

MINUTES
ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING
CITY COUNCIL CHAMBERS
124 Old San Antonio Road
Boerne, TX 78006
Wednesday, January 15, 2020 – 5:30 p.m.

Members Present: Scott Lowry-Chair, Jim Terrian-Vice-Chair, Richard McCormick-Secretary, Jon Paul Bergman-Alternate Member and Matt Janysek-Alternate Member

Staff Members Present: Michael Mann, Laura Talley, Andrea Snouffer, Betty Kwasneski, Sean Skaggs

Visitors: Brian Mazurek and Earnest Broughton

1. CALL TO ORDER – 5:30 PM

Meeting was called to order at 5:34 p.m.

2. DESIGNATE VOTING MEMBERS

Chair Lowry designated all five members present to vote.

3. APPROVE MINUTES OF NOVEMBER 20, 2019 AND DECEMBER 2, 2019 MEETINGS.

All were in favor to approve the minutes of November 20th and December 2nd meetings.

4. CONFLICT OF INTEREST DECLARATION

There were no conflicts of interest.

5. PUBLIC HEARINGS:

Receive comments on Variance No. 20-01, Lot 20, Bristow of Upper Balcones (141 Balcones Bend).

Laura Talley, Planning and Zoning Director, explained this request is a variance to the setback encroachment. She said there was an initial set of plans, a building permit application, turned into Code Enforcement in 2018, which did not include or show the sports court. The setbacks for a home on a one acre parcel are 50' in front, 20' on side and 50' in the rear. An accessory structure can encroach in those setbacks, but is limited and needs to have 10' in the rear, 10' from each side and 5' behind the main structure. Because this house is on a corner lot, it has a 25' setback. The drawing presented at the meeting was part of a building set provided to the City. There was no mention of flatwork on their application in 2018. All they were requesting was living area for the porch and garage, which showed on their application, along with square footages and that was what Code Enforcement was looking for. In 2019 when it was inspected by Code Enforcement, they saw the slab there and told them they needed a permit. Laura said part of the confusion is the definition of a structure. Laura read from the Zoning Ordinance. A structure is anything which is built or constructed which requires permanent location on the ground, or which is permanently attached to something having a location on the ground. A pool is considered an accessory structure. This pad that we are calling a sports court is considered an accessory structure according to the Zoning Ordinance and they are encroaching on the setback. They placed the sports court in this location because they want a pool in the future and the court next to the pool. They will need to pull a permit for the pool as well. Rich McCormick gave his thought on the purpose of setbacks and that he thought it was for fire purposes. Laura said that is one of the reasons, to keep structures away for fire purposes. Another reason for setbacks, is we don't have impervious cover requirements like other cities, instead we have setbacks, you have to leave some grassy areas on properties. Laura explained that while a slab seems

harmless, once the slab is there, another owner could put a building on that slab.

Brian Mazurek explained the drawing, shown on the overhead monitor, which was included in the plans submitted to Code Enforcement. He said he consulted with his architect regarding the design and flatwork for the driveway. He said the sports court was drawn on the site plan with 5' setbacks. He said when the site plan was approved there were no comments to the driveway or sports court. He said the same company doing the flatwork for driveway was the same company doing the flatwork for sports court, and they did it all in the same day. He said he was under the impression that this flatwork was approved and the setbacks were okay because it was drawn on the site plan. He said he doesn't understand why this wasn't brought to his attention when he submitted the plan. He explained that his rear neighbor and the HOA are okay with it. He said they are willing to put up a privacy hedge to hide it. Matt Janysek asked about the initial application. He asked if the sports court was approved to be on the side setback. Brian said we ended up moving and moved it to the left so it wasn't so close to side neighbor. Matt asked if he got a change order, Brian said no. Matt asked if Brian got a permit for that change and Brian said he thought he already got a permit with the first submittal. Matt also asked if Brian's architect asked him if he got a permit for the change. Jon Paul Bergman asked if the architect ever brought up that it is in the setback. Brian said the architect told him since it is not a structure then we didn't need approval. Jim Terrian asked where architect got the information for the setbacks and if he had a survey showing the 5' setbacks. Brian said no. Matt Janysek asked if Code Enforcement requires a survey to show the setbacks with the improvements? Laura said the initial plans did not show the pad. Code Enforcement was asked to review the house, patio, and garage. The driveway can be a 0 property line, but accessory structures cannot. Brian asked about a copy of the original plan. Laura asked Sean Skaggs with Code Enforcement if he had the original plan. Jon Paul Bergman asked if the goals were in the ground. Brian said yes. Laura showed the board members the original form

survey that came in with the building permit. Laura confirmed that the slab was not shown on this survey. Brian explained the reason why it wasn't shown on the form is because it wasn't built with house, it was done with the driveway. He explained again the same company that poured the driveway, poured the pad for the sports court. He said he felt it was a detached extension of the driveway. Jim Terrian explained the adoption of the form survey is for this very reason.

6. ITEMS FOR DISCUSSION/ACTION

Consider Variance No. 20-01: A request from William & Paulina Mazurek, requesting a variance to the City of Boerne Zoning Ordinance Article 5, Section 4, Table 5-2, to allow for a rear setback of 5-feet 8-inches rather than the required 10-foot rear setback for Lot 20, Bristow of Upper Balcones (141 Balcones Bend).

Matt Janysek said that there should've been some kind of communication about the change when they moved the court over. Jon Paul Bergman said when there is a change, there is usually a change order. Jim Terrian said the City adopted the rule of form surveying every project in city limits. Jon Paul Bergman said it's already been poured and is there no way to shift it. Matt Janysek said the encroachment is about 5'. Jim Terrian said if they sell this property, the next property owner might put a shed or building on it. Rich McCormick shows pictures he took of the property to the board members. He said it's constructed and the owner plans to raise the grade so you don't see the court. It is in violation of code. He doesn't believe it endangers anything and the home owner is not putting anything else there. He said we need to do a better job educating those applying for permits. Neighbors say they are fine with it. Jon Paul Bergman said for the neighbor behind this property, it is their driveway facing the sports court. Jim Terrian said we are here to decipher if there is a hardship and something unique to the property. He said this is a self inflicted hardship. Is it a hardship caused by the property? Something that is done by mistake, are we called to accept

it? Scott Lowry said when we make a decision we set precedence and need to be careful about what we approve. Mike Mann said each variance is unique and doesn't set a precedence per our City Attorney. Jon Paul Bergman said people will come to the board years later and people don't forget. Although not a precedence, we live by these decisions. No other neighbor responses. Richard McCormick moved to approve the variance with stipulation there is no additional building on this slab and it is brought up to grade. Jon Paul Bergman seconded. McCormick & Bergman in favor. Lowry, Terrian, and Janysek opposed. Variance denied 3-2.

7. ADJOURNMENT

Meeting was adjourned at 6:04 p.m.

Chair

Secretary