

**ZONING BOARD OF ADJUSTMENTS
JULY 16, 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
Irasema Dimas

GUEST PRESENT

Yesenia Trevino

CALL TO ORDER

Vice-Chairman Sheats called the meeting to order at 4:35 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 MAY 21, 2014

Vice-Chairman Sheats asked if there were any corrections to the minutes. Mr. Friedrichs mentioned that he had submitted some corrections to staff. Mr. Rodeo moved to approve the minutes subject to the corrections submitted by Mr. Friedrichs been made. Mr. Friedrichs seconded the motion. Upon a vote, the motion passed unanimously.

ITEM #1.1

CONSIDER A VARIANCE REQUEST TO KEEP A 6" CORNER SIDE YARD SETBACK AND A 37" REAR YARD SETBACK WHERE 10' IS REQUIRED FOR AN EXISTING OPEN PERGOLA, AT 224 SAN JACINTO ST., BEING LOT 59, BLOCK 20, CIMARRON COUNTRY CLUB SUBDIVISION SEC., I PHASE IV, AS REQUESTED BY MRS. YESENIA TREVINO

Mr. Bobby Salinas mentioned that the subject site is located on the north eastern corner of San Jacinto Circle. The lot measures 50' x 115', which equates to 5,750 sq. ft. There are no unique lot features as to location or orientation of the lot. There are no easements running along the east or south property lines. The plat notes require minimum building setbacks of 10' on the corner side and 10' on the rear.

- On 6-9-14 The building inspector was asked to perform an inspection for a new pool when he noticed a new pergola was being built without a permit. The City Inspector then placed a stop work order for the new construction. During the inspection the Inspector noticed the side and rear setback encroachments.
- After learning that they were over the corner side and rear setback, the applicant filed for a variance due to the cost of having to re-locate the wooden support columns.
- The applicant has also provided a letter from the HOA, however there is no mention of the pergola's approval in the letter.
- Section 1.17(2) Powers of Board of Adjustments: 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: (a) that a literal enforcement of the provisions of this ordinance will result in unnecessary hardship. Financial hardship is not sufficient to show unnecessary hardship. (c) that the unnecessary hardship was not self-inflicted. (f) that the variance will not merely serve as a convenience to that applicant.

REVIEW COMMENTS: ZBA has seen several accessory structures 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 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 10' side corner and rear setback, since the lot is not unique or irregular.

RECOMMENDATION: Staff recommends denial due to:

- The structure can be modified to meet the required setbacks.
- The lot is not unique or irregularly shaped;
- Allowing the structures to remain as is will merely serve as a convenience to the applicant;
- Similar cases have had to re-locate their accessory structure to comply with setbacks;

- Approval would set precedence that will have a negative impact on future variance requests.

Vice-Chairman Sheats asked if there was any opposition.

The audience remained unresponsive.

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

The applicant Mrs. Yesenia Trevino mentioned that she didn't know what was going on.

Vice-Chairman Sheats explained to Mrs. Trevino what happened and the reasons why she was at ZBA.

Mr. Daniel Tijerina also explained to Mrs. Trevino and also gave her some solutions on how to resolve the encroachment violation.

Vice-Chairman Sheats stated that the pergola was built on pavers or concrete and that it looked like they also had a kitchen area along the side of the house.

Mrs. Yesenia Trevino replied that it was a bar-b-que area.

Vice-Chairman Sheats stated that they would need to remove all the concrete that they pour all the way to the property lines.

Mr. Daniel Tijerina replied that it would only be the columns for the pergola.

Vice-Chairman Sheats mentioned that then they would need to come up with a solution as to overhanging the roof on 3 columns only in order to meet the corner side setback.

Mr. Friedrichs stated that it seemed that the last pole was also encroaching into the setback.

Mr. Daniel Tijerina replied that it was complying with the 10' rear setback.

Mr. Yesenia Trevino asked if she would need to remove all the poles.

Mr. Friedrichs replied that she would need to with the exception of 2.

Mr. Daniel Tijerina explained a little more as to what she could do in order to keep the pergola.

Mrs. Yesenia Trevino asked if she could hang the pergola to the wall.

Vice-Chairman Sheats replied that the wall would also need to be removed.

Mr. Acevedo and Mr. Tijerina both replied that the wall didn't have to be removed because it was part of the fence.

Mr. Rodio asked if there was something that they could do or figure out to come out of the wall in an angle in order to keep the pergola. He also stated that the biggest thing that he had was with the contractor and that this was the second time that they bring this type of variance in the last two months, where the owner hires a contractor and relies that they would acquire the proper permits and the contractor doesn't at the end the property owner is the one that stays the violation and the problems of requesting the variance.

He mentioned that he would like to request that the Zoning Board of Adjustments meets with the Planning and Zoning Commission in order to come up with a resolution as to get this type of contractors to come and obtain a permit or end up with some type of fine.

Mr. Tijerina replied that in order to answer Mr. Rodio's first question, he believes that a solution of hanging the pergola out of the wall in an angle would not meet regulations, because the wall was on the property line and the pergola would still need to meet the corner setback.

Mr. Rodio mentioned that if Mrs. Trevino moved the poles to an area where they are meeting regulations then she will be able to support the whole pergola.

Mr. Daniel Tijerina stated that staff would guide or help Mrs. Trevino as to what she can do in order to keep the pergola, but at that point the board need it to decide if they were going to approve or deny the variance request.

Vice-Chairman stated that he doesn't remember approving any other encroachment of that magnitude, especially in the Cimarron area and it's a shame to see all of this problems occurring due to the contractors not obtaining their permits. He stated that in his opinion there was nothing that could justify approving the variance.

He stated that he would also ask the board to make a motion as to sending the boards opinion not only to the P&Z but to the City Manager and to the City Council on the contractor's that don't obtain permits since the property owners are getting ripped off.

Mr. Rodio stated that he would like to make that motion.

Mr. Daniel Tijerina stated that if he may interrupt, what would be in order it would be take an action on the variance and then after that in other business discuss this issue.

Mrs. Olivarez asked Mr. Tijerina if there was some type of a code where they require some percentage of open area because it seemed that this property doesn't have much open space on the back of the property.

Mr. Tijerina replied that the code stated that 30% of the total square footage of the property would need to remain open.

After a brief discussion, Vice-Chairman Sheats entertained a motion. Mr. Rodio moved to "deny" the variance request as recommended by staff. Mr. Friedrichs seconded the motion. The motion passed 3-1 with Mr. Acevedo dissenting.

Thereafter Mr. Rodio mentioned that it was the board's best interest to try and help the property owners that have been taken advantage of by the contractors and will urge staff to relate the information to the City Manager as well as the City Council.

ITEM #2.0
ADJOURNMENT

There being no further business, Vice-Chairman Sheats entertained a motion to adjourn. Mr. Friedrichs moved to adjourn. Mrs. Olivarez seconded the motion. Upon a vote, the motion passed unanimously at 5:18 p.m.

Ned Sheats, Vice-Chairman
Zoning Board of Adjustment