

**ZONING BOARD OF ADJUSTMENTS  
OCTOBER 15, 2008  
CITY HALL'S COUNCIL CHAMBERS**

<b><u>MEMBERS PRESENT</u></b>	<b><u>MEMBER ABSENT</u></b>	<b><u>STAFF PRESENT</u></b>	<b><u>GUESTS PRESENT</u></b>
Rosa Zapata	Kathy Olivarez	Sergio Zavala	William Johnston
Thomas Birmingham	Keri J. Aman	Bobby Salinas	Curtis Wheat
Jorge Garcia		Jaime Acevedo	Gloria Wheat
Raul Sesin		Annette Zavala	Alma Navarro
			Samuel Garza
			Scott Henry

**CALL TO ORDER**

Chairman Raul 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 to the ZBA that was not on the agenda. The audience remained un-responsive.

**APPROVAL OF MINUTES FOR SEPTEMBER 17, 2008**

Chairman Sesin asked if there were any corrections to the minutes. Mr. Birmingham mentioned that he had few changes to the minutes however he had met earlier with staff to correct them. Mr. Birmingham moved to approve the minutes with the corrections to staff as presented. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #1.1**

**CONSIDER A VARIANCE REQUEST TO HAVE A 2'4" SIDE BUILDING SETBACK INSTEAD OF THE REQUIRED 6' SIDE BUILDING SETBACK AT 1016 BRYCE DRIVE, BEING LOT 6, BLOCK 6, HIGHLAND PARK ADDITION #2 SUBDIVISION, AS REQUESTED BY MR. CURTIS WHEAT**

Mr. Zavala stated that the site was located along the south side of Bryce Drive between Highland Park Avenue and Pecan Avenue. The non-unique site measures 75' frontage to Bryce Drive by a 158' depth (11,850 sq. ft.). Mr. Wheat applied for a garage permit in 2004, which was issued with a 6' side setback as Gloria Wheat agreed upon. However, the Inspector did clear the plumbing inspections. The intent of a side setback is to allow a 'fire' clearance from one residence to another. What ZBA has entertained in the past is a 12' building to building separation to the neighbor; however, the neighbor must be willing to sign (and record) a perpetual 9'8" side yard setback, i.e., 9'8" + 2'4" = 12' separation. The adjoining Lot 5 does not

have any structures on that common side but must agree on a perpetual 9'8" side yard setback. Staff recommendations were: 1) to have higher setback encumbrance document recorded to Lot 5, and 2) if not #1 above, retrofit to meet minimum 6'.

Mr. Zavala mentioned that he and the property owners spoke with the adjoining neighbor, Mrs. Navarro, to approve the variance as is, with conditions, or not approve the variance. He also mentioned that at Tropical Valley Acres, ZBA approved a variance in which a building was retained as is, with the following conditions: 1) increased fire rating of the building, and 2) required rain gutters and down spouts. The neighbor's concern was that the driveway was constructed on the property line. Mr. Zavala stated that staff's solution was to saw cut the driveway 24 inches minimum inward from the lot line.

Chairman Sestin asked if there was any public opposition to the request.

Mrs. Alma Navarro, from 1424 N. Francisco Ave., mentioned that she was the owner of Lots 5&6 of Highland Park II, west of the property requesting the variance, she mentioned that she is going to build a 6' fence around her property line and at this time her fence is not up to the property line and allowing a variance will place her fence up to the concrete slab. She stated that she is planning to install a shed in the future and will be on this particular corner. She understands that she needs to leave the required setbacks also. Her concern was that her neighbors have large dogs and does not feel safe. She was also not willing to have a higher setback on her property.

Chairman Sestin asked if the applicant or representative were present.

Mr. Curtis Wheat was present and mentioned that it was an honest mistake, and were willing to do everything that was asked by the ZBA. He mentioned that the fence has been there for 17 years and was thought to be the property line.

Chairman Sestin made a calculation that even if they used the fence as the property line, they still would not meet setback requirements. They would be 5'4" from the property line according to the survey they have. Being that its been there 17 years, "its hard" and the concern is that the neighbor is not willing to give up any setback footage. He asked if this item was an issue where the bank required a survey or if a complaint was filed on this and that's how it was discovered.

Mr. Zavala replied that the bank had requested a survey.

Chairman Sestin replied if the board decides to stay with the required 6' setback the garage would have to be demolished.

Mr. Zavala answered in the affirmative and that any retrofit plan would have to comply with the Building Codes.

Chairman Sestin mentioned that both neighbors should work something out where after he asked if the applicant had talked to the neighbor.

Mr. Zavala replied that at this time there is nothing worked out between them.

Mr. Birmingham mentioned that this item could be brought back to ZBA if the neighbors "worked something out".

There being no further discussion, Chairman Sestin entertained a motion. Mr. Garcia moved to deny the variance. Mr. Birmingham seconded the motion. Upon a vote, the motion passed unanimously.

#### **ITEM 1.2**

#### **CONSIDER A VARIANCE REQUEST TO HAVE A 0' REAR BUILDING SETBACK INSTEAD OF THE 5' REAR BUILDING SETBACK AT MISSION OLD TOWNSITE SUBDIVISION, BEING LOT 1, BLOCK 143, AS REQUESTED BY MR. JOEL GARZA**

Mr. Acevedo stated that the site was located at the SE corner of Francisco Avenue and Business Highway 83 (9<sup>th</sup> street). The corner lot width is 70' x 70' or 4,900 sq. ft. Currently Lot 1 is vacant but the applicant is proposing to construct a professional office building. Staff stated that the site-plan showed a 3,120 sq. ft. structure with a revised 0' rear setback from the lot line and 7 off-street parking spaces. Being zoned C-3, the rear setback is 5'. However, this lot is unique in that it abuts the railroad, which has 100' of R.O.W. or 50' from the center of the track to both directions. Thus, the requested 0' rear setback will not have any implications to its surrounding neighbors and will be 45' away from the railroad tracks. Also there are no public utilities within these 5' where the building is being proposed. With regard to parking, most of the businesses use the excess Railroad R.O.W. for staff or employee parking already. If approved, the applicant will need to make arrangements with the Railroad Company in order to use the surplus R.O.W. for the proposed 7 off-street parking spaces. The desired request seem less objectionable than any that have been previously entertained because of the unique conditions that exist. The 0' rear setback will not create a sight obstruction and not set precedence to the surrounding neighbors since this is one of the last vacant lots. Staff recommended to approve the variances.

Chairman Sesin asked the audience if there was any public opposition to the request.

There was no response.

Chairman Sesin asked if the applicant or representative were present.

The contractor was present to answer any questions.

Chairman Sesin mentioned that he had no issues with the variances presented since all the other businesses are using the back parking, and the design looked reasonable.

Mr. Garcia asked if there are only four parking spaces in the front.

Chairman Sesin replied 'yes' and that small offices don't have a lot traffic and they also have the back for parking. City Planner Jaime Acevedo noted that there was some parallel parking, too.

There being no further discussion, Chairman Sesin entertained a motion. Mr. Garcia moved to approve the variances. Mr. Birmingham seconded the motion. Upon a vote, the motion passed unanimously.

**TABLED ITEM #1.3**

**CONSIDER A VARIANCE REQUEST TO RETAIN A 4.5' CORNER SIDE SETBACK INSTEAD OF THE 6' CORNER SIDE SETBACK AT 300 S. BRYAN ROAD, BEING LOT 7, BLOCK J, HERITAGE SQUARE PHASE I, SUBDIVISION, AS REQUESTED BY MR. WILLIAM JOHNSTON**

Mr. Jorge Garcia moved to have the item removed from the table. Mr. Birmingham seconded the motion. Upon a vote, the motion for removal passed unanimously.

Mr. Zavala explained that the City Attorney agreed that the plat note specified a 6' corner side setback; thus the perspective of the variance had been minimized. The infringement is 1'6." The subject site is located at the NW corner of Christy Drive and Kyle Drive. The corner site measures 35' by 78' depth (2,730 sq. ft.). Mr. William Johnston purchased this mobile home 'as is' and was unaware of any setback violations since he did not acquire a survey at the time of this purchase. Although the original mobile home does comply with the required 6' corner side setback, a 10' x 12' storage room that was enclosed to become part of the mobile home jogs out 1.5' creating an encroachment to the required setback. Hidalgo County Appraisal District records indicate that this addition was made in 1995. Although Staff would prefer compliance to a non-unique Lot, Mr. Zavala reminded ZBA that during their last meeting, they approved a variance with recording a document that

when the mobile home is replaced, that full compliance will be imposed at that time. Mr. Zavala said a similar conditional approval maybe considered.

Chairman Sestin asked if there was any public opposition to the request.

There was no response.

Chairman Sestin asked if the applicant or representative were present.

Mr. William Johnston mentioned that he had the opportunity to speak to Mr. Zavala about the matter and was in agreement with the suggestion to make the correction at the time of mobile home replacement, and meet all required setbacks.

Chairman Sestin asked that this was done back in 95' and if there was a permit issued.

Mr. Zavala replied that records are kept for certain years and then are destroyed, and records were not computerized until 96 or 98.

Chairman Sestin asked staff if they have had issues on this subdivision as far as setbacks.

Mr. Zavala replied in the affirmative and that this item was one of them. The owners are making attempts to reconcile the discrepancy discovered. Mr. Zavala noted that due to the 6' corner setback now being the norm, this expunged several owners Staff thought were in violation and on those who paid for a variance to the (6') corner setback were having their money refunded.

Chairman Sestin asked if there was an association that was opposed or in favor to any variance at this subdivision. He was puzzled where before the association was opposed to setbacks, and in favor of others.

Mr. Zavala replied that the first item presented a few months back was Mr. Mowrar and was denied where there was a presence of opposition.

Chairman Sestin asked if there was a letter from the association on Johnston's item, because on the Mowrar item presented before there was a lot of opposition and it was an open structure and now this is a closed structure and 'they are in favor?

Mr. Zavala asked if ZBA wanted, staff could present the Mowrar item again since there appears to be a change in sentiment.

Chairman Sesin replied that the ZBA board would like to see the Mowrar item again, wants to be fair with everyone, but this item presented is a closed structure and the other one was an open canopy. After ZBA sees the Mowrar item, ZBA could re-consider the Johnston case.

There being no further discussion, Chairman Sesin entertained a motion. Mr. Garcia moved to deny the variance. Mr. Birmingham seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #2.0  
OTHER BUSINESS**

There was none.

**ITEM #3.0  
ADJOURNMENT**

There being no further business, Chairman Sesin entertained a motion to adjourn. Mr. Garcia moved to adjourn. Mr. Birmingham seconded the motion. Upon a vote, the motion passed unanimously at 5:07 p.m.

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Raul Sesin, P.E. Chairman  
Zoning Board of Adjustments