

MINUTES
ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING
CITY COUNCIL CHAMBERS
124 Old San Antonio Road
Boerne, TX 78006

Wednesday, October 19, 2016 – 5:30 p.m.

Minutes from the Board of Adjustment and Appeals meeting, Wednesday, October 19, 2016, 5:30 p.m.

Regular Board Members Present: Bill Kessler-Chair, Jim Terrian-Secretary, Tom Harris, Jon Paul Bergman, Chris Taylor, and Cayman Gentry.

City Staff Present: Michael Mann-Public Works Director, Andrea Rivera-Assistant to the Public Works Director, Sheldon Cravey-Information Technology.

Visitors Present: Howard Haworth, Justin Harper, and Jodi Harper.

approved

1. CALL TO ORDER – 5:30 PM

The meeting was called to order at 5:35 p.m. by Chair Kessler.

2. APPROVE MINUTES OF JUNE 15, 2016

A motion was made by Secretary Terrian , seconded by Member Harris, that the minutes of June 15, 2016 meeting be approved as written. The motion carried. All in favor.

3. DESIGNATE VOTING MEMBERS

Four regular members were designated to vote with Alternate Member Jon Paul Bergman designated by Chair Kessler as the fifth voting member.

4. CONFLICT OF INTEREST DECLARATION

Chair Kessler asked if there were any conflicts of interest to declare. There were none.

5. PUBLIC HEARINGS:

Receive comments on Variance No. 16-05, Lot 1, Serenity Oaks Estates (106 Kitty Kat Lane).

6. ITEMS FOR DISCUSSION/ACTION

The hearing opened at 5:36 p.m. Justin & Jodi Harper, the owners of the property, approached the Board. Mr. Harper began by explaining that the tree house is elevated in same area as a storage unit once sat on the property when they bought it. He said it sits 3.5 feet back from the fence. He said this is a temporary tree house. Member Terrian asked how did they know they needed a setback from the fence? Mr. Harper said that he was told that a 5 foot setback was the rule. Mr. Harper begged the question why now is the tree house noticed and a problem when before with the shed it was never noticed.

Secretary Terrian said the City must maintain their codes and any changes to the property you must get a permit. Mr. Harper said he didn't know the rules. Mr. Harper also mentioned trees that need to be trimmed when he moved into his property and he was told that the City doesn't own trees and he was responsible for trimming them himself. Mr. Harper went on to explain that they are ignorant owners and didn't know the rules and now are asking for a variance. Secretary Terrian said our responsibility is to find a hardship. Mr. Harper said the existing structure was not a problem. Member Bergman said there are certain rules that are set and understands there was a structure there at one time. He said that they had a non conforming structure when the ordinance may not have been in effect. Member Bergman also asked if the treehouse was the same structure. Mrs Harper said that it has the same footprint. She said there is only one place in yard where the tree house works. Secretary Terrian asked if it was built by them. Mr. Harper said yes they built it and moved it so it wouldn't invade the neighbor's property. Member Bergman asked if they could move it another two feet. Mrs. Harper said the posts are cemented in. Member Bergman said the main reason for the ordinance is for safety. Mike Mann said there was a time when a playhouse didn't need a permit. Mrs. Harper said it was built in May. Mike Mann said it was discussed in the staff variance meeting and the issue is not whether or not it was permitted, but that it was in the setback.

Chair Kessler said if a permit was required they may have known to not build in setback. Mr. Harper asked about permitting around town and they said they didn't need a permit because it wasn't a permanent structure. He said he didn't feel the Code Enforcement office explained clearly his questions regarding permanent structures and permitting. Member Harris asked about the comments at the staff variance. Mike Mann explained three were in favor and three opposed. The three that opposed couldn't find a hardship. Member Taylor asked if there are any height limitations. Mike Mann answered no. Mike Mann said anything permanently attached to the ground is a permanent structure. Chair Kessler said you are the one that created the problem and you didn't check first. Chair Kessler said you could have complied with the ordinance and placed the structure back five feet and nothing on their property prevents them from doing that. He said we take these variances on a case by case basis and there are guidelines we have to follow. He said they are not being singled out. Chair Kessler further explained that the rules are written for a reason and we try to comply with them. In respect to hardship, why should we grant this? Mrs. Harper said that they are building a tree house and wanted it to be in the trees. Mr. Harper said the tree house is attached to the tree with bolts. He also said that they were uneducated in this process and said they moved it out of the location that it originally started in. Mr. Harper said his attempt was to make it eye appealing, however

they made a mistake. He also reiterated that there was a structure there before so he didn't think it would be an issue.

Howard Haworth, a neighbor of the Harper's approached the Board and said the Harper's asked if it was ok to place the structure in its current location. He said they were neighborly. He said he can see it from his house. Mr. Haworth mentioned he has a six by eight foot playhouse on his property as well and he will be back next month for a variance. He said he and the Harper's worked together and on thier behalf, he feels they did everything right. He said he received a letter from Code Enforcement and he questions when was the permit required from the letter he received? He said if he knew there needed to be a permit, he would have gotten one. Mr. Haworth approached the board with the notification letter he received from Code Enforcement. He believes according to the size of the playhouse, a permit isn't required. Mike Mann explained that things not allowed in a setback may or may not be required to have a permit. Member Bergman said that the point of the structure being there before, there are ways to replace a structure, you have a right to maintain it, or you can change it as long as it fits standards of City ordinance. Chair Kessler said if there is no permit needed before it doesn't excuse you from encroaching on the setback. Member Bergman said if you have a nonconforming structure it can be changed. Chair Kessler asked if anything needed to be added before closing the hearing. Mr. Harper mentioned that he did not receive a letter from Code Enforcement as did his neighbor Mr. Haworth, just a card on his door. Chair Kessler said out of the public responses five were in favor and one was opposed. The hearing closed at 6:06 p.m.

Consider Variance No. 16-05: A request from Jodi & Justin Harper regarding a variance to the City of Boerne Zoning Ordinance to allow for a 2-foot encroachment into the required 5-foot side yard setback for Lot 1, Serenity Oaks Estates (106 Kitt Kat Lane).

Secretary Terrian said to build a structure doesn't change the fact that we need the five foot setback. Can we create a motion that this structure cannot be changed in any way or be temporary? Mike Mann said there is no temporary variance but you can put conditions on it. Member Harris said if you create a hardship, can you change the law? He said we can't do that. Member Taylor asked do they need a variance since the permitting rule changed in June? He understands fire issue with it being close to fence line and now it is noticed because it sits up high. Mike Mann said a setback violation exists. Secretary Terrian said even a temporary structure can't be in the setback. Member Harris said storage can't be in the setback not even four years ago. Several neighbors had to move structures. Mike Mann offered to read definition of a structure. Member Bergman asked definition of a playhouse. Mike Mann said playhouse has different rules or unique to playhouse. Chair Kessler said it can't be in setback. Member Bergman said we are talking about two different things. We already have an ordinance with what you can or

cannot do.

Chair Kessler said we know the requirements of the setback. If everyone starts doing this on their street then you lose the rule. Member Bergman said they are not setting a precedence they are trying to follow an interpretation of the ordinance. Is there a grandfather clause? Secretary Terrian said we are blurring the lines with the new permitting rules, it still doesn't change the fact that we have an ordinance in place. If City officials noticed the shed, it would be written up as well and told to get a variance. You don't want to create a hardship when you build something. Secretary Terrian said from looking at the pictures, what can be done? Can you add beams under the structure and shift it? Member Harris asked if the posts are in the ground? Mr. Harper said he knows that two are in the ground for sure. Mr. Harper asked if everything needs to be moved. Secretary Terrian said everything. Mr. Harper asked, is the rule anything encroaching on the ground, or in the air? Mike Mann said any part of any structure must not encroach on the setback. Mrs. Harper approached the Board with a picture. Chair Kessler asked for anymore questions. Member Harris moves to deny, Member Bergman seconds. Five were in favor to deny. Motion carried to deny.

7. ADJOURNMENT

Meeting was adjourned at 6:24 p.m.

Chair

Secretary