

**ZONING BOARD OF ADJUSTMENTS
AUGUST 20, 2014
CITY HALL'S COUNCIL CHAMBERS**

MEMBERS PRESENT

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

STAFF PRESENT

Daniel Tijerina
Bobby Salinas
Annette Zavala

GUEST PRESENT

Thomas Tabor
Benjamin Pena

CALL TO ORDER

Vice-Chairman Sheats called the meeting to order at 4:36 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.

Mr. Tijerina wanted to update the board on the issue of where the contractor is not obtaining permits and advising the owner that they don't need permits, and then the City puts a stop work order and advise the owner of the process to go through the ZBA board to ask for an exception to setback rules, and they have had several of the same issues lately, where the owner claims they were not advised by the contractor. He mentioned that he and Mr. Salinas have been talking to Mr. Carlos Ortegón who is the new City Prosecutor, the previous City Prosecutor was Esmeralda Garcia they were also speaking with the City's Attorney David Guerra, they have been looking at different ordinances on fines and fees to apply towards the contractors to hold them accountable, and doing extra leg work and speaking with the some of the board members they are trying to get as much information and should have it for the next meeting.

Vice-Chairman Mr. Sheats from the input from the board they need something done, he also mentioned that Chairman Sesin walked in at 4:40.

Mrs. Olivarez mentioned that once all the Ordinances are done she would like to have the information to be able to post it in the newspaper.

Mr. Rodeo wanted to know if they can have a workshop to get everyone on the same page and maybe also put it on the City's web page and on the City

T.V. channel, and the contractor gets fined it would alleviate the owner from some of the expenses.

APPROVAL OF MINUTES FOR JUNE 16, 2014

Chairman Sesin asked if there were any corrections to the minutes. 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 A 4' SIDE YARD SETBACK WHERE 6' IS REQUIRED AT 1811 VICTORIA ST., BEING LOT 110, GLASSCOCK SOUTH SUBDIVISION, AS REQUESTED BY MRS. JESSICA AGUILAR

Mr. Bobby Salinas mentioned that the subject site is located 250' west of Union along the north side of Victoria St. The lot measures 60' x 106.8' and is not unique. The applicant desires to build a new 12' x 30' addition to the residence which will include a side setback of 4', needing 2' to meet the minimum 6' setback.

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: (f) that the variance will not merely serve as a convenience to the applicant.

Review Comments: It is difficult for staff to recommend in favor of this request because it would be a future living area and would have less than 12' of separation.

Recommendation: Staff recommends denial due to the following:

- The design can be modified to meet the 6' side yard setback
- Staff has predominantly sustained the 6' side setback for living areas;
- The lot is not unique
- Others with identical lots have complied with the City's regulations

Chairman Sesin asked if there was any opposition.

The audience remained unresponsive.

Chairman Sesin asked if the applicant or representative was present.

The applicant Mr. Benjamin Pena husband of Jessica Aguilar, was present and explained to the board the reason they were asking for the variance from 6' to 4' they do have center block wall covering the property, and they were told that they could build towards the back, but the room would be too narrow, he mentioned that if approved they would be using fire rated sheet rock, and he understands that they require a 6' setback but would like to have a 4', so the room would be a standard room.

Chairman Sesin asked what the separation between the homes next to them was.

Mr. Tijerina mentioned that the house to the east was at least 6' from the fence, the applicants have a 16' separation between them and the fence, and they are requesting to go 12' and have a variance for the 4' setback.

Mr. Acevedo asked if it was the area being shown was a concrete slab.

Mr. Tijerina replied it was.

Chairman Sesin model subdivision rule requires 5' side for fire safety that's state wide, for fire safety, he understands the plat requires 6' side setback, he would consider the 5' separation and 10' from the road that's state wide, but it would be up to the board.

Mrs. Olivarez mentioned that if they consider the 5' would there still be room for the fire department to go through, and when was this code adopted, where it allows a 5' separation.

Chairman Sesin mentioned that it's been in place since 1976.

Mr. Friedrichs mentioned that the patio in the front, would the addition cover that.

Mr. Tijerina mentioned it would be a 12' x 30' addition if the board approves the variance, it would cover most of the concrete on the side and the concrete goes all the way to the block fence.

Mr. Sheats mentioned that he didn't want to be the wet blanket, but the rules state that the variance will not merely serve as a convenience to the applicant.

Chairman Sesin mentioned that 6' is required but even if they have the separation at 5' there would be sufficient for an emergency vehicle to go through, they have 10' from building to building tradition the City's adopt the 6' setback, but the model subdivision rules only require 5'.

Mr. Bobby Salinas mentioned that even the building code requires a 5' setback.

Chairman Sesin mentioned that a 5' setback would be in compliance but the plat note reads 6', mentioned that he would be receptive to working with the applicant its merely not a convenience it's simply staying within the model rules and fire rules.

Mr. Friedrichs mentioned that if there was anything from preventing them from building it longer and thinner.

Mrs. Olivarez asked if the room would be 11' x 30', would it be an inconvenience.

Mr. Pena mentioned if they build it longer it would not be aligned to the home to be square, it would be narrow it would stick out like a sour thumb.

Chairman Sesin mentioned that he would not object to the 5' side setback it would be in state compliance and building code compliance but he still has the block fence which is a plus.

Mr. Sheats wanted an explanation on Building Codes, Fire Codes and City Ordinance they are confusing to many things and they are only talking about the two codes not the Ordinances.

Mr. Tijerina mentioned that the model subdivision rules were adopted by the state to avoid Colonia type of situations out in the County, and municipalities.

Chairman Sesin mentioned the City also adopt the model subdivision rules.

Mr. Tijerina mentioned that the City did adopt the rules back in the 1990s. Model subdivision rules are guide lines the City uses and impose, and as far as separation between structures and the fire code typically what they have is minimum 6' for side setbacks, fire codes setbacks, as far as is what they need to keep in minds is to be consistent, and try to stay in compliance if its new construction. The separation per the building code could be 5' but the

required plat note shows 6' side setback. And there was another item on the agenda similar to this one.

Chairman Sesin mentioned that they were asking for a variance on the plat note.

Mr. Rodio mentioned that they haven't complied with the City's Ordinance of the 6' side setback, or 5' setback. If they approve this they will open a can of worms and then they will see more people asking for variances to the plat note. And then would they have people coming back asking why they didn't get the variance and he did.

Mr. Sheats mentioned the Ordinance has nothing to do with the plat note.

Mr. Tijerina replied that if the applicant requests a variance on the setback they would be seen on a case by case basis. The Ordinance requires a 6' and the model rules require 5', and to answer Mr. Sesin question they also provided a copy of the subdivision plat that shows a 6' plat note.

Mr. Salinas mentioned that it was an R-1 setback and it requires a 6' side setback.

Mr. Friedrichs mentioned if they had any easements on the side.

Mr. Tijerina replied they did not have any easements on the side.

Chairman Sesin what do they do when an Ordinance says R-1 and the plat note setback says 7.7' do they issue a variance, and if they want to build on the 6' setback what do they issue the variance to if they are meeting the Ordinance, what do they issue the variance on the Ordinance or the plat note.

Mr. Tijerina mentioned that they impose the plat note not the Ordinance.

Chairman Sesin so there you can issue a variance on the plat note.

Mr. Tijerina mentioned that they are keeping in compliance with the 7.7' requirements.

Chairman Sesin mentioned that in this example the plat note has nothing to do with the Ordinance they all tie in together.

Mr. Sheats mentioned that he was a little confused and he has served on the board for many years and he has never heard of the 5' side setback, and

this is something new to him he has always know it to be 6' side setback. It has always been that the City of Mission has a 6' side setback between houses.

Mr. Tijerina mentioned based on the Zoning Ordinance.

Mrs. Olivarez mentioned when they adopted the codes.

Mr. Tijerina mentioned that in 1974 the subdivision code was adopted and 1976 the zoning code was adopted.

Chairman Sestin mentioned that he was merely pointing out model subdivision rules allow 5' separation, and yes the zoning code does say 6' if variances can be granted there might be some way that he is meeting state and fire code and maybe allowing the variance. It meets fire code but not our zoning ordinance code, and considers the 5' side setback variance instead of the 4'.

Mr. Salinas mentioned that fire separation code calls for 5' side setback.

Mr. Pena mentioned that the house to the west is about 2' from his block fence and that's one of the reasons he applied for the variance to get the proper permits, just in case in the future he sells the property it shows that he applied for a variance.

Mr. Tijerina asked if the house was built before the subdivision was annexed by the City?

Mr. Pena mentioned that he believes it was built around the same time he built his home around 2002, and the City annexed the subdivision around the same time.

Mr. Tijerina mentioned if the overhang was the one up to his fence or the poles.

Mr. Tijerina mentioned that the poles are at 6' and the overhang is at 4'.

Mr. Salinas mentioned that by code the eaves could be over the 6' setback, as long as the supporting columns are at 6'.

Mr. Tijerina mentioned that if the board wanted additional information they could table the item.

Chairman Sesin would be receptive on the 5' side setback but it was up to the board.

Mr. Sheats mentioned that he believes that they should do everything the same for everyone and is ready to make a motion. He mentioned that he appreciated that the applicant came in and applied for the variance instead of doing the work, like most people would of done but unfortunately they can't accommodate them.

Mr. Rodio wanted to know if this subdivision was within the ETJ.

Mr. Tijerina mentioned that this subdivision is in the City and is located at the North West corner of the Expressway 83 and Glasscock Rd.

Mrs. Olivarez mentioned how many people would come in if they started changing this side setback from 6' to 5' side setback.

Mr. Tijerina mentioned that there is no way of telling how many people would come in for the 5' side setback variance instead of the 6' side setback.

Mr. Friedrichs mentioned that if he was allowed to vote since he was an alternate.

Mr. Tijerina mentioned that only the active board members were allowed to vote.

After a brief discussion, Chairman Sesin entertained a motion. Mr. Sheats moved "Deny" the variance request as recommended by staff Mr. Acevedo seconded the motion. Upon a vote the motion to deny the variance passed unanimously.

ITEM #1.2

CONSIDER A VARIANCE REQUEST TO KEEP A 7.5' SIDE YARD SETBACK WHERE 10' IS REQUIRED AT 2206 STONEGATE DRIVE, BEING LOT 40, SONEGATE SUBDIVISION PHASE II, AS REQUESTED BY MR. THOMAS TABOR

Mr. Bobby Salinas mentioned that the site is located 600' west of Flamingo Ave., along the south side of Stonegate Dr., The lot measures 126' x 165' (20,790 sq. ft.)

- History: On July 23, 2012, the City Council approved Ordinance 3800 which requires non-living accessory structures to be no more than 800 sq. ft., and no more than 15' in height.

- On January 29, 2013, Staff received a complaint that a large metal structure was under construction at the above address.
- On March 20, 2013, Mr. Tabor applied for a variance to keep the 1200+ sq. ft., building but his variance request was denied. He was given 30 days to obtain a building permit and comply with all applicable ordinances and codes.
- On December 6, 2013, the City Council approved Ordinance 4044 which permits the square footage and height requirements for accessory structures to be up to 40% of the primary structure's square footage and equal in height to the primary structure.
- On July 30, 2014, Mr. Tabor submitted a building permit application proposing to reduce the building and patio to be in compliance with the new ordinance, however, a 7.5' setback is proposed where the minimum side setback is 10' as per the recorded plat.
- Chairman Sesin asked if there was any opposition.

The audience remained unresponsive.

Chairman Sesin mentioned that there were two calls made in opposition of the variance, and there were two letter's in favor one from Mr. Rigoberto Garza 2204 Stonegate Dr., and Mr. Stephen Greer 2207 Stonegate Dr.

Mr. Salinas mentioned that the phone calls they received were discussing in complaints in regards to a business being operated from a residential area, since the trailers were there and the size of the building.

Mr. Tijerina mentioned that he had visited the site with another employee and the applicant does have some race cars out there and some of the complaints are that he has the trucks out there, parked on empty lots.

Mr. Friedrichs mentioned that on the exhibit the item marked "A" was this green area or a detention pond.

Mr. Tijerina mentioned that it was a detention pond.

Chairman Sesin asked if the applicant or representative was present.

Mr. Tabor was available to answer any questions the board might have, he mentioned that there were several things that needed to be addressed, and the pictures with the trailers that were presented, he mentioned that the reason he had the trailer parked in the empty lot was, because the lease of the storage facility where he had it parked had expired and he did have a new lease and was going to move the trailer to the storage. And from time to time when they have a race he does bring the trailer to pick up the race

car he has stored in the shed while they load or unload it. And the vacant lot has been there for several years and yes he does park the trailer there sometimes. The reason the truck was parked there was because Mr. Greer had a pool delivered and the crane was there and he didn't want to hinder the access so he parked it on the empty lot, he does have copy's of the contract for the new storage space, and as the previous conversation he falls into the category of when he first got the storage done he didn't obtain the proper permits and took the contractors word that he didn't need any permits and later finding out that was not the case.

He also mentioned that when Mr. Tijerina first went out to his home and the building was erected the original complaint was that there might be an issue with the setback and they measured and at the time it was brought up it was a 6' minimum, and the building is at 7.5' and he never investigated the setback issue any further, and as they progressed and the Ordinance was changed to allow the footprint and the height to be changed he proceeded with the modifications to bring it into compliance and he followed the 6' side setback.

Mr. Tabor also mentioned that after all the modifications were done he also was speaking to Mr. Salinas and he applied for a permit to get it documented and make it legal and move on and put this issue behind them, and then the 10' side setback was brought up to his attention. And he was told the setback was 6' for the subdivision, and his at 7.5' from the side setback. He mentioned that his neighbors' house is at 15' from the side setback. He also mentioned that his very respectful of his neighbors he does not start his race car late at night or early in the morning his wife is a teacher and he has young kids so there is no problem with the noise, and when he does turn on the car its inside the building and its very low idol, and the neighbor who is complaining about the noise she could of called the Police Department and they would of being out there, there was an incident where he had the trailer parked on the street and the police officer did go and advised him to remove the trailer and they did. And if he knows the rules he complies with them.

Chairman Sesin mentioned that he was in transition of storage units, and what happens when he does not have storage available again would he park the trailer on the empty lot again.

Mr. Tabor mentioned that it will not happen again it was that at this time it was bad timing his contract ended on August 18, 2014 and he still didn't have the new place secured for storage. There is an abandoned home and on occasion he has parked the trailer on the driveway to not have it on the street. But he has two spots in the storage facility now.

Mrs. Olivarez mentioned if the picture was taken from the alley, and if the building was in the middle of a commercial area in front of his house.

Mr. Acevedo explained that the structure was in the back of the residence and they have a detention pond in the back.

Mr. Tabor mentioned that it was taken from the front of Stonegate Dr., the shed is in compliance with the new ordinance the height and the structure type, and the square footage, the issue is the setback and he was not aware of, and all the significant expense he put into it, and he has been working and talking to Mr. Salinas, he spoke to the City Attorney and wrote letters to the Mayor and the City Council, he was instructed by Mr. Salinas and he worked with him very closely, and when he brought the structure into compliance and submitted the permit the issue with the side setback came out. And when Mr. Tijerina went to the site they measured the setback and they meet the 6' required and that was not in his radar he is not trying to implicate Mr. Salinas or Mr. Tijerina.

Mr. Tijerina mentioned that for clarification purposes the site visit was done a long time ago, and they did speaking to Mr. Tabor about the height issue and try to get him to submit a permit for review, and in essence until the permit was submitted the review process started and a plat note of 10' side setback was disconnected, they are large lots.

Mr. Sheats the situation they have is strictly the setback and they can't look at the other issues, because they could or could not exist in the future, and they don't want it to be a hardship for the applicant, however from his opinion he relied on someone and he didn't do diligence himself and got into a mess that exceeded over a year and in a half, if he would of submitted a permit when he first decided to do this project and the City would of found out about the 10' side setback plat note, and he does not want to be sarcastic in any way but everyone realizes that you have to have knowledge of the laws. And for them to just say they didn't know about it, it will cost some money to fix it, and if he would of followed the rules they would not be in this situation in front of the board, when the lot was bought it showed the plat notes.

Mr. Tabor mentioned that he appreciate his perspective but when he hires a contractor he expects them to be professional, just like when he goes to the Doctor he does not second guess his opinion, and for the amount of money he is paying he expects them to be professional.

Mr. Rodio mentioned that the problem is the contractors where they don't advise the owners and leave, he mentioned that his being a contractor for

over 40 years and he knows they need permits. He mentioned that the contractor he hired should have gotten a permit, and here they are again a year after blaming the contractor, and he is gone.

Chairman Sesin mentioned why the applicant waited over a year to submit a permit.

Mr. Tabor replied that he didn't want to blame Mr. Salinas and maybe it was his ignorance and he was working with Mr. Salinas he should have filed the permit but since he was making corrections and going back and forth trying to remedy the situation.

Chairman Sesin replied that he is not certain what happened a year ago but, he is sure they conveyed to him to secure a permit.

Mr. Tabor at that point the building was done and they were trying to figure what to do to make it comply, and he at one point came in with a permit to shrink the building and he spoke to Mr. Salinas a day before he had to appear at court, and was told to hold off on the permit since the City was looking at modifications on the ordinance. He thought he was doing everything in order; He has put a lot of work and a whole lot of money into and knowing that the City's setback rule is 6', and his above that and Mr. Garza his neighbor has no issues with the setback, he understands their issue with exceptions and all this fiasco has cost him his marriage and at what point he is trying to put his life together, there is a lot of hardship and financial situation he will have if he needs to take it down, and then have a pile of scrap metal sitting in the back of his house.

Mr. Friedrichs mentioned that at the last meeting they had a question on the footprint was and the enclosed area was.

Mr. Tabor replied that the enclosed area was 30' x 20' one stall and the overhang is 12' x 20', it was two 20' stalls.

Mr. Rodio mentioned that if there was no way that he could bring the walls 2 1/2' and accommodate the setback.

Mr. Tabor mentioned that they had to totally take the building down to ground zero the pilings are at least 36" in to the ground and is a frame steel structure.

Mr. Rodio mentioned that they sell an epoxy seal that they can put into the holes and be able to make it to comply with the setbacks, and there is a way to make it comply without tearing the whole building down, and it will cost

him money to fix it but it can be done take it in 2 1/2 'and leave the overhang, and they can't set precedence in this matter.

Mr. Tabor mentioned that there is room for safety vehicle to go through and that's what the 6' setback was for.

After a brief discussion, Chairman Sesin entertained a motion. Mrs. Olivarez moved to "deny" the variance request as recommended by staff. Mr. Sheats seconded the motion.

**ITEM #2.0
OTHER BUSINESS**

Mr. Tijerina mentioned that they will be having an unsafe structure seminar September 3, 2014 at City Hall, dealing with unsafe structures and they are invited to attend its free.

**ITEM # 3.0
ADJOURNMENT**

There being no further business, Chairman Sesin entertained a motion to adjourn. Mr. Sheats moved to adjourn. Mr. Rodio seconded the motion. Upon a vote, the motion passed unanimously at 5:35 p.m.

Raul Sesin, Chairman
Zoning Board of Adjustment