

**ZONING BOARD OF ADJUSTMENTS  
AUGUST 1, 2012  
CITY HALL'S COUNCIL CHAMBERS**

<b><u>MEMBERS PRESENT</u></b>	<b><u>MEMBERS ABSENT</u></b>	<b><u>STAFF PRESENT</u></b>	<b><u>GUESTS PRESENT</u></b>
Kathy Olivarez	1 VACANCY	Bobby Salinas	Mike Rhodes
Raul Sesin		Sergio Zavala	Jose & Odilia Enriquez
Danny Tijerina		Annette Zavala	Jaime Gonzalez
Jorge Garcia			Juan Lara
Jon Lown			Feliza Taylor
Mike Friedrichs			Miguel Brito

**CALL TO ORDER**

Chairwoman Olivarez called the meeting to order at 4:34 p.m.

**CITIZENS PARTICIPATION**

Chairwoman Olivarez 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 JUNE 20, 2012**

Chairwoman Olivarez asked if there were any corrections to the minutes. There being none, Mr. Garcia 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 0' INNER YARD SETBACK WHERE 6' IS REQUIRED AND TO HAVE A 10' REAR SETBACK WHERE 25' IS REQUIRED BEING LOT 21, BLOCK 4, OAKWOOD ESTATES SUBDIVISION, AS REQUESTED BY DASC, INVESTMENTS**

Mr. Salinas explained that the subject property is located at the NW corner of W. Griffin Parkway and Kristi Lane. The lot is part of a 1982-recorded plat where the original intent 30 years ago was a residential community. However, with the widening of Griffin Parkway into a 7-lane major thoroughfare, the adjoining properties are transitioning to a commercial use instead of the originally intended SF homes. This lot was commercially rezoned where it is typical for a commercial inner side yard setback to include a 0' setback if the structure is fire-rated and no storm rain diverted onto the adjoining lot. Regarding the rear setback request, the recorded plat notes mandated a 25' rear setback, too, where the normal setback in 1982 for an R-1 lot would be 10'. Since there is a 10' u.e., the 10' rear setback for

any use should not be less than 10'. Staff's recommendation was approval of 0' inner side yard setback subject to compliance to building code requirements; and approval of a 10' rear setback.

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

The audience remained un-responsive.

Mr. Garcia asked if the property was rezoned, was variance to the side setbacks, all they were looking at.

Mr. Salinas mentioned that if the building is fire rated the side setback could be at 0' instead of the required 6'.

Mr. Sestin mentioned that the plat required higher setbacks, but the zoning ordinance allows a 0' lot line construction as long as its fire rated, and there is no run off being discharged to the adjacent lot. He asked how the slope was, and also what the building was going to be used for.

Mr. Salinas replied that it was going to be a car lot, and because of the setback imposed they wanted to have more space for the inventory they will have.

Chairwoman Olivarez asked if the building would impair visibility.

Mr. Salinas said that by reducing the rear setback this would maximize visibility.

Chairwoman Olivarez asked if the applicant or representative were present.

Ms. Feliza Taylor from Taylor Construction was representing the client, who wanted to build a car lot and when they saw the setbacks it did not give them the room needed; thus, they would prefer the building to be as far back as possible. She mentioned that, they have a new proposed layout of the building showing the car display. They had met with an engineer for the drainage, where the water would run to the east of the building.

Mr. Sestin asked where the run off water would go.

Ms. Taylor mentioned that the building has a head roof and will drain to all four sides.

Vice-Chair Sestin said it would not work.

Mr. Salinas mentioned that all the water should be flowing to the east away from the property to the west.

Ms. Taylor said that's what they proposed, but if they need to make changes, it they would.

Ms. Taylor mentioned that they had spoken to the City Engineer and he told her it could drain to the back and to the right, since they had plenty of room. She mentioned that the drainage layout was submitted with plenty of time.

Mr. Sesin mentioned that, for the record, they could not run their water to the adacent lot.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Sesin moved to approve the variance request as proposed. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #1.2**

**CONSIDER A VARIANCE REQUEST TO HAVE A 8.6' FRONT SETBACK WHERE A MINIMUM 20 IS REQUIRED AT 2009 JOANNA AVENUE, BEING LOT 14, BLOCK 2, NORTHSIDE SUBDIVISION, AS REQUESTED BY MR. JUAN F. LARA**

Mr. Salinas mentioned that the site is approximately 500' north of 22<sup>nd</sup> Street along the west side of Joanna Avenue. The surrounding properties are all from the Northside Subdivision; are all zoned R-1; and are all conventionally shaped with identical dimensions of 112' x 60'. The 2003 survey reflects a single-family brick home with a carport along the front with a current front setback of 28.6'. In viewing the general neighborhood, especially on this block, all the other homes and / or carports seem to be compliant to the minimum 20' standard. Combined with the fact that there are no unique characteristics on the property, staff did not see any compelling reason to allow such an extreme variance, i.e., an 8.6' front setback where 20' is required and where others are. An alternative may be to install a steel I-beam support with fastened roof overhang affixed to said steel structure at the 20' setback mark. Staff noted that staff received a letter of opposition from an adjoining neighbor via the mailed notices. Recommendation: Denial; alternative to meet code remains via steel I-beam alternative.

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. Juan Lara, the property owner, said that he wanted to build an extension to the carport. He wants some coverage for his vehicle and he needs it to be within the 20' setback.

Chairwoman Olivarez asked if he had seen some of the options for the carport they had recommended.

Mr. Lara mentioned that he had but it would exceed his budget.

Chairwoman Olivarez mentioned that the I-Beam was something that has been done in the past, and has worked for other applicants.

Mr. Lara mentioned that he understood but he wanted a simple carport not to the extreme of having an I-beam.

Mr. Sesin mentioned that in the survey there was a metal storage on concrete blocks that appear to be encroaching on the rear setbacks, and a carport that seems to be encroaching as well and the side setback is also being encroached, and if staff is also going to address these issues also or are they being ignored.

Mr. Salinas mentioned that they were not being addressed at this time.

Mr. Zavala mentioned that by the time he saw the application and saw the exhibits the notices had being mailed out, so they focused on the request of the carport, the front setback is at 28.6' he is currently exceeding the minimum setback. Regarding the 5' side setback, at one time the zoning code did allow that. Mr. Zavala encouraged ZBA to focus on the variance before them. The I-Beam that has been used by others has worked before, and its one of the alternatives Mr. Lara has. Neither staff nor ZBA typically consider the applicant's finances; this is not a compelling issue. The code indicates that financial hardship, standing alone should not be weighed in the final action. Insofar as the metal storage building, this was discovered after the fact but is likely grand fathered.

Mr. Sesin asked if there were any other structures around the surrounding neighborhood that were not in compliance.

Mr. Zavala mentioned that staff had visited the area to see if there were any structures not in compliance to the front setback, none were seen.

Mr. Sesin wanted to be consistent. He understood the financial requirements to comply with the type of design required, but if the I-beam option was used, Mr. Lara wouldn't need a variance.

Mr. Zavala mentioned that if the applicant would do the I-Beam, he would comply with the required 20' front setback.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Tijerina moved to deny the variance request as recommended by staff. Mr. Lown seconded the motion. Upon a call for a vote, the motion passed unanimously.

**ITEM #1.3**

**CONSIDER A VARIANCE REQUEST TO HAVE A 12' FRONT SETBACK WHERE 20' IS REQUIRED (VIA PLAT NOTE) AT 3805 HERON WAY BEING LOT 157, RETAMA VILLAGE PHASE II SUBDIVISION, AS REQUESTED BY MIKE RHODES.**

Mr. Zavala mentioned that Staff has provided a vicinity map of the property being in the Bentsen Palm Development within a phased residential community called Retama Village. The lot is substantially rectangular like most of the other platted Retama lots. However, there is a portion of the lot that is irregular that induces a setback conflict with the proposed masonry column needed for the open coach carport. Viewing the site plan, it is clear that the irregularly shaped portion of the lot is causing the setback issue. Though the subject lot is not entirely rectangular as the other lots, it is still held to the same standard 20' front setback via the recorded plat note.

Please be advised that this disparity would not be an issue in other similar R-1 subdivisions where our Zoning Code allows a 10' front setback when a cul-de-sac type feature is evident, i.e., Sect. 1.59-2(e)(1). The proposed front setback to the support column is 12'. Imposing the 20' setback would also cause the coach port to be out of alignment to the main structure where in most of the other Retama lots, the coach port is in alignment to the home's setback, too. Recommendation: Approval due to unique circumstances of the Lot merit special consideration; our Zoning Code reduces the setback to 10' when such irregular cul-de-sac type features are evident.

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. Mike Rhodes said that he had previously met with Julio and Mr. Zavala and he wanted to bring ZBA members up to date about Retama Village so they could be familiar with them and if they have not been out there, they are a 2500 acre community. They are PUD and have different setbacks. They are unique because they have 3000 acres of habitat around them; they

have 11 different communities with different price points. They are asking for the variance to have all homes uniform. They also have their own private streets, and have a speed limit of 15 mph. Without the variance, the lot would be unusable.

Chairwoman Olivarez mentioned that she had being out to the community to cover a story about theses houses because they were so unusual, she likes all her "ducks in a row" so this variance would align the homes.

Mr. Sesin mentioned that if there should be a hold harmless just to make sure that if someone goes into that particular corner, the City would not be liable.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Sesin moved to approve the variance request as recommended by staff subject to a Hold Harmless as indicated. Mr. Tijerina seconded the motion. Upon a call for a vote, the motion passed unanimously.

**ITEM #1.4**

**CONSIDER A VARIANCE REQUEST TO A.) RETAIN A 5' FRONT YARD BUILDING SETBACK WHERE A 20' IS REQUIRED (OPEN METAL CARPORT), B.) TO RETAIN A 2' CORNER SIDE YARD BUILDING SETBACK WHERE 10' IS REQUIRED (STORAGE SHED), C.) TO RETAIN A 2' REAR YARD BUILDING SETBACK WHERE 10' IS REQUIRED (OPEN CARPORT), AT 2502 LINCOLN AVENUE, BEING LOT 40, WOODLAND RIDGE SUBDIVISION, AS REQUESTED BY MR. JOSE ENRIQUEZ.**

Mr. Salinas mentioned that the site is at the NE corner of W. 25<sup>th</sup> Street. & Lincoln Avenue; the corner lot has dimensions of 75' x 102.5'. The properties are uniformly conventional are not unique in shape, dimensions, or location. On April 10, 2012 Code Enforcement mailed a letter of the various violations to the applicant wherein the response was instead of removing the front carport, relocating the storage shed, or adjusting the rearmost supports columns, they'd rather ask for variances for all 3 areas of infraction. In conferring with Mrs. Enriquez at the site on April 12<sup>th</sup>, she indicated that the improvements have been evident for bout 4-5 years though no building permits had been applied for.

Variance a) Front open carport: the metal carport has a 5' front setback where 20' is required; recently, the ZBA viewed several carport infractions on RV lots where, if possible, the setback could be met if a steel support I-beam could be installed with an overhang roof. The front of this house is at 20' thus there is no option for such an I-beam measure; the other houses on this row of lots are compliant to the 20' setback.

Variance b) Storage Shed; It's on the corner side inducing a 2' corner side yard building setback; the ZBA considered & denied similar variances elsewhere with a similar corner setback violation; in viewing the rear yard of the Enriquez site, there seems to be room to the NE area but this would entail the removal of the carport's roof to allow the shed to be relocated. Mr. Salinas said that a plat note of this corner lot not accessing 25<sup>th</sup> St. meant that the carport had to be removed from the rear of the lot.

The applicant provided a list of 9 signatures reflecting 5 area properties that do not object to the variances solicited.

Recommendation: The front carport should be removed; it is too out of alignment to adjoining others; the shed at the corner should be relocated to the NE with a 6' side setback & 4' rear setback; the carport's should be removed due to the plat note.

Regarding the rear carport, if they had applied for a permit, it would have been addressed at that time.

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. Enriquez mentioned that the reason he had the carports was to maintain the vehicles inside the property, and to protect them from hail damage.

Mr. Sestin asked why he didn't obtain building permits.

Mr. Enriquez replied that, at that time, he was out of town, and the people that did it were not aware they needed a permit especially since there is no electricity.

Mr. Sestin asked what was on the north corner of the lot.

Mr. Enriquez mentioned that it was the other half of his lot.

Mr. Sestin suggested that the carport be relocated from Lincoln Ave., since it looks like it could meet setbacks and maybe have a sidewalk to the house. This would still protect the vehicles from the elements; with proper guidance from the City, it would work.

Mr. Sestin asked if there were any other structures that were not in compliance.

Mr. Enriquez alleged that there were in other similar violations around the subdivision.

Mr. Sestin mentioned that staff would look into it to see if permits were issued and, if so, they would be taken care of. One violation does not justify the other, he said.

Mrs. Enriquez said that Landmark Construction built her house. She worked for that company at that time when they built the house. They proceeded to add the carports and the shed thinking it was included with the house plans. And the shed relocation could not be placed in the rear because they have the transformer box. They could remove the awning; they don't have a problem with that.

Chairwoman Olivarez mentioned that they didn't obtain a permit and they should have.

Mr. Sestin mentioned that they have utility lines running thru the back area so they are encroaching on the easement. There is room and they have to explore the options mentioned during the meeting.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Tijerina moved to deny the variance requests. Mr. Friedrichs seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #1.5**

**CONSIDER A VARIANCE REQUEST TO HAVE A 20' FRONT BUILDING SETBACK INSTEAD OF A 25' FRONT SETBACK, AT 2913 SYCAMORE AVENUE, BEING LOT 1, ORCHARDS AT SHARY PHASE I, AS REQUESTED BY BRITO CONSTRUCTION.**

Mr. Zavala mentioned that the subject property is located 250' north of Nicole Drive along the west side of Sycamore Ave. The property is conventionally shaped at 74+' x 124+'. A feature that should be emphasized is that the lot is a 'double-frontage lot' where it fronts Shary Road. Shary is a major thoroughfare, this could be deemed an extenuating circumstance and not 'common' to typical residential lots.

Insofar as the history on this structure, a building permit was applied for on 3/30/12 wherein the 25' front Setback was shown to be complied with and, as such, the city issued the permit on 4/5/12. When the foundation inspection was done, which included verification of the front Setback, the 25' was marked as 'approved' on the City's inspection slip by building inspector Joe Hernandez. In subsequent dialogue on this with contractor, Brito said that they aligned the subject house to the existing home to the south. In



like manner, the City's building inspector said that since the Brito house was aligned with the house to the immediate south, he 'approved it'. We note that the house to the south has a garage at 20, which could be permitted by Code @ 18'.

The photographs show that the 5' is not very discernible especially since it is in alignment to the home to the south, which has 6' cedar fence, which further obscures the subject 5'. In retrospect, an option that the City could've taken on these series of lots with the double-frontage feature to Shary Road, would be to reduce the front setback on the minor street side to 20' to thus allow the owners five extra feet to the (Shary) rear of the property. Regardless, the home is in alignment with the structure to the south, will not depreciate property values, and is not discernible to moving traffic on Sycamore Avenue. Recommendation: No objection due to circumstances above in approving this upscale home.

Mr. Zavala explained that he spoke to both the City Inspector and the Contractor to hear both sides. The Contractor confessed that they went with the house next to them, and the home has a garage which can be at 18' to the front lot line, so they matched their home to the one next door. The Inspector went by the same thing without verifying the notes. However, the option to these double frontage lots may be to, reduce the front setback on the minor street to 20' to allow the openness.

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. Enriquez the applicant was present.

Mr. Sesin mentioned that it's all lined up even thou the City Inspector misinterpreted the setback. The reduced setback actually allows a bigger buffer to Shary Rd. so he does not see an issue with it.

There being no further discussion, Chairwoman Olivarez entertained a motion. Mr. Sesin moved to approve the variance request. Mr. Lown seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #2.0  
OTHER BUSINESS**

Mr. Zavala recognized Mr. Mike Friedrichs as a new ZBA member. Mrs. Aman has voluntarily resigned due to working now in McAllen; thus there is still a vacancy.

**ITEM #3.0  
ADJOURNMENT**

There being no further business, Chairwoman Olivarez entertained a motion to adjourn. Mr. Lown moved to adjourn. Mr. Garcia seconded the motion. Upon a call for a vote, the motion passed unanimously at 5:23 p.m.

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Chairwoman Olivarez  
Zoning Board of Adjustments