

**ZONING BOARD OF ADJUSTMENTS  
NOVEMBER 18, 2009  
CITY HALL'S COUNCIL CHAMBERS**

**MEMBERS PRESENT**

John Lown  
Kathy Olivarez  
Jorge Garcia  
Keri J. Aman

**MEMBERS ABSENT**

Raul Sesin  
Daniel Tijerina

**STAFF PRESENT**

Sergio Zavala  
Jaime Acevedo  
Bobby Salinas  
Annette Zavala

**GUESTS PRESENT**

Hugo Martinez  
Eddie Sánchez  
Russ Winters  
Herm Roldan  
Cuauhtemoc F. Roldan  
Jeff Underwood  
Reggie King  
Raquel Martinez

**CALL TO ORDER**

Vice-Chair Olivarez called the meeting to order at 4:41 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 OCTOBER 21, 2009**

Vice-Chair Olivarez asked if there were any corrections to the minutes for October 21, 2009. Mrs. Aman moved to approve the minutes. Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

**ITEM #1.1**

**CONSIDER A VARIANCE REQUEST TO HAVE A 7' 1.5" REAR SETBACK, INSTEAD OF THE REQUIRED 7' 6" REAR SETBACK AT 2102 CRYSTAL DRIVE, BEING LOTS 6 & 7, BLOCK 8, MEADOW CREEK SUBDIVISION PHASE II-B, AS REQUESTED BY CUAUHTEMOC ROLDAN**

Mr. Salinas went over the write up stating that the site is located 90' east of the NE corner of Lakeview Drive and Crystal Drive. The rear setback for this subdivision is 7' or greater for easements. These lots share a 15' easement with the adjoining lots to the rear, requiring the rear setbacks to equal 7.5'.

The applicant recently purchased this home, built in 2002, and now desires to construct a new addition to be in line with the existing home. Although staff noted the setbacks as "7' or u.e.", the Permits Clerk noted 7'; thus, the City inadvertently

approved the home to move forward. Regardless, there is no conflict with the existing utilities. Staff recommended no objection, subject to recording a hold harmless agreement. (This approval would also be deemed as favoring the existing home 'as is').

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. Cuauhtemoc Roldan was present to answer any questions.

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

**ITEM # 1.2**

**RECONSIDER 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 stated that this item was previously seen on October 21, 2009 at which time it was denied by ZBA. The applicant was out of town and unable to attend so he is requesting that this item be re-considered. The applicant does have the right to file a new ZBA application for re-consideration within 30 days.

Mr. Acevedo stated 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 Modifications Committee, Mr. Underwood stated that his concerns were previously recorded since this item had been previously seen before, and that the applicant may enclose the veranda once again not complying with any of the rules, thus the Association is against this variance. They prefer for it to be moved to a place where everyone can live with or be removed all together. Mr. Underwood also asked if staff was able to get any pictures from the inside because they got a proposal of how it was going to get constructed it was going to be a temporary structure but they don't know, and if the City was able to determine that.

Mr. Acevedo mentioned that the applicant was going to provide the City with pictures, but they were not allowed in the property, and stated that if the board wanted to, they could table the item until further information was gathered.

Mr. Russ Winters his the manager of the Sharyland Residential Association and mentioned they were in opposition. This item was seen by them which was going to be temporary and then they come to find out it was installed in the ground.

Mrs. Raquel Martinez, who lives at 4102 San Roman, mentioned she was in favor and that she did not see anything wrong with the pergola.

Mrs. Aman asked if the Zoning Board of Adjustment had the authority to approve a structure when the Homeowners Association has not approved it.

Vice-Chair Olivarez mentioned that they do, the Zoning Board of Adjustments is to enforce the City codes, not necessarily what the Homeowner's Association say, they have to decide whether they violate city codes.

Mr. Lown mentioned that the applicant was disregarding what the Homeowner's Association and the City were telling him to do, and making it a permanent structure.

Vice-Chair Olivarez asked if one of the reasons was to avoid some utility easements.

Mr. Acevedo mentioned that when the Homeowner's Association approved the permit, they approved it with a 3' setback but he shifted it back 1'. If he have left it at 3' he would not have a back yard.

Mrs. Aman asked if the structure had been built at 3' would the association be in favor of the structure being there.

Mr. Underwood replied that the key factor was that it was not going to be a permanent structure and on piers to be moved if needed.

Vice-Chair Olivarez mentioned that her concern was that the applicant did not provide any pictures.

Mrs. Aman mentioned that if they approve this, it would set precedence and is not in favor of granting the variance.

Mr. Zavala stated that there is another concern, which is if it was placed on piers or if it's on a concrete slab, since staff was not able to enter the property.

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

Mr. Eddie Salinas the contractor was representing the applicant.

Vice-Chair Olivarez asked why they did not let staff enter the property.

Mr. Salinas replied that it was a permanent structure, when the application was submitted to the association, Mr. Martinez was aware of the 10' utility easement, so he moved it to the south and placed it at 3'. He is still within the easement, and he knew if some work had to be done the structure would have to be removed.

Vice-Chair Olivarez stated that the problem was that they are not following the guidelines and he is disregarding the rules.

Mr. Salinas also mentioned that there are other houses in the subdivision that also have structures on the easements.

Mr. Acevedo replied that the City has mailed out letters to the surrounding property owners.

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

**ITEM # 1.3**

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

Vice-Chair Olivarez entertained a motion to remove the item from the "Table". Mrs. Aman moved to remove the item from the "Table". Mr. Garcia seconded the motion. Upon a vote, the motion passed unanimously.

Mr. Acevedo went over the write up stating that this item was previously tabled on October 21, 2009, so that the applicant could provide Staff with an aerial and photos that were not presented at the previous meeting.

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 shed 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.

If ZBA is inclined to approve this variance, ZBA may consider the following: 1) approve but fire-rate the south ½ of the shed (with rain gutters), and 2) if ever removed, the new replacement structure shall meet the prevailing setbacks. 3.) Subject to recording a hold harmless agreement.

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

Mrs. Norma Canales mentioned that she feels there should be some space between the building and the fence, the building goes all the way to the fence, and for their safety there should be a space between the building and the fence, for their safety.

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

Mr. Reginald King stated that Mrs. Canales she is not their neighbor, she lives four houses down and across the street. He mentioned that the structure is not a fire safety issue for her house nor the house ext to them. He is in favor of the variance and added that the structure is bricked all around.

Vice-Chair Olivarez mentioned that the City is asking them to fire rate the back wall and install rain gutters, and also mentioned that the building was there before and all they did was a facelift.

There being no further discussion, Vice-Chair Olivarez entertained a motion. Mr. Garcia moved to approve the request. Mr. Lown 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. Garcia moved to adjourn. Mr. Lown seconded the motion. Upon a vote, the motion passed unanimously at 5:05 p.m.

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Kathy Olivarez, Vice-Chair  
Zoning Board of Adjustments