

**ZONING BOARD OF ADJUSTMENTS
JUNE 17, 2009
CITY HALL'S COUNCIL CHAMBERS**

MEMBERS PRESENT

Raul Sesin
Kathy Olivarez
Jon Lown
Jorge Garcia
Daniel Tijerina

MEMBERS ABSENT

Keri Aman

STAFF PRESENT

Sergio Zavala
Jaime Acevedo
Raymundo Elvira
Susana De Luna

GUESTS PRESENT

Jesus J. Garcia
Victor Manuel Sanchez
Diana Garza
Rosa Elia Cedillo
Irene Peña

CALL TO ORDER

Chairman Raul Sesin called the meeting to order at 4:33 p.m.

CITIZENS PARTICIPATION

Mrs. Rosa Elia Cedillo who resides at 1811 Cardenas read from a written statement. See attachment "A".

Chairman Sesin asked Mr. Zavala if this was something that could be addressed at the next scheduled meeting since he was aware that it couldn't be discussed at this meeting.

Mr. Zavala stated that he would need to confer with legal counsel on this request.

Chairman Sesin stated that Mrs. Cedillo has made a request and he would like to get an answer before the next meeting.

APPROVAL OF MINUTES FOR MAY 20, 2009

Chairman Sesin asked if there were any corrections to the minutes. 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 33' FRONT SETBACK INSTEAD OF A REQUIRED 35' FRONT YARD SETBACK AT 1705 KRISTI LANE, BLOCK 19, BLOCK 6, OAKWOOD ESTATES SUBDIVISION, AS REQUESTED BY ESTEBAN GARCIA

Mr. Acevedo stated that the site was located at the Kirk Avenue/Kristi Lane intersection along the south side of Kristi Lane. The applicant desires to construct a 2,306 sq. ft. residence on Lot 5 and was requesting a variance to have a 33' front setback instead of the plat-specified 35' front setback on the irregular lot. Staff called P&Z's attention to the Site Plan, which had the

proposed building 33' from the front lot line. In reviewing the recorded plat, staff observed that Lot 5 was at a *knuckle*. The lot has a depth of 120' where others to the north have a depth of 147.5' though all Lots were encumbered with the same 35' front setback. The site plan however, clearly showed that the front 35' setback could be easily met on the vacant Lot though there would be a resulting 23.8' rear setback (where 25' were required). Since the front setback could be met, then it should. The Lot's irregular pattern and it's Lot depth didn't appear to impede front setback compliance though staff acknowledges that the rear 23' setback would result. With fencing of the rear yard though, the rear setback infraction was negligible. Staff presented an aerial showing that similar Lots in the area were meeting the 35' front setback. Staff's recommendation was to meet front setback and infringe onto 25' rear setback.

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's cousin, Mr. Jesus Garcia, stated that he just wanted to know if the Board could allow him to build the house at 33' front setback.

Chairman Sesin recommended that he comply with the 35' front setback but would consider allowing the encroachment on the rear setback.

There being no further discussion, Chairman Sesin entertained a motion. Mrs. Olivarez moved to deny the request of the 33' front setback variance but instead allow the 23' rear setback. Mr. Tijerina seconded the motion. Upon a vote, the motion passed unanimously.

ITEM # 1.2

CONSIDER A VARIANCE REQUEST TO HAVE A 2.5' SIDE BUILDING SETBACK INSTEAD OF A 6' SIDE SETBACK AT 1311 W. RAY CIRCLE STREET, BEING LOT 26, NELL TOLLE SUBDIVISION, AS REQUESTED BY VICTOR MANUEL SANCHEZ

Mr. Zavala went over the write-up stating that the site was located 300' north of Barnes along the west side of West Ray Circle. The site approximately measures 45' frontage to West Ray Circle by a 107' depth (4,804 sq. ft.). The applicant is requesting a variance to construct an open carport on Lot 26, which would have the open carport 2.6' to the side lot line. Being zoned R-4, the typical side setbacks were 6'. The intent of side setbacks was to allow a 'fire' clearance from one residence to another on different Lots. What ZBA had entertained in the past was a 12' building to building separation to the neighbor; however, the neighbor must be willing to sign (and record) a perpetual 9.5' side yard setback, i.e., 9.5'

+ 2.5' = 12' separation. Staff did not object if the neighbor agreed to the higher side setback and that the carport remained perpetually open.

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, Mr. Victor Manuel Sanchez, was present to answer any questions that the Board might have.

Mrs. Olivarez asked if the neighbor understood that they couldn't expand on their property because of the 12' requirement.

Mr. Zavala replied, "Yes". He added that it would be very challenging for the neighbor to expand to the north side anyway. He mentioned that the likelihood would be that the mobile home would probably be moved out first, Mr. Zavala called ZBA's attention to the favorable letter from the adjoiner, too.

Mrs. Olivarez asked if there was a possibility that the mobile home would be taken out and the neighbor might want to build a house.

Mr. Zavala stated that it was possible in the R-5 zone but this would be where the recorded encumbrance would come into place.

Mrs. Olivarez stated that the property was zoned R-4 for mobile homes.

Mr. Zavala stated that the property was actually zoned R-5, which would allow RV, mobile homes, and homes.

Mrs. Olivarez stated that there could be the time that the owner or somebody else might want to use more space.

Chairman Sesin replied, "Yes, however the encumbrance agreement is executed that it would be subject to agreeing with those conditions".

Mrs. Olivarez stated that she just wanted to make sure that the neighbor understood that before signing.

Chairman Sesin stated that he was sure staff would convey that to the neighbor before signing.

Mr. Tijerina asked if it was possible to also include a hold harmless agreement included.

There being no further discussion, Chairman Sesin entertained a motion. Mr. Lown moved to approve the variance subject to staff's recommendations including the hold harmless agreement. Mr. Garcia seconded the motion. Upon a vote, the motion was unanimously approved.

ITEM # 1.3

CONSIDER A VARIANCE REQUEST TO HAVE A 3' SIDE BUILDING SETBACK INSTEAD OF A 6' SIDE SETBACK AT 220 PASEO DEL REY, BEING LOT 3, BLOCK 22, TIERRA DORADA SUBDIVISION, AS REQUESTED BY JESUS & DIANA GARZA

Mr. Zavala went over the write-up stating that the site was located between Cuesta del Sol and Tierra Dorada along the east side of Paseo del Rey. The site measures approximately 60' of frontage to Paseo del Rey by a 100' depth (6,000 sq. ft.). The applicant installed a storage unit without a building permit. Staff called P&Z's attention to the aerial, which showed the shed 3' from the lot line. Being zoned R-1, the typical side setback is 6'. The intent of side setbacks was to allow a 'fire' clearance from one residence to another.

Since it was a 'shed' staff's first recommendation was to merely relocate it (with a permit) in compliance to setback codes. This first alternative would not encumber adjoining Lots and would be self-accountable. A reluctant second alternative would involve dual-Lot compliance. What ZBA had entertained in the past was a 12' building to building separation to the neighbor; however, the neighbor must be willing to sign (and record) a perpetual 8' side yard setback, i.e., 9' + 3' = 12' separation. Staff pointed out that the adjoining neighbor was the applicant's father.

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, Mrs. Diana Garza, stated that "all the people" in the neighborhood had storage sheds that were in violation.

Chairman Sesin asked Mrs. Garza if there was a reason why she couldn't meet the 6'.

Mrs. Garza stated that when she asked for permission from the city to put the storage shed she was told it would not be allowed but later her parents bought the lot next door and the storage shed was moved without pouring any foundation. She thought it met the setbacks until she received a letter from code enforcement stating that the storage shed was in violation to the side setback.

Mrs. Olivarez stated that she would hate to tie up subsequent future owners' property and if there was no foundation why wouldn't she be able to move it to be in compliance. She added that if the property was tied up, it could create bad feelings between her and a future owner/neighbor that her storage shed could keep them from building. Mrs. Olivarez mentioned that she understood it was *okay* to leave the storage shed if it was with her father only but ownership may change.

Mr. Lown stated that there was no reason why it could be moved to meet code.

Mrs. Olivarez stated that Mrs. Garza had mentioned that no foundation had been poured therefore it would be easier for them to just move the storage shed.

There being no further discussion, Chairman Segin entertained a motion. Mr. Tijerina moved to deny the variance request as recommended by staff. Mrs. Olivarez seconded the motion. Upon a vote, the motion to deny was unanimously approved.

**ITEM #2.0
OTHER BUSINESS**

There was no other business discussed.

**ITEM #3.0
ADJOURNMENT**

There being no further business, Chairman Segin entertained a motion to adjourn. Mr. Tijerina moved to adjourn. Mrs. Olivarez seconded the motion. Upon a vote, the motion passed unanimously at 4:51 p.m.

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

Attachment "A"

RECEIVED
JUN 17 2009

Good Afternoon. My name is Rosa Elia Cedillo. I reside at 1811 Cardenas here in Mission.

On December 5, 2007, this Board approved a variance on Lot 2, Block 2, Carlos G. Leal, Jr., the lot to the South of my home.

This variance has caused both my property and my family to be severely damaged.

I immediately filed a complaint in compliance with appeal procedure; and, my appeal was not brought before the board for discussion as it should have been.

Instead, on February 25, the Board took the variance to the City Council for approval. I made an appearance at that meeting and the Mayor looked at the City Manager, who looked at Mr. Zavala and Mr. Zavala explained that the matter had been referred to the City Attorney, Mr. Guerra. I was ignored.

On March 3, 2008, Mr. Guerra wrote to me and said, *"the City can only get involved if City ordinances are violated, not otherwise."*

My appeal was not even considered. Building has continued as if applauded by the City, granting them permission to build an outdoor restroom inside the carport that was to "remain open"; they were permitted to build a duplex with electricity running underground from the main house on the adjoining lot, all in violation of city ordinances.

I hereby request, pursuant to Article IV, Section 1.17 (1) of this City's Ordinances, that this complaint be placed on the agenda of the next regularly scheduled meeting, wherein I will demonstrate that the variance approved by this board alters the essential character of the locality, that the variance merely serves as a convenience to the applicant, having no regard to surrounding property. That this Board made a mistake in granting this variance and that this matter needs to be corrected.

That the City having had the applicants sign a Hold Harmless Affidavit, in the event someone should get hurt due to the encroachment being allowed, does not protect my family, it merely **"adds insult to injury"**!