

**ZONING BOARD OF ADJUSTMENTS
DECEMBER 10, 2008
CITY HALL'S COUNCIL CHAMBERS**

MEMBERS PRESENT

Thomas Birmingham
Jorge Garcia
Kathy Olivarez
Rosa Zapata

MEMBERS ABSENT

Keri J. Aman
Raul Sesin

STAFF PRESENT

Sergio Zavala
Annette Zavala
Willie Seguin

GUESTS PRESENT

Genevieve Tomscak
Sandy Spidel
Johnny Hart
Jon Lown

CALL TO ORDER

Vice person Olivarez called the meeting to order at 4:33 p.m.

Mr. Zavala introduced Deputy City Manager Willie Seguin to the ZBA Members.

CITIZENS PARTICIPATION

Vice-Chairperson Olivarez asked if there was anyone in the audience that had anything to present that was not on the agenda. The audience remained un-responsive.

APPROVAL OF MINUTES FOR NOVEMBER 19, 2008

Vice-Chairperson Olivarez asked if there were any corrections to the minutes. Mr. Birmingham moved to approve the minutes as presented. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

ITEM #1.1

CONSIDER A VARIANCE REQUEST TO HAVE A 4' SIDE BUILDING SETBACK INSTEAD OF THE REQUIRED 6' SIDE BUILDING SETBACK AT 214 CHIMNEY ROAD, BEING LOT 12, AND 1.30 ACRES OF LOT 13, BLOCK 'A', RIVERSIDE SUBDIVISION, AS REQUESTED BY MR. JOHNNY HART

Mr. Zavala stated that the site was located 1500' north of Mayberry Road along the west side of Chimney Road. The applicant operated the Riverside Club on Lot 12 and was looking to expand to his establishment on the adjacent 1.30 acres of Lot 13. Mr. Hart desired to construct a 60' x 82' square foot separate addition to his operation on Lot 13, and was requesting a 4' side setback to the adjoining Lot 14. Typical side setbacks for such addition would be 6'. However, Lot 13 was unique in that it has a levee that runs the perimeter length of the lot. Since the likelihood was that the levee

was not going to be removed, and since the 24" encroachment would be towards this levee section only, Staff did not object deviating code by 24".

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

There was none

Vice Chairperson Olivarez asked if the applicant or representative were present.

Mr. Johnny Hart was present to answer any questions the board might have.

Mr. There being no further input or discussion, Vice Chairperson Olivarez entertained a motion. Mr. Garcia moved to approve the variance Mr. Birmingham seconded the motion. Upon a vote, the motion was approved 4-0.

ITEM 1.2

CONSIDER A VARIANCE REQUEST TO RETAIN A 2' SIDE SETBACK INSTEAD OF THE REQUIRED 6' SIDE SETBACK AT 300 S. BRYAN RD., BEING LOT 1, BLOCK "L", HERITAGE SQUARE SUBDIVISION AS REQUESTED BY MRS. SANDY SPIDEL

Mr. Zavala stated that the subject site was between Highland Park Drive and Christy Drive along the south side of Deirdre Drive. The site measured approximately 55' frontage to Deirdre Drive by a 105' depth (5,775 sq. ft.). The applicant desired to retain a 2' side-building setback for a covered carport built with no building permit. The required side setback was 6' for Heritage Square when there are no easements. However, Lot L-1 has a 10' Utility Easement which should not be built over. In the past, several variances had been granted at Heritage Square; none however, were granted for construction over a Utility Easement. Mr. Zavala recommended 'Denial' since no permit was issued; was 8' over a public utility easement; others were meeting rear setbacks; if approved, would set wrong precedence to others; Lot was not unique, and was self-inflicted.

Mr. Zavala said that others easement had been denied by ZBA, though in conventional housing settings. The sites were as follows:

-1606 Merlin Drive	12-11-06
-1604 Merlin Drive	12-11-06
-3505 Santa Idalia	09-04-07
-1604 Audrey Drive	09-04-07

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

There was no response.

Vice Chairperson Olivarez asked if the applicant or representative were present.

Mr. Jon Lown who resided at 300 S. Bryan Rd., Unit A-13 spoke in favor of the variance. He was the Vice Chair for the Heritage Square Architectural Committee, and that there was another carport structure there before and it was in the same place, and was not a sight obstruction.

Mrs. Spidel said that they bought this unit a year ago and she was not aware of the encroachment, She presented a letter from the Architectural Control Committee from Heritage Square in favor of the variance.

Mr. Garcia mentioned that the picture showed two driveways; one on the east and one on the west of the mobile home.

Mrs. Zapata replied that one looked like it was used for a porch.

Mr. Zavala replied that it was a driveway and a porch. If ZBA was inclined, he said that they could consider a hold harmless that included a 36-month re-evaluation.

Mr. Garcia moved to deny the variance. There was no second to the motion.

Vice-Chairperson Olivarez mentioned that she would prefer to have a full ZBA panel to perhaps make a better decision.

There being no further discussion, Vice-Chairperson Olivarez entertained a motion. Mrs. Zapata moved to Table the item, Mr. Birmingham seconded the motion. Upon a vote, the motion to table was approved 4-0.

ITEM #1.3

CONSIDER A VARIANCE REQUEST TO HAVE A 1' CORNER SIDE SETBACK INSTEAD OF THE 6' CORNER SIDE SETBACK AT 300 S. BRYAN ROAD, BEING LOT 7, BLOCK I, HERITAGE SQUARE SUDIVISION, AS REQUESTED BY MRS. GENEVIEVE TOMSCAK

Mr. Zavala said that the subject site was at the SW corner of Tammy Drive and Mark Place. The corner Lot site measured approximately 40' frontage to Tammy Drive by a 78' depth (3,120 sq. ft.). Typical corner side setback at this development is 6'. In 1981, the applicant purchased her residence from

Mark Andrews, the original Heritage Square developer, with the existing side porch 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 is 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. Over the past months several similar variances had been granted. Since the side porch had been there for over 27 years and presented no sight obstruction, Staff did not object subject to: 1) the side porch remaining perpetually open, and 2) once the unit is replaced, the prevailing setback would be met; said encumbrances assured by recorded instrument.

Vice-Chairperson Olivarez asked if there was any public opposition to the request.

There was no response.

Vice-Chairperson Sesin asked if the applicant or representative were present.

Mrs. Tomscak was present to answer any questions that the board might have.

There being no further input or discussion, Vice-Chairperson Olivarez entertained a motion. Mr. Birmingham moved to approve the variance subject to recording a setback compliance agreement upon the unit's replacement. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #2.0
OTHER BUSINESS**

Mr. Zavala thanked ZBA for their community service noting that this was going to be last meeting for Mrs. Zapata who would no longer serve on ZBA.

**ITEM #3.0
ADJOURNMENT**

There being no further business, Vice-Chairperson Olivarez entertained a motion to adjourn. Mr. Garcia moved to adjourn. Mr. Birmingham seconded the motion. Upon a vote, the motion passed unanimously at 4:56 p.m.

Kathy Olivarez, Vice-Chairperson
Zoning Board of Adjustments