



ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBERS
SEPTEMBER 13, 2010
1:30 P.M.

Chair Cordova called the meeting to order at 1:32 p.m.

The following Board Members answered roll call:

Mr. Rick Cordova, Chair
Ms. Alisa Jorgensen, Vice-Chair
Mr. Oscar Perez
Mr. Rick Aguilar
Mr. Randy Bowling
Mr. Rigoberto Mendez
Mr. Jose Melendez
Mr. Ken Gezelius
Mr. Lamar Skarda

The following City Staff were present:

Mr. Art Rubio, Planning & Economic Development, Planning, Senior Planner
Ms. Linda Castle, Planning & Economic Development, Planning, Senior Planner
Mr. Mike Neligh, Engineering & Construction Management, Building Permits & Inspections, Senior Plans Examiner
Ms. Cynthia Osborn, City Attorney's Office, Assistant City Attorney

CHANGES TO THE AGENDA

Staff noted the following:

1. Item 1., **ZBA10-00038**, 3325 Wedgewood Drive, postpone four (4) weeks
2. Item 5., **ZBA10-00022**, 900 Gomez Road, applicant withdrew application;
3. Item 7., **ZBA10-00037**, 865 Via de los Arboles Road, application was withdrawn

MOTION: Motion made by Mr. Perez, seconded by Mr. Melendez and unanimously carried **TO APPROVE THE CHANGES TO THE AGENDA.**

AYES: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowilng, Cordova, Mendez, Melendez, Gezelius and Skarda

NAYS: N/A

Motion passed. (9-0)

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susannah M. Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson



Prior to the meeting Staff distributed the following information to Board Members:

1. Memorandum from Mr. Stala regarding the Carport Structural Design
Mr. Estala had reviewed the carport structural design and found it to be acceptable provided the following conditions are met:
 1. provide roof framing plan
 2. foundation details
2. Letters from the utility companies regarding encroaching into the easement
Letters stated either there was no objection to the carport or there was no existing utility easement.

Mr. Rubio gave a PowerPoint presentation and noted there were no phone calls and/or letters from the public either in favor of or opposition to the request.

Ms. Castle stated the Staff Report recommended postponing the case four weeks; however, **STAFF NOW RECOMMENDS APPROVAL OF THE REQUEST**. She explained the carport was constructed without the proper permit. Department of Transportation Staff had no adverse comments and/or issues.

Chair Cordova asked if members of the audience were present to speak in favor of or in opposition to the application. There were none.

Chair Cordova asked if there were any other questions and/or comments. There were none.

MOTION:

Motion made by Mr. Gezelius, seconded by Mr. Melendez **TO APPROVE**.

Prior to the vote, Chair Cordova asked if the applicant was present.

Mr. Humberto Escobedo, applicant, was present; Mr. Rubio translated for Mr. Escobedo. Mr. Escobedo explained the carport had been completed without the proper permit; additionally, all that remains is to paint the structure.

Correction – Side View Plan – Ridge and Side Beams

Mr. Estala explained the applicant has installed two 2" x 12" Ridge Beams and two 2" x 12" Side Beams rather than one 2' x 12' Ridge Beam and one 2" x 6" Side Beam as shown in the plan.

Additionally, Mr. Estala explained Staff will need to review the roof framing plans. Following the issuance of the permit, Inspectors will inspect the structure to ensure that what was constructed matches the plans submitted. In his opinion, the color of the stucco and brick are a close match.

Mr. Bowling requested the following amendment to the motion *‘that the stucco be painted the same color as the siding’*.



1. provide truss details from manufacturer
 2. add one more 2' x 12' support beam to the 2-2'x12' provided
3. Opposition Petition
Eight neighbors, residing within 300 feet of the subject property, signed a petition opposing the proposed request

Mr. Rubio gave a PowerPoint presentation and noted **STAFF RECOMMENDS APPROVAL OF THE REQUEST FOR THE SPECIAL EXCEPTIONS PENDING REVIEW BY ENGINEERING AND CONSTRUCTION MANAGEMENT OF THE CARPORT STRUCTURAL DRAWINGS.**

Per his memo, Mr. Estala explained, he is requesting the applicant's representative add another 2' x 12 support beam, for a total of three support beams. Additionally, per the plan review process, Mr. Estala requests the representative submit the truss package information from the manufacturer.

Chair Cordova asked if the applicant or representative was present.

Mr. Jim Smith, JKS Properties, representing the applicant, agrees with Staff comments; furthermore, he will include all requested revisions/documents at the time he applies for the permits.

Opposition Petition

Staff and Board Members commented on the location of the addresses of those who neighboring residents in opposition to the request.

Chair Cordova questioned if members of the audience were present to speak in favor of or in opposition to the application. There were none.

To the representative, Ms. Jorgensen asked, if the applicant had spoken with the neighbors to inquire why they were opposed.

Mr. Smith responded his client is 100% homebound and does not have any relationship with his neighbors. Mr. Smith then listed a number of health issues his client has and added he brought with him a prescription from the applicant's physician recommending the carport construction. Mr. Smith stated an \$83,000.00 VA grant will used to pay for a portion of the modification.

Staff noted there are no utility easements at the front property line; additionally, per the aerial photograph, there were no other properties in this neighborhood with encroaching carports.

Ms. Osborn clarified the applicant is requesting two separate Special Exceptions – (1) Rear Setback and (2) Carport over a Driveway. She referred to the Memorandum approving the carport structural design, with requested provisions, and read the following into the record *"Section 2.16.050 K (Carport over a Driveway), requirement 2. "The zoning board of adjustment has received the written approval of the structural deign from the building permits and inspection division of the development services department"*. Ms. Osborn explained it was her opinion that the memo was not an approval due to the conditions listed. The applicant/representative has not met those provisions, Staff cannot approve the structural design; therefore, the Board cannot grant the Special Exception for a carport over a driveway.



Chair Cordova asked Mr. Smith if he had submitted the revised plans, per Staff's request.

Mr. Smith he was unaware of the request to add an additional 2' x 12' beam until this meeting; additionally, he will submit the manufacturer's truss information at the time he submits his documents for permit.

Mr. Estala concurred the representative has not submitted the truss details from the manufacturer nor a plan with the added 2 x 12 beam.

To Staff, Ms. Osborn explained, the representative has not submitted revised carport structural design plans with the additional 2' x 12' beam nor the truss details from the manufacturer, per the Memorandum. Staff cannot approve the plans and without approval of the plans the Board cannot grant the Special Exception K.

In his opinion, Mr. Bowling stated, it seemed the Board could approve this request conditionally. It bothered him that the Board has previously approved projects that did not go through the proper process, were constructed without permit and/or the Board did not have an opportunity to approve the plans. He reiterated Mr. Smith stated he concurred with Staff comments.

Ms. Osborn responded the Board may grant Special Exceptions with conditions; however, in this case, Special Exception K, requirement 2. states *written approval of the structural design must be provided.*

Mr. Estala stated the memo is not written approval of the structural design; additionally, Staff has not yet reviewed the manufacturer's truss information. Mr. Estala then explained the criteria regarding plan review, permitting and inspection.

Chair Cordova asked Staff if the memo could be considered a letter of approval with modifications.

Mr. Estala responded that was his intent – if the representative meets those conditions; the carport structural design is approved.

In her opinion, Ms. Castle stated yes, it could, the letter states the carport structural design has been reviewed and has been found to be acceptable provided the following conditions are met.

1. provide truss detail from manufacturer
2. add one more 2 x 12 support beam to the 2-2 x 12 provided

The applicant's representative has agreed to those conditions; furthermore, those conditions must be met before a permit can be issued.

In the future, Ms. Osborn suggested Staff approve the structural design unconditionally rather than approving the design with conditions.

Mr. Aguilar asked if the Board has any obligation regarding the opposition petition.

Mr. Mendez explained the neighbors should have sent a representative(s) to state their concerns before the Board.



The following Special Exception request was postponed from a previous ZBA meeting to allow the applicant an opportunity to revise the site plan.

ITEM 6:

ZBA10-00025

1235 Galloway Drive

Maria L. Ramirez

Applicant requests a Variance (Yard Setbacks) under Section 2.16.030 in an R-4 (Residential) zone. The request is for a Variance from Title 20, Zoning, Section 20.12, Density and Dimensional Standards, Yard Setback Requirements. The required front and rear yard setback cumulative total is 45 feet; the required side street setback is 10 feet; and, the required side yard setback is 5 feet in the R-4 zone district. The request is for a new, two story residential structure that encroaches into the required yard setbacks. Applicant requested the following setbacks: front 43'8", rear 9'6" and sides 10'. However, the zoning administrator determined that in order to conform with the neighboring properties, the front setback shall be along Galloway Drive; the rear setback is along Morrow Drive; and, the side setbacks are at the western property line and at the eastern point of the lot. *The applicant has submitted a site plan that shows a 15' front setback along Galloway, a 7' rear yard setback along Morrow Street and side setbacks of 5' and greater.* Staff recommendation is for approval with no driveway access permitted from Morrow Street. The applicant does not agree with the condition and is asking for the Board to consider a request for a driveway that accesses both Galloway Street and Morrow Street.

Mr. Rubio gave a PowerPoint presentation and noted **STAFF RECOMMENDS APPROVAL OF A VARIANCE DUE TO THE ODD SHAPE OF THE LOT WITH A CONDITION THAT DRIVEWAY ACCESS FROM MORROW STREET SHALL BE PROHIBITED.** Mr. Rubio read the following into the record:

Definition of Unnecessary Hardship, Section 20.02.1128

"Unnecessary hardship" means a hardship by reason of exceptional shape of a lot, exceptional topographic conditions, or other exceptional physical conditions of a parcel of land. Unnecessary hardship shall not include personal or financial hardship or any other hardship that is self imposed."

Ms. Castle explained Traffic Engineering Staff did not object to the driveway having access to both Galloway and Morrow drives. Planning Staff felt it was not safe accessing the driveway from both directions.

Mr. Melendez felt it was safer having two driveways as a safety precaution so that the applicant would not be backing out into the street.

Mr. Jared Mendoza, Department of Transportation, explained Traffic Engineers reviewed the designs and determined, due to low traffic volumes on both streets, accessing the driveways from both streets was acceptable. Regarding the proposed structure and/or stop sign; there were no visibility issues. Transportation Staff had no specific speed limit information for Galloway and Morrow Streets.

Mr. Rafael Padilla, contractor, requested the Board Member's approval.

Ms. Maria L. Ramirez, property owner, displayed photos of a newly constructed home in lower Kern Place having a similarly shaped lot as her property and commented on the comparisons between the constructed home and her proposed site plans.



Chair Cordova asked Board Members if they had any further questions of Staff and/or the applicant or representative.

Ms. Jorgensen asked Staff to be more specific regarding the objection to the driveway on both sides.

Staff thought motorists would cut across Ms. Ramirez’ property rather than go to the stop sign. Additionally, due to the character of the neighborhood, there were no other properties with two driveways. Ms. Ramirez’ property is not located within a Historic District or the Neighborhood Conservancy Overlay.

Regarding the request for a Variance, Ms. Jorgensen read the following questions into the record:
(Board Member responses duly noted)

APPENDIX A: Findings – Variances

INQUIRY		FINDINGS
<p>Is the request for a variance owing to special condition inherent in the property itself?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda</p>		<p>The property is/has ... (e.g., odd-shaped, unusual topography, etc.)</p>
<p>Is the condition one unique to the property requesting the variance?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda</p>		<p>The condition is unique to this property.</p>



<p>Is the condition self-imposed or self-created?</p> <p>If yes, STOP If no, PROCEED</p> <p>NO: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda</p>		<p>The condition necessitating the request was not created by the property owner.</p>
<p>Will the literal enforcement of the zoning ordinance result in an unnecessary hardship?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda</p>		<p>Strict enforcement of the zoning ordinance would impose a hardship above that suffered by the general public.</p>
<p>Will the hardship prevent any reasonable use whatsoever?</p> <p>If yes, CONTINUE If no, STOP</p> <p>YES: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda</p>		<p>Without the grant of the requested variance, the property owner would be deprived of the right to use his property. Financial considerations alone cannot satisfy this requirement.</p>
<p>Would the grant of the variance be contrary to public interest?</p> <p>If yes, STOP If no, CONTINUE</p> <p>NO: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda</p>		



Prior to the meeting, Staff distributed an email from the representative requesting the application be withdrawn.

MOTION: Motion made by Mr. Perez, seconded by Mr. Melendez and unanimously carried **TO APPROVE THE CHANGES TO THE AGENDA.**

AYES: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda

NAYS: N/A

Motion passed. (9-0)

Other Business:

8. Approval of Minutes: August 9, 2010

Chair Cordova asked Board Members if they had any corrections/revisions to the minutes.

Ms. Jorgensen requested the following revisions:

1. Page 1, add Mr. Santamaria's first name;
2. Page 4, middle of the page; correct the spelling of "PORSTMOUTH" to "PORTSMOUTH"
3. Page 4, middle of the page, correct ZON10-00032 to read ZBA10-00032

Mr. Skarda requested the following revision:

Page 5, middle of the page; revise ZA10-00034 to read ZBA10-00034

Chair Cordova asked if there were any other questions and/or comments. There being none.

MOTION:

Motion made by Ms. Jorgensen and unanimously carried **TO APPROVE THE AUGUST 9, 2010 MEETING MINUTES, AS CORRECTED.**

AYES: Messrs. Perez, Aguilar, Cordova, Mendez, Melendez, Gezelius and Skarda

NAYS: N/A

ABSTAIN: Ms. Jorgensen and Mr. Bowling

Motion passed. (7-0)



Discussion regarding revising ordinance language to read "pending approval"

Mr. Bowling proposed revising the ordinance language to read pending approval.

Chair Cordova, Staff and Commissioners commented.

Ms. Osborn explained the Board must receive written approval of the structural design from the Building Permits & Inspection Division. A letter stating "approval subject to" is not written approval of the design, there are outstanding issues pending. Additionally, Ms. Osborn was not suggesting the Board deny the request, she was suggesting Staff wait until written approval of the structural design is granted before the request is brought before the Board. Furthermore, Ms. Osborn explained the Board should not consider the request unless the structural design has been approved. The ordinance language states Staff must have written approval of the structural design; then that is what the Board should require, not bringing in documents after the fact. In conclusion, if the standards are lowered the Board must ensure the structural design is approved. She thought the ordinance language was properly written; it was her belief that Staff should bring complete cases before the Board.

Chair Cordova explained previous Boards wanted to ensure the structure was safe before approving "subject to".

In the past, Ms. Castle noted, Staff required an engineer's seal on the structural drawings.

Mr. Estala explained Staff can change the procedure; we can call the applicant/representative and advise they correct the plans/bring in additional documents prior to the meeting. Mr. Estala did not want the applicant to wait because Staff had requested an additional beam. For future meetings, Mr. Estala will inform applicants they must submit the required information/documents two weeks before the meeting.

9. Training for Board on Special Exceptions

Ms. Castle gave a PowerPoint presentation regarding Special Exceptions.

For the November 8th ZBA Meeting, Ms. Osborn will provide Board Members a PowerPoint presentation/training session on Ethics.

No further discussion. Meeting was adjourned.

ADJOURNMENT:

MOTION:

Motion made by Chair Cordova and unanimously carried **TO ADJOURN AT 2:52 P.M.**

AYES: Ms. Jorgensen and Messrs. Perez, Aguilar, Bowling, Cordova, Mendez, Melendez, Gezelius and Skarda

NAYS: N/A

Motion passed. (9-0)

Linda Castle, Senior Planner

