

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

<u>MEMBERS PRESENT</u>	<u>MEMBERS ABSENT</u>	<u>STAFF PRESENT</u>	<u>GUESTS PRESENT</u>
Kathy Olivarez	Raul Sesin	Sergio Zavala	Arthur Brown
Jorge Garcia		Annette Zavala	Jim Bergner
Keri J. Aman		Bobby Salinas	Donna Bergner
Thomas Birmingham		Jaime Acevedo	Ariel Salinas
Daniel Tijerina		Willie Seguin	Jeff Underwood
Jon Lown			Sandy Spidel
			Juan Cantu
			Ruby E. Thompson
			Calvin Davis

CALL TO ORDER

Vice-Chair Olivarez called the meeting to order at 4:36 p.m.

CITIZENS PARTICIPATION

Vice-Chair 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 DECEMBER 10, 2008

Vice-Chair 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

DISCUSSION AND ACTION TO APPOINT A CHAIRMAN AND VICE-CHAIRMAN

Mr. Zavala stated that the appointment of a Chairman & Vice-Chair is up for reconsideration.

Mr. Birmingham moved to re-appoint Mr. Raul Sesin as the Chairman and Mrs. Olivarez as Vice-Chair. Mr. Garcia seconded the motion. Upon a vote, the motion was unanimously approved.

ITEM #1.2

CONSIDER A VARIANCE REQUEST TO PROPOSE A 10' FRONT SETBACK INSTEAD OF THE TYPICAL 20' FOR 'FRONT' OF HOME, LOT

23, HACKBERRY MANOR SUDIVISION, AS REQUESTED BY MR. ARIEL SALINAS

Mr. Zavala stated that the subject site is at the NW corner of 23RD Street, /Karina Drive and has dimensions of 74.5' x 100'. The proposition is to propose the 'front' of the home not on and Karina but instead along the typical side corner side (being 23rd Street). In re-assessing variances of this nature in perspective to the Zoning Ordinance's boundaries, the owner's desire is for 'aesthetics' in lieu of simply meeting typical setbacks. Although other similar requests have been cleared, in general those other lots were narrower in lot widths, i.e., this lot's width is over 74'. In our attempt to regain the full integrity of our zoning guidelines, Planning is defaulting to the ordinance's guidelines and, in that regard, staff had the following comments: enforcing typical setbacks on this will not impose an un-necessary hardship; this corner lot is not unique; there are 2 other corner lots to the east where their front is to the north-south street and their garage is a side entry along 23rd Street. This results in a more uniform row of 'front doors' than a double car garage door being in their midst. Re-designing the house to face the east will align with future others to the north and face the 'front doors' of the lots across the street to the east. Sect. 1.17-2f) stated "That the variance will not merely serve as a convenience to the applicant"; this appears to be the case since we know that all standard setbacks can easily be compiled with on this 74' + width corner lot save the applicant's wish to face southward. Faced with a non-unique lot where other 74' + wide corner lots have been counseled by Staff to comply with all their setbacks & having a home face eastward would be 'more uniform' to future homes to the adjoining north & east, Staff has no alternative but to object to this variance.

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

Mr. Juan Manuel Cantu, who lives at 2212 Hackberry Ave. He spoke to his neighbors and got some signatures in opposition. He stated that they all worked with what they had and would have also wanted 10' more, but they followed the guidelines and kept the subdivision from looking off balance.

Vice-Chair Olivarez asked how many signatures he had obtained.

Mr. Cantu replied that he had 6 signatures.

Vice-Chair Olivarez asked staff if they had reviewed the names.

Mr. Acevedo mentioned that staff reviewed the names and they equated to 6% opposition.

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

There was no one present

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

ITEM #1.3

CONSIDER A VARIANCE REQUEST TO PROPOSE A 5' REAR SETACK INSTEAD OF THE REQUIRED 13' REAR SETBACK, AT 3702 SAN ERAIN ST., BEING LOT 47, LAS VILLAS AT LAGO ESCONDIDO PHASE III, AS REQUESTED BY HUNT VALLEY INDUSTRIAL

Mr. Salinas said that the subject site was within a private and gated community within the Sharyland Plantation. BEING PUD-zoned, there is a level of self-governance and flexibility when it comes to building setbacks and land uses that normally would not be imposed elsewhere. The differing land uses and distinctions of building plans even within one given community will not all be uniform; this seems to add to the intrigue of that community. This is reflective of all phases of Las Villas at Lago Escondido as one notices that unique building setbacks of Plat Note #5. PUD's normally have an 'out of the box' development scheme with various common landscaped and lake areas that seems to attract a certain clientele to their upscale plans. The Lot width is 50', which in other areas of Mission would mean a townhouse-residential land use. Mr. Salinas mentioned that the applicant recently changed their proposal, to where they are asking for a 10' rear setback rather than 5'. Those lots at Lago that do not have a rear fence actually have an elongated appearance toward the lake since the 'lot line' is obviously not marked. The subject lot is unique as one observes the 3-lot series showing a jogged effect with substantial rear frontage to a common lake feature. Staff has determined that the lot is unique via it's platted status and via it's surrounding common features; but is common in land use to other residential town homes where a 0' rear setback is typical, and thus, a 10' setback is similar to the 10' to the City's minimum rear setback of 10', proposal merits favorable consideration. Staff does not object to the proposal variance.

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.

Mr. Jeff Underwood was present to answer any questions the board might have.

Vice-chair Olivarez asked if the pond water would go into the property if there were a major hurricane.

Mr. Underwood mentioned that each lot has a specific house design and there was simply a miscalculation on this lot, regarding the setback and regarding the pond it was built to withstand a 100 yr. Flood and can handle a storm. He mentioned that they went through hurricane Dolly without any problems.

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

ITEM #1.4

Tabled: CONSIDER A VARIANCE REQUEST TO RETAIN A 2' SIDE SETBACK INSTEAD OF THE 6' SIDE SETBACK (10' UTILITY EASEMENT) AT 300 S. BRYAN ROAD, BEING LOT 1, BLOCK "L", HERITAGE SQUARE SUDIVISION, AS REQUESTED BY MRS. SANDY SPIDEL

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

Mr. Acevedo mentioned that this item was tabled on the December 12, 2008 ZBA meeting. The subject site is between Highland Park Drive and Christy Drive. The site measures approximately 55' frontage to Deidre Drive by a 105' depth (5,775 sq. ft.). The applicant desires to retain a 2' side-building setback for a covered carport built with no building permit. The required side setback is 6' for Heritage Square when there are no easements. However, Lot L-1 has a 10' Utility Easement which cannot be built over. In the past several meetings, several variances have been granted at Heritage Square, none however, have been granted for construction over a Utility Easement. Section 1.17 (2) Powers of board of adjustment: The board shall have power to authorize upon appeal in specific cases such variances from the terms of this ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in unnecessary hardship, and so that the spirit of this ordinance shall be observed and substantial justice done. Such variances from the strict application of the terms of this ordinance must be in harmony with its purpose and intent, and shall be authorized only when the board is satisfied that the applicant has proven the following conditions exist: (f) that the variance will not merely serve as a convenience to the applicant. Staff recommended denial. Due to No permit was issued, 8' over a Public utility easement with existing services, Others are meeting rear

setbacks, If approved; will set wrong precedence to others, lot is not unique, and self-inflicted.

Note: Similar requests for construction over easements been denied by ZBA at:

-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-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. Spidel the applicant, mentioned that they bought the property on Dec. 08 with the structure as is and that she had provided a copy of a letter from the architectural committee approving the carport.

Mr. Acevedo mentioned that there had been some changes on the structure and they had enclosed it since the last meeting and did not obtain a permit.

There being no further input or discussion, Vice Chair Olivarez entertained a motion. Mr. Garcia moved to deny the variance. Mr. Birmingham seconded the motion. Upon a vote, the motion was denied.

ITEM #1.5

CONSIDER A VARIANCE REQUEST TO HAVE A 0' CORNER SIDE SETBACK INSTEAD OF THE REQUIRED 6' CORNER SIDE SETBACK AT 300 S. BRYAN RD., BEING LOT 1, BLOCK "G", HERITAGE SQUARE SUBDIVISION AS REQUESTED BY MR. & MRS. JIM BERGNER

Mr. Acevedo stated that the subject site was at the SE corner of Dianna Drive and Mark Place. The corner lot site measures approximately 40' frontage to Dianna Drive by a 78' depth (3,120 sq. ft.). The applicant is requesting that a 0' corner side setback remain on Lot G-1 at Heritage Square Subdivision. The 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 carport already in place. Due to the age of the structure in question, it is 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 the site and determined that there is no sight obstruction caused by the existing carport for incoming and outgoing traffic. There are also no known accidents at this intersection on

record. Over the past months several variances have been granted at Heritage Square, this one would be no different than those that have already been granted. Since the side porch had been there for over 27 years and presents no sight obstruction, staff does not object subject to: the side porch remaining perpetually open, and, once the unit is replaced, prevailing setback to be met.

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.

Mr. & Mrs. Bergner were present to answer any questions the board might have, Mrs. Bergner asked if the mobile home was sold did they need to move the carport.

Mr. Acevedo replied to her that the structure could stay and if at any time the mobile home gets removed, that's when the setbacks would be enforced.

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

ITEM #1.6

CONSIDER A VARIANCE REQUEST TO HAVE A 0' CORNER SIDE SETBACK INSTEAD OF THE 6' CORNER SIDE SETBACK AT 300 S. BRYAN ROAD, BEING LOT 1, BLOCK "C", HERITAGE SQUARE SUBDIVISION, AS REQUESTED BY MR. ALONZO McCOY

Mr. Zavala stated that the subject site was at the SE corner of Cody Drive and Kyle Lane. The corner Lot site measures approximately 40' frontage to Cody Drive by 78' depth (3,120 sq. ft). The applicant is requesting that a 0' corner side setback remain on Lot C-1 at Heritage Square Subdivision. Typical corner side setback at this development is 6'. The applicant is the second owner to this residence. The previous owner purchased the mobile home 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 is not known if the City Building Permit was issued however there no record of a variance being issued. Staff had an opportunity to visit with the applicant on-site and determined that there is no sight obstruction caused by the existing carport for incoming and outgoing traffic. There are also no known accidents at this intersection on record. Over the past months several variances have been granted at Heritage Square, this one would be no different than those that have already been granted. Since the side

porch has been there for over 27 years and presents no sight obstruction, Staff does not object subject to the side porch remaining perpetually open, and once the unit is replaced, prevailing setback to be met.

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.

Mr. McCoy was present to answer any questions that the board might have.

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

ITEM #1.7

CONSIDER A VARIANCE REQUEST TO HAVE A 0' CORNER SIDE SETBACK INSTEAD OF THE 6' CORNER SIDE SETBACK AT 300 S. BRYAN ROAD, BEING LOT 8, BLOCK "F", HERITAGE SQUARE SUBDIVISION, AS REQUESTED BY MRS. DORIS V. McCASLAND

Mr. Zavala stated that the subject site was at the SW corner of Dianna Drive and Kyle Lane. The corner lot site measures approximately 40' frontage to Dianna Drive by a 78' depth (3,120 sq. ft.). The applicant is requesting that a 0' corner side setback remain on Lot F-8 at Heritage Square Subdivision. Typical corner side setbacks at this development are 6'. In 1981, the applicant purchased her residence from Mark Andrews, the original Heritage Square developer, with the existing carport already in place. It is 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 the site and determined that there is no sight obstruction caused by the existing carport for incoming and outgoing traffic. Over the past months, several 'temporary' variances have been granted at Heritage Square with special emphasis made to regain ultimate re-compliance when the main unit is replaced. Staffs has no objection since the side porch has been there for over 27 years and presents no sight obstruction, for the side porch remain perpetually open, and once the unit is replaced, prevailing setback to be met.

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.

There was none

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

ITEM: #1.8

CONSIDER A VARIANCE REQUEST TO HAVE A 3'3" CORNER SIDE SETBACK INSTEAD OF THE 6' CORNER SIDE SETBACK AT 300 S. BRYAN ROAD, BEING LOT 1, BLOCK "G", HERITAGE SQUARE SUDIVISION PHASE II, AS REQUESTED BY MRS. CHARLOTTE NORSTRUD

Mr. Zavala stated that the subject site was at the SE corner of Christy Drive and Diedre Drive. The corner lot site measures approximately 50' frontage to Tammy Drive by a 110' depth (5,500 sq. ft.). The applicant is requesting that a 3'3" corner side setback remain on Lot P-1 at Heritage Square Phase II Subdivision. Typical corner side setback at this development is 6'. The applicant purchased the home in 1992, with the existing side porch already in place. Due to the age of the structure in question, it is 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 is no sight obstruction caused by the existing side porch for incoming and outgoing traffic. There are also no known accidents at this intersection on record. Over the past months, several variances have been granted at Heritage Square, this one would be no different than those that have already been granted. Since the side porch has been there for over 17 years and presents no sight obstruction, staff does not object subject to the side porch remaining perpetually open, and once the unit is replaced, prevailing setback to be met.

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.

There was none

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

ITEM #1.9

CONSIDER A VARIANCE REQUEST TO HAVE A 0' CORNER SIDE SETBACK INSTEAD OF THE REQUIRED 6' CORNER SIDE SETBACK AT 300 S. BRYAN RD., BEING LOT 1, BLOCK "H", HERITAGE SQUARE SUBDIVISION, AS REQUESTED BY MR. ARTHUR BROWN

Mr. Zavala stated that the site was located at the SW corner of Tammy Drive and Mark Place. The corner lot site measures approximately 40' frontage to Tammy Drive by a 78' depth (3,120 sq. ft.). The applicant is requesting that a 1' corner side setback remain on Lot I-7at Heritage Square Subdivision. Typical corner side setback at this development is 6'. The applicant purchased this residence in 1994 and is the second owner to this residence. The previous owner purchased the mobile home 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 is 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 is no sight obstruction caused by the existing carport for incoming and outgoing traffic. There are also no known accidents at this intersection on record. Over the past months, several variances have been granted at Heritage Square, this one would be no difference than those that have already been granted. Since the side porch has been there for over 27 years and presents no sight obstruction, staff does not object subject to the side porch remaining perpetually open, once the unit is replaced, prevailing setback to be met.

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.

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

There being no further input or discussion, Vice-Chair Olivarez entertained a motion. Mr. Birmingham moved to approve the variance subject to recording a setback compliance agreement upon the unit's replacement. Mr. Tijerina 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. Birmingham moved to adjourn. Mr. Tijerina seconded the motion. Upon a vote, the motion passed unanimously at 4:15 p.m.

Kathy Olivarez, Vice-Chair
Zoning Board of Adjustments