

**ZONING BOARD OF ADJUSTMENTS
OCTOBER 21, 2009
CITY HALL'S COUNCIL CHAMBERS**

<u>MEMBERS PRESENT</u>	<u>MEMBERS ABSENT</u>	<u>STAFF PRESENT</u>	<u>GUESTS PRESENT</u>
John Lown Kathy Olivarez Jorge Garcia Daniel Tijerina	Keri Aman Raul Sesin	Sergio Zavala Jaime Acevedo Bobby Salinas Annette Zavala	Jeff Underwood Nancy King Reginald King Sandra Olguin Norma Canales

CALL TO ORDER

Vice-Chair Kathy Olivarez called the meeting to order at 4:42 p.m.

CITIZENS PARTICIPATION

Vice Chair Olivarez asked if there was anyone in the audience for citizen's participation.

There was no response.

APPROVAL OF MINUTES FOR JUNE 17 AND AUGUST 19, 2009

Vice-Chair Olivarez asked if there were any corrections to the minutes for June 17, and August 19, 2009. Mr. Lown moved to approve the minutes for June 17, and August 19, 2009, Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

ITEM #1.1

CONSIDER A VARIANCE REQUEST TO RETAIN A 6" REAR YARD SETBACK INSTEAD OF A 10' REAR YARD SETBACK AT 3109 MELODY LANE, BEING LOT 1, JOHNSON CITY SUBDIVISION, AS REQUESTED BY NANCY KING

Mr. Jaime Acevedo went over the write up stating that the site is at the SE corner of Melody Lane and 2 Mile Road. The corner site measures approximately 128' frontage to 2 Mile Road by a 125' depth (16,035 sq. ft.). The applicant desires to retain a 6" rear setback for a pool shed built with no building permit. The required rear setback for this R-1 lot is 10'. Staff calls your attention to the aerial which has the pool house 6" from the lot line. The applicant claims that the structure has been here for over 25' years meaning since before 1984 when the property was un-subdivided.

Realizing that setbacks are intended to maximize a fire break between buildings on different lots, ZBA may consider denying this request. If ZBA is inclined to approve

this variance, ZBA may consider the following: **1)** fire-rate entire structure, **2)** encumber higher setback on adjoining Lot to south via recorded documents, and **3)** if ever removed, any new accessory structure shall meet the prevailing setbacks.

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

Mrs. Norma Canales mentioned that even though she did not live near them, she was afraid that her neighbor would want to do the same thing later. She moved to Johnson City in the early 80's and the house was there already and it had the swimming pool and the small building was where the canopy is located, and she believed it's for the pumps. There was another incident with a neighbor that was building a shed and the City made them comply with the setbacks, she also mentioned that there is a recorded plat subdivision with the setbacks in place. She presented a picture dated November 2004 that showed the back of the King's house but the shed mentioned was not visible.

Vice-Chair Olivarez asked if the applicant or representative were present.

Mrs. Nancy King the applicant stated that she purchased the house in 2008, and the building has been there since 2004. The building in question houses all the pool pumps and has been there for over 30 years. They bricked and raised the building to make it look better. She stated that it was already done when she purchased the house. The pipes are right against the fence all they did was make it look nicer, and mentioned that the comment Mrs. Canales made about the building being close to the awning was not true; they got permits to build this. The building that is against the fence was there when that house was purchased back in 1993, the City has been out there several times to look at this situation. If the building has to be moved it would have to be torn down and all the plumbing needs to be moved.

Mr. Garcia asked that if the applicant had access through Melody Lane can that be considered as a side setback instead of the rear setback.

Mr. Acevedo replied that the house faces 2 mile and even though it will still be encroaching on the setbacks, and a permit was issued a few years back, but it did not show the building mentioned on the variance, it only showed a gazebo.

Vice-Chair Olivarez asked if staff had pictures of this location.

Mr. Acevedo mentioned that they have an old aerial picture that does not show the structure; however, it does show the pool and gazebo.

Vice-Chair Olivarez asked if the brick wall was fire rated, because on the site plan the roof hangs over the fence and the neighbor is also building a carport.

Mr. Acevedo replied that the carport being built next-door was a wood structure and did meet setbacks.

Vice-Chair Olivarez mentioned if they could fire rate the wall and the roof.

Mr. Acevedo replied that it could be done.

Vice-Chair Olivarez mentioned that if this was there since the 90's it might be grand fathered.

Mr. Zavala mentioned that it might have been a smaller structure and could not be seen, but its not shown on the permit they obtained.

Vice-Chair Olivarez asked if there was a permit issued.

Mr. Acevedo mentioned that it might have been in 2008.

Mrs. King mentioned that the permit would have been issued before 2008; she bought the house in 08.

Mr. Reginald King stated when the city decided to widen 2 Mile Road the City sent an aerial view of their property that clearly shows the pool shed. He mentioned that the shed was very dilapidated and all they did was put brick around it.

Mrs. Canales mentioned that the shed was not there at the time she took the picture and this was taken back in 2004.

Vice-Chair Olivarez mentioned that maybe the structure was below the fence at the time the picture was taken.

Mrs. King replied that it was a small structure and all they did was rebuild it and made it taller to make it look more appealing. If anyone walks in, you can see the original structure.

Mr. Zavala the mentioned that the permit approved by the City was issued in January 05, and does not show the pool shed, the permit application shows the new addition of a 10'-6" x 12'-0" and the replacement of the old fence.

Mrs. Canales mentioned that they have lived there since the early 80's. She mentioned that they had seen a small building near the fence, however it was a very small building that was not up against the fence, it was closer to the canopy.

Mr. Daniel Tijerina made a motion to deny the item.

Vice-Chair Olivarez asked if there was a second to deny the item.

The motion failed due to lack of a second. She asked for another motion.

Mr. Garcia made a motion to approve the item subject to staff recommendation to fire rate the walls and the installation of gutters, Mr. Lown seconded the motion, if they fire rate the roof as well. The motion failed due to, lack of votes; they need a minimum of four votes to pass.

Mr. Zavala mentioned that the item should be tabled to allow the applicant an opportunity to provide further photographic evidence of the pool container's pre-existence.

There being no further discussion, Vice-Chair Olivarez entertained a motion. Mrs. Olivarez moved to table the request. Mr. Lown seconded the motion. Upon a vote, the motion passed unanimously.

ITEM # 1.2

CONSIDER A VARIANCE REQUEST TO HAVE A 1' 8" REAR SETBACK INSTEAD OF THE REQUIRED 10' REAR SETBACK AT 3504 SANTA LAURA, BEING LOT 16, PASEO LINDO PHASE II, AS REQUESTED BY HUGO MARTINEZ

Mr. Acevedo went over the write up stating that the site is at the Santa Laura/San Ramon intersection along the west side of Santa Laura. The owner, Hugo Martinez, desires to retain a veranda that was constructed without a permit in his back yard and is requesting to retain a 1' 8" side setback for this structure. Typical setbacks for this development should be a 5' side setback and a 10' rear setback. When viewing the vicinity map, there is a 220' drainage ROW directly abutting the subject site to the south and a 100' drainage ROW to the west, thus not affecting anyone to the west and south (rear). There is a 15' recorded utility easement along the rear of the property line. However, the applicant did spot the lines prior to construction and avoided all utilities during construction.

On March 18, 2009 a similar request was approved by ZBA at 323 Sabine (Lot 7, Block 22, Cimarron Country Club Subdivision Phase 1, Section IV). In the Cimarron variance, a veranda structure abutting a golf course was permitted with a 1' rear setback. ZBA heavily weighed the perpetual open space adjoining the lot, which seems similar in this case.

Staff does not object to the variance subject to: **1)** a recorded document that the patio will be perpetually 'open and un-enclosed', i.e., no walls, and that the City and recognized franchise holders be indemnified and held harmless to any private improvements on or over the 10' utility easement, and **2)** if ever removed, the prevailing setbacks shall be complied with thereafter.

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

Mr. Jeff Underwood, from Hunt Valley, representing the developer and the Home Owners Association Modification Committee, he went over the specifications they require anytime a homeowner wants to modify their home or add a structure to their home. He stated that need to apply for an approval from the modification committee and if approved, one of the requirements is to apply with the City and obtain a permit as well. In this case, the owner has not complied with the City's or the Homeowners associations, requirements. Back in September of 2008 the Modification Committee sent the owner two letters for modifying his house without approval the owner finally came in to seek approval from the association. In July of 2009, he applied to install a veranda where the modification committee for not meeting setbacks denied his request. A letter was sent out to him where the owner once again went to the association for an approval of a 3' setback from the fence. The Association approved this pending approval from the City. The concern the Association has is that the owner has not complied with any rules. Mr. Underwood stated that he fears that the applicant will enclose the veranda once again not complying with any of the rules, thus the Association is against this variance.

Vice-Chair Olivarez asked if the applicant or representative were present.

There was no response.

Mr. Garcia asked if they had contacted the owner.

Mr. Acevedo replied that the owner was advised of the meeting.

Mr. Acevedo mentioned that the owner would have to comply with the Home Owners Association.

Mr. Lown asked if the applicant had applied for a permit, and he also mentioned that if the Homeowner's Association was in opposition and did not obtain the proper permits, he was against the approval.

Mr. Acevedo mentioned that the applicant had not obtained the proper permits.

There being no further discussion, Vice-Chair Olivarez entertained a motion. Mr. Tijerina moved to deny the request. Mr. Lown seconded the motion. Upon a vote, the motion passed unanimously.

ITEM # 1.3

CONSIDER A VARIANCE REQUEST TO HAVE A 2' SIDE SETBACK INSTEAD OF THE REQUIRED 6' SIDE SETBACK & TO HAVE A 2' REAR SETBACK INSTEAD OF THE REQUIRED 10' REAR SETBACK (U.E.), AT 2809 SANTA OLIVIA, BEING LOT 12, CAMINO REAL SUBDIVISION PHASE II, AS REQUESTED BY SANDRA OLGUIN

Mr. Acevedo went over the write up stating that the subject site is at the NE corner of Santa Olivia and San Efrain. The irregular corner lot has a total of 10,207 sq.ft. The applicant desires to retain a 2' side and a 2' rear setback for an 8' x 10' storage shed installed with no building permit. Typical setbacks at this development are 6' side building setback and a 10' rear building setback, due to the existing 10' utility easement.

The primary purpose of setbacks is to provide a firebreak between buildings and between properties. We have seen situations in the past and we will undoubtedly see future situations where ZBA will need to consider alternate 'out of the box' solutions that would still meet the intent of the setback code... staff believes that the fire-rating option is certainly one of these viable alternatives. We researched our files and are providing them for your assessment. As documented, on auxiliary buildings such as sheds and garages, ZBA has already seen similar cases where fire-rating that side of the building can be imposed and, if need be, fire-rating can be expanded to a more substantial portion of the structure than just one side of the accessory building, e.g., fire-rate 50% to compensate for the encroachment.

Staff believes that the 1510 E. Business Highway 83 (Lemon Tree Estates Lot 19-Block H) variance is the most comparable to the Olguin proposal. The Lemon Tree Estates structure was a storage shed where a 2.5' setback was approved with fire rating. The Lemon Tree Estates approval has worked well since 2006 and we believe that the Olguin case is similarly workable.

With the above expressed, Staff does not object to the Olguin variance but recommends that 50% of the storage shed be fire-rated to compensate for the encroachment while simultaneously maximizing protection. We also recommend that the applicant fill out an "Indemnification Agreement" since over an existing utility easement.

DATE	SITE	VARIANCE	BLDG. TYPE	ACTION
6/12/01	1015 Blake	Permit 2' side setback	garage/carport	approved w/fire-rate
9/15/04	1103 Fortuna	Permit 2' 6" side setback	storage shed	approved w/fire-rate
2/15/06	1510 E. Bus.83	Permit 2'5" side setback	storage shed	approved w/fire-rate
10/15/08	1016 Bryce	Permit 2'4" side setback	garage/carport	approved w/fire-rate

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

There was no response.

Vice-Chair Olivarez asked if the applicant or representative were present.

Mrs. Sandra Olguin was present to answer questions.

Vice-Chair Olivarez asked if she applied for a building permit.

Mr. Acevedo mentioned that the applicant had applied for a building permit, however was not sure if she applied for a permit with the Home Owner's Association.

Mrs. Olguin mentioned that the Home Owner's Association approved both permits, for the shed and the pergola.

Vice-Chair Olivarez mentioned to the owner that she also needed permits from the City, and if this was also in the Sharyland Plantation.

Mr. Tijerina asked Mr. Underwood if they would oversee this permit.

Mr. Underwood mentioned that in the past, the Association has considered and approved non-permanent structures within the setbacks, as long as it does not sit on a concrete slab.

There being no further discussion, Vice-Chair Olivarez entertained a motion. Mr. Lown moved to approve the request. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #2.0
OTHER BUSINESS**

There was no other business

**ITEM #3.0
ADJOURNMENT**

There being no further business, Vice-Chair Olivarez entertained a motion to adjourn. Mr. Tijerina moved to adjourn. Mr. Lown seconded the motion. Upon a vote, the motion passed unanimously at 5:16 p.m.

Vice-Chair Kathy Olivarez
Zoning Board of Adjustments