



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBER
JUNE 23, 2008
1:30 P.M.**

The Zoning Board of Adjustment meeting was called to order at 1:30 p.m. by Larry Nance, Chairman.

The following Board Members answered roll call:

Mr. Larry Nance (Chair)
Mr. Robert Veliz (Vice-Chair)
Mr. Oscar Perez
Mr. Rick Cordova
Mr. Jose Melendez
Mr. Randy Bowling
Mr. Servando Hernandez

The following City Staff members were present:

Ms. Mirian Spencer, Development Services Department, Planning, Planner
Mr. Robert Peña, Development Services Department, Planning, ZBA Secretary
Ms. Linda Castle, Development Services Department, Planning, Senior Planner
Mr. Juan Estala, Development Services Department, BP&I, Chief Plans Examiner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

Staff requested the following changes:

Item 1. ZBA08-00049, 9364 Sorbonne Drive, be revised:

From – REQUEST: Variance (Rear Yard Setback)
*To – REQUEST: **Special Exception C (Rear Yard Setback)***

Item 3. ZBA08-00043, 5005 Love Road, postpone three (3) weeks until the July 14, 2008, ZBA meeting.

Item 5. ZBA08-00046, 4914 Olmos St., postpone three (3) weeks until the July 14, 2008, ZBA meeting.

Motion made by Mr. Veliz, seconded by Mr. Perez and unanimously carried to **APPROVE THE CHANGES TO THE AGENDA.**

AYES: Messrs. Perez, Cordova, Melendez, Bowling, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (7-0)

Mr. Harrel L. Davis III, Attorney representing St. Mark's United Methodist Church in the Appeal of an Administrative Official's Decision, ZBA08-00037, explained he was working with City Staff to resolve these disputes that have lead to the appeal. He hoped to have these disputes resolved prior to the next ZBA meeting. He added he would present the item at the July 14th ZBA meeting if the disputes could not be resolved.

Mr. Boureslan responded no and noted a portion of the second story was part of the original home.

Mr. Bowling clarified the addition was a one-story addition, the existing house is a two-story.

Mr. Boureslan agreed.

Ms. Castle explained the original site plan submitted for building permit met the setbacks.

Mr. Melendez noted removing 18" of the existing wall of the home would cause a structural problem and be very expensive.

Mr. Boureslan explained the home was built in 1988, the applicant purchased the home from the home builder, and the addition was built in 2003. The applicant has lived with the rear yard encroachment for 20 years.

Mr. Bowling asked Staff if language in the Code addressed this type of situation.

Ms. Castle explained a Special Exception does address situations existing for 15 years or more; however, the owner must not be the original owner and not responsible for whatever is encroaching.

Mr. Boureslan produced letters from neighbors stating the home had been in existence for a long time and had no objection with the current condition of the home.

Mr. Veliz asked Staff for an aerial of the property from 1988, 1989.

Ms. Castle responded the 1986 aerial does not show the home. She added the 1996 aerial shows some building was done in the rear; however, the picture is not very clear. She explained the City's contingent is that the applicant will have to demolish quite a bit of the home already and to meet the requirements for the Special Exception, the applicant would have to remove the 18".

Mr. Nance clarified Staff is recommending the 13' 11" by 18" to stay as is.

Mr. Veliz noted Staff is allowing 20' by 15'; however, the applicant is requesting 14' by 16.5'.

Mr. Boureslan responded no, he would like 14' by 18".

Mr. Bowling clarified for a total of 40' by 16.5'.

Ms. Castle explained the Applicant would like to keep a 14' by 16.5' portion that is encroaching, which is 1.5' more than what is permitted.

FOR THE RECORD – Mr. Nance asked Mr. Boureslan to state the exact measurements that they would like to keep.

Mr. Boureslan stated we want 13' by 13'.

Ms. Castle explained we're giving him a little more on the width, 20 feet, which is 1/3 the width of the lot. She added he would like to keep 16.5" on the depth of the encroachment.

Mr. Nance clarified what you're really asking for is 14' by 16.5', as opposed to 20' by 15'.

Mr. Boureslan responded correct. He explained the initial application request was for a Variance; however, Staff recommended the Special Exception. He opined the application should be heard as a "Builder Error"; however, the City has no proof the home was or was not built with the encroachments.

Mr. Melendez asked Staff whether the surrounding homes have the same setback encroachment issue.

No response.

Mr. Boureslan noted no survey of the original house exists; the only existing survey was done in 2003.

Mr. Estala explained the original site plan shows the required setbacks. He said these are the plans that were approved for the original house. However, if an addition is built without a permit, the City would not have record of that. If a survey comes back after the addition is built, the survey shows the property as it exists. He explained what is missing are the permits to build the addition, perhaps because no permits were submitted.

Mr. Nance surmised it is the opinion of the City that based on this site plan, the home was built in 1988 with 29' setbacks. He asked the following questions of Staff:

1. The Board could not approve the request for the Special Exception.

Ms. Castle responded that is correct.

2. Could the Board approve the application as a Variance, if the Applicant would revise his application.

Ms. Castle responded Staff would not support the request for a Variance.

Mr. Cordova asked Staff if rezoning the property to R-3A, which allows a cumulative 45' setback, was probable.

Ms. Castle responded R-3A zoning requires 15' rear setback and 20' front setback.

Mr. Boureslan referred to the site plan and noted the drawing shows the right side yard setback at 15'. He stated the current side yard setback is only 5'. He stated the builder did not build the home per the plans he submitted to the City. He asked if the Board wanted to postpone the application and review the application as a Variance at the next meeting.

Mr. Bowling added the site plan shows the side yard setbacks as 15' and 12'; however, the survey shows 5' and 22'. Obviously the home was not built per the site plan.

Mr. Boureslan concurred and requested the item be postponed and the application be reviewed as a Variance at the next meeting. He explained 18" by 13' would cost over \$20,000; additionally, demolition of 460 square feet would cost the same.

Mr. Nance suggested the Board postpone the item until the next meeting, at that time, Staff will present the application as a Variance.

Mr. Boureslan added many homes on that street do not meet the setback requirements.

Mr. Perez noted postponing the item does not ensure it will be approved at the next meeting.

Ms. Spencer noted the application does not meet the Variance requirements and added the condition(s) of the land denote a Variance.

Mr. Boureslan conferred with the owner, Mr. Saavedra, and then told the Board the owner would accept the City's conditions.

Chairman Nance asked if members of the audience were present to speak in favor of or in opposition to the application. There being none, Mr. Veliz moved, Mr. Hernandez seconded and unanimously carried to **APPROVE THE APPLICATION WITH THE CONDITION THAT THE APPLICANT TAKE THE 18" FROM THE 13 X 11, AND ALL OTHER ENCROACHMENTS IN THE SIDE AND REAR SETBACKS BE DEMOLISHED.**

AYES: Messrs. Perez, Cordova, Melendez, Bowling, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (7-0)

ITEM 2:

ZBA08-00052

5034 Columbine Street

Wiley and Louise Jones

Applicants request a Special Exception under Section 2.16.050 B (Side Yard Setback) in an R-1 (Light Density Residential) zone. This would permit the construction of a 20' by 33' garage that is proposed to encroach 20' into the required side yard setback. The required side yard setback is 20 feet in an R-1 zone. The applicant is requesting the Special Exception B to construct a garage that is proposed to be built to the side property line. There are two other houses built to the side property line at 5018 and 5026 Columbine. The house at 5018 Columbine was granted a variance by the ZBA in 1993 to build to 0' of the side property line. The house at 5026 Columbine was permitted a two-car garage addition in 1994.

Ms. Spencer gave a PowerPoint presentation and noted Staff recommends approval of the request for the Special Exception B for a 17' by 33' garage located to within 3' of the side property line.

Mr. Julius Lowenberg, Representative, explained a 17' by 33' garage is too tight for two cars and noted one other home on the same street is built to the side property line. He requested the Board allow him the additional 3 feet. He explained the garage would be built so that no water would drain to the side property, the water drains to the front and rear.

Mr. Nance asked if the proposed garage would conform with the existing home.

Mr. Lowenberg responded yes.

Mr. Perez asked if an easement existed.

Mr. Lowenberg responded no.

Mr. Hernandez asked if Staff had received any letters, phone calls or emails in favor or in opposition to the request.

Ms. Castle responded no and added there is only one home built to the property line.

Ms. Osborn provided legal advice and read into the record the following:

Section 2.16.050 B.3.: The modifications are in the same nature as the existing nonconforming lots and do not permit construction less conforming than the least conforming of the nonconforming lots.

Prior to the vote, Mr. Cordova requested language be added to the motion, No water will drain onto the neighboring property utilizing gutters or other means of control. Mr. Bowling accepted the amendment.

Ms. Osborn provided the necessary language.

Ms. Castle noted Mr. Nance's term as a regular board member would expire next week; however, there is a possibility he would be appointed as an alternate board member. She added the new Chair will be elected at the next ZBA meeting.

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Mr. Bowling referred to the Sorbonne Drive issue and noted the aerial looked as though there were other non-conforming lots on the same street. He opined the demolition would be costly and asked that Staff do their due diligence when researching and measuring, specifically regarding demolitions.

Mr. Melendez concurred.

Ms. Osborn provided legal advice.

Mr. Estala added had the Applicant applied for the permit, the City would not have authorized the construction.

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Mr. Hernandez noted there were many individuals present for the St. Mark's issue.

Ms. Castle responded that this morning the Staff had received several letters from the neighbors opposing the application, additionally, Ms. Castle stated she had informed the deliverer that the item had been postponed. She explained the postponement was posted to the web this morning.

Ms. Osborn noted the request to postpone was received late Friday afternoon.

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Ms. Spencer noted Mr. Mathew McElroy had been appointed Deputy Director of Planning.

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Mr. Nance read the following into the record: *The Zoning Board may retire into Executive Session pursuant to Section 3.5A of the El Paso City Charter and the Texas Government Code, Chapter 551, Subchapter D, to discuss any item on the agenda. We will be retiring into Executive Session at this time, pursuant to Section 551.071, Consultation with Attorney.*

Motion made by Mr. Bowling, seconded by Mr. Hernandez and unanimously carried to **RETIRE INTO EXECUTIVE SESSION AT 2:45 P.M.**

AYES: Messrs. Perez, Cordova, Melendez, Bowling, Nance, Veliz and Hernandez
NAYS: N/A

The Motion passed. (7-0)

Motion made by Mr. Perez, seconded by Mr. Veliz and unanimously carried to **RECONVENE THE ZBA MEETING AT 3:05 P.M.**

AYES: Messrs. Perez, Cordova, Melendez, Bowling, Nance, Veliz and Hernandez
NAYS: N/A

The Motion passed. (7-0)

ADJOURNMENT:

Motion made by Mr. Hernandez, seconded by Mr. Veliz and unanimously carried to **ADJOURN THE ZBA MEETING AT 3:05 P.M.**

AYES: Messrs. Perez, Cordova, Melendez, Bowling, Nance, Veliz and Hernandez

NAYS: N/A

The Motion passed. (7-0)

Robert Peña, Secretary, Zoning Board of Adjustment