

**ZONING BOARD OF ADJUSTMENTS
NOVEMBER 19, 2008
CITY HALL'S COUNCIL CHAMBERS**

MEMBERS PRESENT

Thomas Birmingham
Jorge Garcia
Raul Sesin
Kathy Olivarez
Keri J. Aman

MEMBER ABSENT

Rosa Zapata

STAFF PRESENT

Sergio Zavala
Bobby Salinas
Jaime Acevedo
Annette Zavala

GUESTS PRESENT

Alma Navarro
Jon Lown
John Hollaway
Barbara Larson
Donna Bergner
William Short
Jean Short
Gloria Wheat
Curtis Wheat
K. White
William Johnston

CALL TO ORDER

Chairman Raul Sesin called the meeting to order at 4:34 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 OCTOBER 15, 2008

Chairman Sesin asked if there were any corrections to the minutes. Mr. Birmingham 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 RETAIN A 2'4" SIDE YARD BUILDING SETBACK INSTEAD OF THE REQUIRED 6' SIDE YARD 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 this item had been reviewed in October 2008. The survey showed the detached garage building, which was constructed with a building permit but in violation to the side yard-building setback. The location of the chain link fence not being on the property line likely contributed to the encroachment whereby a City Inspector did 'clear' the setback allowing it to move forward to completion. This is mentioned as a

matter of deduced reasoning and not to deflect from the primary purpose of setbacks, which is a firebreak between potential buildings on separate properties. During the October hearing, Planning Director Sergio Zavala recalled where a similar situation had been encountered and where ZBA weighed the merits of that application and acted to approve it but with stipulations. In an effort to fully disclose that evidentiary data to ZBA, which may be useful in examining other similar scenarios, the files were researched. The sate provided was as follows:

<u>DATE</u>	<u>SITE</u>	<u>VARIANCE</u>	<u>BLDG TYPE</u>	<u>ACTION</u>
6/12/01	1015 Blake Lot 67, Eagle Hts.	Permit 2' sy sb Where 6' required	Detached masonry garage/carport	Approved Fire Rated*
9/15/04	1103 Fortuna Lot 6., El Porvenir	Permit 2' 6" sy sb Where 6' required	Storage shed	Approved Fire Rated**
2/15/06	1510 E. Bus Hwy Lot 19, Blk H Lemon Tree Est.	Permit 2' 5" sy sb Where 6' required	Storage shed	Approved Fire Rated***

- * Javier Hinojosa moved. Raul Sesin seconded Approved 5-0
- ** Rene De La Cruz moved. Thomas Birmingham seconded Approved 5-0
- *** Kathy Olivarez moved. Rosa Zapata seconded Approved 5-0

ZBA had seen situations in the past and they will undoubtedly see future situations where they will need to consider alternate ` out of the box' solutions that would still meet the intent of the setback code. Staff said that the fire-rating option was one of those viable alternatives. As just documented, on auxiliary buildings such as sheds and garages, ZBA had already seen similar cases where fire-rating that side of the building could be imposed. Staff said that the 1015 Blake was the most comparable to the Wheat proposal. The Blake structure was a detached masonry garage where a 2' setback was approved with fire rating; the Wheat case was a detached masonry garage that was even further from the property line at a 2' 4" setback. The Blake approval has worked well since 2001 and Staff said that the Wheat case was similarly workable. With the above expressed, Mr. Zavala did not object to the Wheat variance but recommended that the Wheat garage be similarly fire-rated to compensate for the encroachment and maximize fire protection.

Chairman Sesin 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 Lot 5 Bk 6 of Highland Park II, west of the subject property. She said that she had spoken to Mr. Jaime Acevedo on October 14, 2008 and wanting her questions answered about the October 15, 2008 ZBA meeting. Mrs. Navarro said that she left two messages for Mr. Zavala to call her back her calls were never returned. She made a visit to City Hall and

was referred to Mr. Acevedo and explained her future intentions about a building permit for a storage shed on the SE corner of her lot. Mr. Acevedo advised her that she had to leave the required setback for her lot *and* for Lot 6 because the Wheat building only left 2' instead of the required 6'. Mr. Acevedo and another gentleman who never introduced himself after I introduced myself to him, met at the described site on October 17, 2008 at 10:00 A.M. She was then informed that the Wheat's were going to fire proof the west wall of the building and it would not affect her property at all. This was different from what she had been told, and she just wanted to protect her property for future use. She also mentioned that the building in question is a "very spacious" two-car garage with living quarter's complete with bathroom, and the other adjoining room is where all the 'loud' music came from. The Noise Ordinance stated that the music could go on until 10:00 P.M., however the people who live two houses down can't listen to their own T.V. because of the 'loud' music. Mrs. Navarro said that flames have a way of shooting up and out, and this was going on in California right now, thus her intent to protect her property for generations to come. She concluded by saying that this was a residential neighborhood, and especially on Saturdays, cars were lined up all along the side of the street waiting for their kids to finish with their piano lessons.

Mr. Kenneth White from 2105 S. Cynthia in McAllen said that he sold this property to Mrs. Navarro and a lawyer that lived there before him placed the fence there. He lived there for several years and this, the Wheat's lived there for several years and before them another couple lived there, and he was never aware of the 2' that was inadvertently cut off.

Mrs. Alma Walter, who resides at 1012 Bryce, said that the reason that they will not find any calls was because she was not going to waste the time of the Police Department. She made several complaints to the PD to the non-emergency number but those calls were never logged in because she did not want to follow thru with the complaint.

Chairman Sesin asked if the applicant or representative were present.

Mr. Curtis Wheat was present and provided a letter from the PD where there had been no calls made against this property He also had two price quotes on retrofitting the garage at 34,000.00, and one for fire-rating that would cost 5,000.00. He was willing to fire-rate.

Mrs. Gloria Wheat said that when asked about noise from the music, a neighbor really couldn't hear until they got to the alley.

Mr. Sesin asked if the fence was there at the time of the construction and the City inspector approved it, and how did the survey come about.

Mr. Zavala replied that the bank asked for the survey due to the sale of the Wheat property.

Mr. Sesin asked if the noise was coming from the family that lived there.

Mrs. Wheat replied that there was a family that lived there now.

Mr. Zavala stated that if there was a problem with noise in any neighborhood, then one should call the police and make a report. Regarding the piano lesson business, Staff would investigate the problem immediately. The issue at hand however was the 2'4" setback proposal that ZBA needed to act on.

Mrs. Olivarez asked 'if the garage had a shower? Did any one live there? and did this affect the six foot setback for Mrs. Navarro?'

Mr. Zavala mentioned that regardless of the decision made on this case, Mrs. Navarro would only face a typical 6' side yard setback.

Mrs. Wheat replied that no one lives in the garage and it only had ½ bathroom, i.e., toilet only.

Mr. Birmingham asked if the fire Marshall signed off on this.

Mr. Zavala replied that they would as they had in the other similar cases cited earlier by Staff.

Mr. Sesin mentioned that the noise issue would be taken care of by others and if there were a business there, Staff would investigate it.

There being no further discussion, Chairman Sesin entertained a motion. Mr. Garcia moved to approve the variance subject to fire rating. Mrs. Aman seconded the motion. Upon a vote, the motion passed 4-1 (Kathy Olivarez dissented)

ITEM 1.2

CONSIDER A VARIANCE REQUEST TO HAVE A 10' FRONT YARD SETBACK INSTEAD OF THE REQUIRED 15' FRONT YARD SETBACK AT 300 S. BRYAN RD. (N-8), BEING LOT 8, BLOCK "N", HERITAGE SQUARE SUBDIVISION UNIT 2 AS REQUESTED BY MR. CLARENCE MOWRAR

Mr. Zavala stated that the item was previously seen on May 21, 2008 at which time the ZBA voted 3 to 2 to deny the variance request. ZBA had considered several variances since then, all of which contrasted the Mowrar

case. In an attempt to hopefully adjust the City's perspective to the Heritage Square issues, we deemed that such re-assessment would be in the community's best interest. The subject site is located near the Shaun Drive and Angela Drive intersection along the north side of Angela Drive. The applicants desire to still temporarily retain a 10' front building setback instead of the required 15' front building setback for an open carport that was relocated. In 2007, after being declared totally disabled with a series of serious medical conditions, a ramp was installed on Lot N-8 to facilitate the applicant's entry to his residence. In order to allow for the handicap accessible vehicle to properly align with the new ramp, the existing carport was shifted 5' south or towards the front of the property. Since this setback encroachment was for 2 supporting columns, staff did not object to deviating from code 5' until the use was no longer needed or the property was sold. An agreement could be prepared citing this temporary variance; and recorded to alert any subsequent owner. The water meter record can also be 'tagged' to alert Planning of any new owner registering their name. Staff recommended approval subject to 1) the recording of agreement as cited above, 2) the variance was not transferable to others, and 3) once the use of the ramp was no longer needed, the open carport must be retrofitted to comply with all setbacks within 30 days.

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

There was no response.

Chairman Sesin asked if the applicant or representative were present.

The applicant was not present. Mr. Zavala said that the Mowrar's were in the hospital on medical issues.

There being no further discussion, Chairman Sesin entertained a motion. Mrs. Olivarez moved to approve the variance as recommended by Staff. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

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. Zavala said that the item was last seen at the October 18, 2008, ZBA meeting at which time it was unanimously 'denied'. The site was located near the NW corner of Christy Drive and Kyle Drive. The corner site measured 35' by a 78' depth (2,730 sq. ft.). The applicant was requesting that a 4'5" side-building setback remain on Lot J-7 at Heritage Square Phase

I Subdivision. 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 did 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 to this mobile home some time near 1995. As the plat shows, the Lot was typical to the plat's corner Lots where others have complied with their 6' setback. Also, with no record of a permit, the encroachment seems self-inflicted by the previous owners. Staff confessed that the 18" encroachment was not a sight obstruction. An alternative that could be considered was to leave it 'as is' but meet setback codes upon the replacement of the mobile home. The recommendation from Staff was denial and recommended that the structure be retrofitted to meet code. If the ZBA was inclined to 'approve' it, the applicant could record an Encumbrance Agreement as stated above.

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

There was no response.

Chairman Sesin asked if the applicant or representative were present.

Mr. William Johnston was present to answer questions, and said that he would be receptive to the encumbrance setback agreement.

There being no further discussion, Chairman Sesin entertained a motion. Mrs. Olivarez moved to approve the variance subject to recording a setback compliance agreement upon the unit's replacement. Mrs. Aman seconded the motion. Upon a vote, the motion passed unanimously.

ITEM #1.4

CONSIDER A VARIANCE REQUEST TO HAVE A 2" CORNER SIDE SETBACK INSTEAD OF THE 6' CORNER SIDE SETBACK AT 300 S. BRYAN ROAD, BEING LOT 1, BLOCK K, HERITAGE SQUARE PHASE I, SUBDIVISION, AS REQUESTED BY MRS. BARBARA LARSON

Mr. Zavala mentioned that the subject site was at the SE corner of Mark Place and Christy Drive. The corner Lot site measures approximately 40' frontage to Christy Drive by a 78' depth (3,120 sq. ft.) The applicant was requesting that a 2" corner side setback remain on Lot K-1 at Heritage Square Subdivision. Typical corner side setback at this development was 6'. In 1981, the applicant purchased her residence from Mark Andrews, the original Heritage Square Developer, with the existing carport already in place. Due to the age of the structure in question, it was not known if a City

Building Permit was issued however there was no record of a variance being issued. Staff had an opportunity to visit with the applicant on-site and determined that there was no sight obstruction caused by the existing carport for incoming and outgoing traffic. There were also no known accidents at this intersection on record. Recommendation: Since the carport was open and had been there for over 27 years and was not a sight obstruction, Staff did not object subject to 1) the carport remaining perpetually open, and 2) once the unit was replaced, prevailing setbacks would be met. The applicant was receptive to Staff's conditions with a recorded document.

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

There was no response.

Chairman Sesin asked if the applicant or representative were present.

Mrs. Barbara Larson was present to answer any questions the board might have.

There being no further discussion, Chairman Sesin entertained a motion. Mrs. Aman moved to approve the variance subject to the setback compliance agreement inclusive of an 'open' carport structure (not to be enclosed). Mr. Garcia 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. Mrs. Aman moved to adjourn. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously at 5:07 p.m.

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