



**ZONING BOARD OF ADJUSTMENT MEETING MINUTES
2ND FLOOR – CITY COUNCIL CHAMBER
JUNE 9, 2008
1:30 P.M.**

The Zoning Board of Adjustment meeting was called to order at 1:33 p.m. by Chair Larry Nance.

The following Board Members answered roll call:

Mr. Larry Nance (Chair)
Mr. Robert Veliz (Vice-Chair)
Mr. Jose Melendez
Mr. Rick Cordova
Mr. Sam Barela
Mr. Servando Hernandez
Ms. Alisa Jorgensen
Mr. David Marquez

The following City staff members were present:

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

CHANGES TO THE AGENDA

Ms. Castle requested the following:

Item 1. ZBA08-00043, 8037 Stanford Court, be postponed two (2) weeks to the June 23rd ZBA meeting.

1ST MOTION:

Motion made by Mr. Veliz, seconded by Mr. Melendez and unanimously carried to **POSTPONE ZBA08-00043, 8037 STANFORD COURT, TWO (2) WEEKS UNTIL THE JUNE 23RD ZBA MEETING.**

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

NAYS: N/A

The Motion passed. (8-0)

Ms. Castle noted Staff had spoken to the Applicant and explained that the plans, as submitted, required revising. Additionally, the Building Permits & Inspections Memorandum to the Board would be updated for the June 23rd, ZBA meeting.

Ms. Castle gave a PowerPoint presentation and noted Staff recommends approval as the request meets the requirements of the Special Exception G.

Ms. Aileen Carbajal, Representative, was sworn in prior to the discussion. She explained the Special Exception request to the Board.

2ND MOTION:

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. Hernandez moved, Mr. Barela seconded and unanimously carried to **APPROVE ZBA08-00044**.

AYES: Ms. Jorgensen and Messrs. Perez, Cordova, Mendez, Melendez, Nance, Veliz and Marquez

NAYS: N/A

The Motion passed. (8-0)

ITEM 3:

ZBA08-00045

814 Sunset Drive

William Van Haselen

Applicant requests Special Exceptions under Section 2.16.050 G (Rear Yard Setback) and Section 2.16.050 V (Front Yard Setback) in an R-1/sp zone. This would permit the construction of a new residence of which a 21'-7½" by 14' portion is proposed to encroach 14' into the rear yard setback and a 24' by 39' portion is proposed to encroach 39' into the rear yard setback. This would also permit a 29'-4½" by 10' portion that is proposed to encroach 10' into the required front yard setback; a 13' by 4' portion that is proposed to encroach 4' into the required front yard setback; and, a 6'-6½" by 4' portion that is proposed to encroach 4' into the required front yard setback. The required cumulative front and rear yard setback total is 100' in an R-1/sp zone. The applicant is requesting the Special Exceptions for portions of a new residence that are proposed to encroach into the required front and rear yard setbacks.

Ms. Castle gave a PowerPoint presentation and noted Staff recommends denial of the request because new houses should be built within the setbacks of the zone in which they are located. Additionally, Staff does not feel the exceptions will be in harmony with the spirit and purposes of Titles 2 and 20, including the preservation of the essential character of the district in which is located the property for which the exception is sought.

Mr. Jeff Huff, Representative, explained the Applicant's home was part of a three unit, gated subdivision and noted the front property was authorized similar setback extensions approximately one year ago. He added given the Board's previous approval, a precedent had been set. He noted properties to the East and South of the Applicant's property would not be impacted by the proposed setback requests.

Mr. Peña noted he had received one letter in support of the application.

Ms. Jorgensen asked, in excess of the buildable area of the lot, what was the estimated amount of square footage added to the first home.

Mr. Huff responded approximately 700 square feet.

Ms. Jorgensen noted the Applicant was requesting approximately 1,483 additional square feet.

Mr. Huff stated the amount was fairly accurate and noted the largest portion being garage area.

Mr. Melendez commented on the uniqueness of the homes within this subdivision and the Applicant's desire for a one-story home.

Mr. Barela asked Staff what the maximum square footage for a detached garage would be.

Ms. Castle explained the calculation requirements and noted 400 square feet of accessory building is permitted outright.

- *It was determined that Ms. Jorgensen does have a substantial interest in her residence on the street.*
- *It is the opinion of the City Attorney's office that although Ms. Jorgensen has a substantial interest in her own property, any decision either for or against this variance would not have any special economic effect on the value of Ms. Jorgensen's property distinguishable from its effect on the public.*

Therefore, it is the opinion of the City Attorney's office that Ms. Jorgensen does not have a conflict of interest and may sit for this case. She concluded that the City Attorney's office wanted to ensure the Board that the City Attorney's office was aware that Ms. Jorgensen lived on the same street as the applicant and had determined there was not a conflict of interest.

Mr. Cordova noted there were eight Board Members present and clarified there must be seven affirmative votes to approve the Variance request.

Mr. Conrad Conde, Representative, and Doug and Emma Schwartz, Applicants, were present. Mr. Conde asked the number of Board Members normally present for ZBA meetings.

Mr. Nance responded eight Board Members were present at the May 5th and May 19th, ZBA meetings respectively.

Mr. Conde replied although there are eight Board Members present, the Applicants would like to proceed. He stated there were two issues that may require further explanation:

1. ... *"not contrary to the public interest"*. There are several two-story homes within the area; however, the Applicant's home is single-story. In the event a second story was added it would not be contrary to the neighborhood; and
2. The two neighbors most affected by the request, the property directly behind and the property abutting the rear of the Applicants, have written letters supporting the application.

Mr. Conde noted there was a second caveat *"... and due to special conditions"*, the special condition placed on the property was *"50% must be retained for on-site ponding"*; however, not all R-1 or R-2 zoning require on-site ponding. Without the Variance, the Applicants will more than exceed the on-site ponding requirements. He explained there was not much difference between the allowable 15 feet and the proposed 22 feet. Additionally, the proposed structure will be located in the rear of the property, very well secluded by trees.

Mr. Schwartz reiterated the on-site ponding was a pre-existing condition and, in addition, with the large setbacks for R-2 zoning, it is difficult to obtain the square footage without going to two stories.

Mr. Nance questioned the height of the structure located at the front of the home.

Mr. Schwartz responded 23 feet inside.

Mr. Peña explained the structure located at the front of the home is attached to the main structure and per the Code; structures can be 35 feet in height, in the R-2 zone.

Mr. Nance asked if it were possible to attach the proposed structure to the main structure.

Mr. Schwartz responded not without going beyond the 25' rear yard setback; however, if the proposed structure would be attached to the main structure, he would still have to apply for a Special Exception.

Mr. Nance explained it would be advantageous to apply for a Special Exception rather than proceed with the Variance request.

Mr. Veliz asked Staff if the Applicants could apply for a Special Exception in the event the Variance was denied.

Ms. Castle opined the Applicants could apply for a Special Exception.

Mr. Nance commented that the test for Variance findings is difficult; however, a Special Exception may offer a better solution.

Mr. Schwartz responded it would be very difficult to attach the proposed structure to the home. He added that for architectural purposes, a separate structure apart from the house was what he most desired

Ms. Osborn read into the record the following: *"Reapplication. The Board will not consider an appeal or application that is the same or very similar to the one that has been denied for a period of one year."* Ms. Osborn clarified a Special Except was not the same as a Variance. Here the Applicants are requesting a variation into the height requirement which would not be the same or similar as a request to encroach into the setbacks and could be brought back within a year.

Mr. Nance asked if the application were denied, could the Applicants come back.

Ms. Osborn responded that would be a safe assessment.

Ms. Castle clarified that if the application for a Variance is denied, the Applicants could build their accessory structure no higher than 15 feet, without having to come before the Board.

Mr. Veliz reiterated the Applicants could request a Special Exception, attaching the proposed structure to the home.

Ms. Castle concurred.

Ms. Osborn opined that would be a different request.

Mr. Schwartz thanked everyone for their suggestions.

Mr. Melendez asked Staff what the distance was between the Applicant's property and the two rear properties. Mr. Melendez clarified the neighbors properties were located in the back.

Mr. Veliz read the following Findings – Variance question into the record:

Is the request for a variance owing to special condition inherent in the property itself?

AYES: Messrs. Melendez, Cordova, Barela, Veliz and Hernandez

NAYS: Ms. Jorgensen and Messrs. Nance and Marquez

Failed. (5-3)

Ms. Osborn explained there was no need to read the remaining questions and suggested the Board take a vote on the request for the Variance.

consistent with the public interest and with the spirit of the ordinance, and substantial justice would be served.

Mr. Jerry Bombach, Representative, explained they had considered other design options.

Mr. Cordova asked Staff how the lot got through the subdivision process, is it not substandard?

Mr. Peña explained originally the Applicant's property was to have been a pond.

Ms. Jorgensen noted if the Board approves the Variance, the property owner(s) could not add an accessory structure as the garage was considered the accessory structure.

Mr. Peña concurred, the garage is the accessory structure.

Mr. Cordova asked which direction did the garage drained.

Mr. Bombach responded toward the street.

The following Findings – Variances questions were read into the record, followed by the vote of the Board.

1. Is the request for a variance owing to special condition inherent in the property itself?

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

NAYS: N/A

Approved. 8-0

2. Is the condition one unique to the property requesting the variance?

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

Approved. 8-0

3. Is the condition self-imposed or self-created?

AYES: N/A

NAYS: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

Approved. 8-0

4. Will the literal enforcement of the zoning ordinance result in an unnecessary hardship?

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

NAYS: N/A

Approved. 8-0

5. Will the hardship prevent any reasonable use whatsoever?

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

NAYS: N/A

Approved. 8-0

6. Would the grant of the variance be contrary to public interest?

AYES: N/A

NAYS: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

Approved. 8-0

7. Is the request within the spirit of the ordinance and does it further substantial justice?

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

NAYS: N/A

Approved. 8-0

Chair 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. Marquez seconded and unanimously carried to

APPROVE ZBA08-00041.

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

NAYS: N/A

The Motion passed. (8-0)

OTHER BUSINESS:

8. Approval of Minutes May 5, 2008
May 19, 2008

1ST MOTION:

Chair Nance asked if Board Members had questions or comments regarding the Minutes of May 5, 2008. There being none, Mr. Veliz moved, Mr. Barela seconded and unanimously carried to **APPROVE THE MINUTES OF MAY 5, 2008.**

AYES: Messrs. Melendez, Cordova, Barela, Nance, Veliz and Hernandez

NAYS: N/A

ABSTAIN: Ms. Jorgensen and Mr. Marquez

The Motion passed. (6-0)

Chair Nance asked if Board Members had questions or comments regarding the Minutes of May 19, 2008.

Ms. Jorgensen requested assistance from Ms. Osborn, Ms. Jorgensen referred to page four and clarified she had asked if the Board denied the application and the application was an outlier, would that be considered consistent. Furthermore, if the most egregious case is denied, is that consistent with previous rulings or is it arbitrary.

Ms. Jorgensen clarified the Minutes place the emphasis on whether the Applicant had fully prepared plans, rather than emphasizing *"in denying the most egregious case, the Board would be consistent with previous rulings"*.

Ms. Osborn concurred with Ms. Jorgensen's assessment.

Mr. Hernandez noted previous applications within the subdivisions were in the neighborhood of 200 to 300 square feet. Now, this application comes in under the wire requesting 1900 square feet. He asked

Staff if the Board's ruling would be considered arbitrary. He opined the Applicant was going beyond the spirit of the law.

Ms. Osborn provided legal advice.

Ms. Osborn clarified the wording as follows:

Ms. Jorgensen asked if the Board denied that particular Special Exception, would their action be considered arbitrary since they had granted other similar special exceptions in the past.

Ms. Osborn responded that because this application was so egregious and just a hypothetical Special Exception, in that the Applicant had asked for the maximum special exception allowed without showing any plans, she did not think it would be arbitrary. This request was not like previously approved requests.

2ND MOTION:

Mr. Veliz moved, Mr. Cordova seconded to **APPROVE THE MINUTES OF MAY 19, 2008, AS CORRECTED.**

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Nance, Veliz and Marquez

NAYS: N/A

ABSTAIN: Messrs. Barela and Hernandez

The Motion passed. (6-0)

DEVELOPMENT SERVICES REPORT:

9. Discussion and action regarding Zoning Board of Adjustment issues.

- New ZBA Code Cases

Ms. Castle explained that at the June 23rd ZBA meeting there will be applications that will be heard under the new Ordinance. Additionally, do not be surprised when you see applications that will be heard under the previous Ordinance, those are vested.

Ms. Osborn provided legal advice regarding the vested statute.

Mr. Marquez asked Staff regarding the application for the church on Love Road.

Ms. Castle responded the item will be posted on the June 23rd ZBA Agenda.

Mr. Nance requested Staff put together the actual numbers regarding parking.

Ms. Castle noted Mr. Nance had requested information regarding parking. Additionally, the Zoning Administrator will present this case to the Board for the Planning Division.

Mr. Cordova asked Staff if a building permit was submitted with an encroachment, it could be allowed, not adding an encroachment afterward.

Ms. Castle responded there is a Special Exception which permits encroachments in existence for more than 15 years and the current property owner is not responsible.

ADJOURNMENT:

Motion made by Mr. Veliz, seconded by Mr. Hernandez and unanimously carried to **ADJOURN THE ZBA MEETING AT 3:10 P.M.**

AYES: Ms. Jorgensen and Messrs. Melendez, Cordova, Barela, Nance, Veliz, Hernandez and Marquez

NAYS: N/A

The Motion passed. (8-0)

Robert Peña, Secretary, Zoning Board of Adjustment