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

Mr. Ken DeJarnett, the Director of Development for Rhodes Enterprises they are the Developers of Tanglewood at Bentsen Palm Subdivision, and are also the owners of the vacant lots in the subdivision and of lot 84, which is immediately to the north adjoining Lot 83; they are in opposition of the variance. He stated that it "clearly decreases the market value" of the adjoining lot, and the marketability of the future house being that close to the adjoining lot line even if they set their house off the minimum distance, it will be less appealing to the buyer. And with respect to marketing, Mr. DeJarnett works the sales floor with his staff regularly, and he knows the character of Tanglewood is and how important the restrictions are to the buyers. They are a very restricted subdivision and their plat notes require a minimum of 5' side setback. He has a letter in opposition to the variance from Rene Zamora the Chairman from the homeowners who was unable to attend (letter was not submitted to staff). Mr. DeJarnett also mentioned that if they approve this, then other applicants would want to do the same. They have had issues with people wanting to build on the property lines, and they enforce the setbacks and do not get approved in their HOA review process. The plan that was submitted at permit stage was approved, but they took shortcuts. They as a construction company, have each lot staked by a professional surveyor and then they return when the floor plan is designed, and verify the location and the elevation for flood purposes also. He mentioned that Jimco the company took shortcuts.

Chairwoman Olivarez asked staff what would happen if the variance would get denied, and who would bare the cost, and if the contractor had a bond.

Mr. Salinas mentioned that the applicant would need to apply for a remodeling permit and adjust the house to meet setbacks; and if they fire

rate the walls, it would eliminate the windows. The owners would have to bare the cost, and he was not aware if the liquidated contractor had a bond.

Mr. Sheats mentioned that they would have to fire rate the walls.

Mrs. Aman asked if the house was re-possessed by the bank; if so, the applicant was International Bank of Commerce and in order to sell the house, they need this variance.

Mr. Salinas replied it was a re-possessed home and IBC was the one asking for the variance.

Chair Olivarez asked if the applicant or representative were present.

Mr. Leo Montalvo, an attorney from McAllen who is also representing the bank, "strongly disagreed" with Mr. DeJarnett's comments. He mentioned that the lots were 65' on width and 125' in length, and the bank is an "innocent owner". The bank foreclosed on Jimco who bought two lots from Mike Rhodes, the developer. The bank foreclosed after they gave notice to the contactor and Rhodes had subordinated its lien on this particular lot. Rhodes had the opportunity to salvage it to buy the house Mr. Montalvo believed there were "hard feelings" between the two parties.

Chairwoman Olivarez asked if the lot next to it had a house built on it; and if the bank could buy the extra 3' from the adjoining lot since the width of the lot is 65'.

Mr. Montalvo replied that there was no construction on the adjoining lot, and if they subordinated the lien, it was at their own risk. The bank has incurred a substantial amount of expenses. He believes that the City of Mission should bare some responsibility as well; when the contractor forms the layout, and the city requires a 10' setback between two lots and all of a sudden it's diagonally outlined, and they wind up with an encroachment of 2.8" on a 5' setback. It's interesting that in most cities it's 12' separation between homes on separate lots. He also mentioned that the bank could buy the 3' needed. The bank is an "innocent owner" at this point. He's not blaming the developer either but does not want IBC to be held hostage because the contractor messed up and the city maybe didn't properly inspect the side setback at the time.

Mr. Montalvo said that they have talked to Rhodes and one option is to buy 3' from Lot 84, and have a 5' setback, and IBC would probably would be doing that if the price is right. Another option is for the board to grant the variance and require any future construction on lot 84 to have a setback at 8', as opposed to the 5' on the north side.

Chairwoman Olivarez mentioned that the price of the 3' should be worked out between the developer and the bank; the board cannot regulate the price or coordinate negotiations.

Mr. Montalvo mentioned that the board had the option to grant the variance.

Chairwoman Olivarez mentioned that she wanted Mr. Sergio Zavala Planning Director to explain what he thinks should happen or happened at that time. She opined that the City should be liable for some of the error that occurred since someone in the city messed up.

Mr. Zavala believes that the building inspector, which he is no longer with the City, was following the lines that the contractor placed at that time, and the inspector believing that they were a professional contractor, followed the strung-up lines & passed the setback. Like Mr. DeJarnett mentioned, the contractor did not want to invest on a professional surveyor thus they went and looked for the property pins on their own, and found the wrong ones. Regarding accountability, that's for someone else to determine and discern. A 2.2" setback where 5' is required is evident but, like Mr. Montalvo mentioned, a 6' is typical. This property is in a PUD, and they sometimes deviate the setback; that's the case with Hunt Valley also. If the other house is built at the minimum 5' setback, there will be a 7.2" separation only.

As to the City being "at fault" he limits that perception since ultimately Jimco is the responsible one; we don't have Jimco to testify but if he got a survey, they would not be here at this time.

Fire Marshal Gilbert Sanchez mentioned that the codes Fire uses are residential; that the setbacks they used are as to PUD requirements at a minimum 5' on each lot. In regard to dangers when there's a structural fire and it gets into the roofline, it radiates heat and that's the main concern.

Mr. Sheats mentioned that the only way to mitigate the heat was to fire treat the entire half of the house.

Chairwoman Olivarez mentioned that the bank should buy the 3' or rebuilt the part that's encroaching.

Mrs. Aman mentioned that she would prefer to table the item to give both parties opportunity to try and resolve the issue at hand.

There being no further discussion, Mr. Tijerina moved to "Table" the variance request. Mr. Sheats seconded the motion. Upon a vote, the motion to 'Table' the item was unanimously approved.

ITEM #3.0
ADJOURNMENT

There being no further business, Chairwoman Olivarez entertained a motion to adjourn. Mr. Lown moved to adjourn. Mr. Sheats seconded the motion. Upon a vote, the motion passed unanimously at 5:28 p.m.

Kathy Olivarez, Chairwoman
Zoning Board of Adjustments