

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

**Wednesday, June 15, 2016 – 5:30 p.m.**

Minutes from the Board of Adjustment and Appeals meeting, Wednesday, June 15, 2016, 5:30 pm

Regular Board Member Present: Scott Lowry-Vice Chair, Jim Terrian -Secretary, Tom Harris, and Chris Taylor.

City Staff Present: Michael Mann -Public Works Director, Andrea Rivera - Assistant to the Public Works Director, Laura Talley -Planning and Community Development Director and Sheldon Cravey - Information Technology.

Visitors Present: Michael Velasco, Greg & Kris Pinfield, Steve Artale, Paula Artale, Chuck Artale, Karli Kennell, Antonio Valenciano Jr., Tonya Vicknair, and Antonio Valenciano III.

1. CALL TO ORDER – 5:30 PM

**THE MEETING WAS CALLED TO ORDER AT 5:34 P.M. BY  
VICE-CHAIR LOWRY.**

2. APPROVE MINUTES OF DECEMBER 16, 2015

**A MOTION WAS MADE BY MEMBER HARRIS, SECONDED BY  
SECRETARY TERRIAN, THAT THE MINUTES OF DECEMBER 16,  
2015 MEETING BE APPROVED AS WRITTEN. THE MOTION  
CARRIED 4-0.**

3. DESIGNATE VOTING MEMBERS

Vice Chair Lowry explained that all board members present will vote. Because there are only 4 members present the vote needs to be unanimous. Mike Mann approached the board and explained that it takes 3/5 of the board to pass, so it will take all 4 members approve a variance. Vice Chair Lowry asked if there was anyone on the agenda tonight that would like to set up another meeting later. He explained that once we hear from you, you cannot back out. No one appealed.

**4. CONFLICT OF INTEREST DECLARATION**

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

**5. PUBLIC HEARINGS:**

a: Receive comments on Variance No. 16-01, Lot 189, Unit 4B,  
Menger Springs (602 Menger Springs).

Vice Chair Lowry called to receive comments. Michael Velasco started by explaining that he represents the developer of Menger Springs for Lot 189, Unit 4B and is requesting a 30' rear setback variance because of unique shape of the lot and extreme topography. He said that in the rear of the property there is a 20' Bandera Electric easement and an 86' City of Boerne ROW and 100' LCRA transmission easement. And, because of these easements, no one behind the property will be affected. He further explained that the property owners across the street would benefit because the house sits farther back. Member Taylor asked if there are any neighbors to the right on Lot 190. Mr. Velasco said that this lot is currently owned by the developer, but that the house sits on far right side of property due to a large drainage easement that is about 75 feet wide. Member Terrian asked if the setback line that references number 12 on the drawing is the 50' rear setback line. Mr Velasco said yes, which will put in on the BEC line and will afford the property a reasonable space to build. Member Harris asked if green line represented by number 5 is the new setback line. Mr. Velasco answered yes. Member Harris asked Mr. Mann if we have a hardship. Mr. Mann said that he feels there is due to the unique topography and shape of the lot and that a literal enforcement of rules would be a hardship. Member Taylor asked Mr. Velasco if he knew where the 606 neighbor is on the map. Mr. Velasco answered by explaining that Laddie Denton currently owns the lot and is the developer. Vice Chair Lowry asked if anymore neighbors responded beside what he has. Mrs. Rivera answered no. Vice Chair Lowry explained that we have two other responses that are in favor and asked if there are any questions or concerns from the

audience. Vice Chair Lowry closed this hearing at 5:49 pm.

b: Receive comments on Variance No. 16-02, Lot 9, Block 5,  
Sunrise Addition (108 Ebensberger).

Greg & Kristin Pinfield approached and stated they are owners of the property. Mr. Pinfield began by explaining that this is an unusual lot and that it was subdivided prior to 60 years ago. He said he is not sure of the date but the neighbor on one side of the property has owned since the late 50's and the property has been vacant since then. Mr Pinfield went on to explain that it has been verified that it is a residential lot but a nonconforming lot. He said he looked at purchasing adjoining property and looked at selling to the adjoining owner as well. However, no one was interested in selling their property. He said they asked for variance about 18 months ago. He said he understands the neighbor is concerned about a shot gun development. He said that he has looked at designs and wants to design something with architectural appeal. Mrs. Pinfield went on to explain that the City Attorney helped identify that it is a legal residential lot and that residential taxes have been paid on this lot. She said there is a small house trend across the country and that this would be affordable but nice housing. She said she believes the house would fit in and the design would enhance the surrounding houses not bring down the value. Mr. Pinfield approached board with more pictures of the surrounding lots to include rear and front. Mr Pinfield said he is requesting both variances at the same time because the property is too small to not get both variances approved. He said it will be nice and habitable and will keep an architectural detail. He said he wants it to look like the railroad. Vice Chair Lowry asked if there were any questions. Chairman Harris asked Mr. Mann if the Fire Chief was present at the Staff Variance Meeting. Mr. Mann said yes, he was present and that it was discussed and the Staff voted unanimously to approve the variances. He said it was also a discussion about fire separation and it centered around the fact that this doesn't have anything to do with building code. The builder will have to comply with building codes regardless of setbacks. Mr. Pinfield explained that it will be of traditional construction, not pre-fab

or manufactured. Chairman Terrian said with regards to fire that anything under 10' separation between buildings needs to be fire rated structure. Mr. Mann explained that this was not discussed but that this variance cannot and will not override building code. Member Harris said the neighbor response from 110 Ebensberger said this was encroaching on his privacy. Mr. Mann responded that Staff did not see that at the time we met. It was discussed at Staff Variance about comments last time. And there were neighbors that spoke against it last variance request. Mrs. Pinfield explained that people are living in smaller areas and that it is a trend. Mr. Pinfield said it is habitable, like a full size apartment. He said we took a lot of consideration into the design. Vice Chair Lowry called up Antonio Valenciano. Mr. Valenciano approached with his father Antonio Valenciano who owns the property at 110 Ebensberger. He said they spoke last time there was a hearing and was one hundred percent opposed to this variance. He explained it has been a driveway. He said we fear that being a rental property, people will be in and out. He said a 2' encroachment is an invasion of privacy. We feel that it will set a precedence in the Boerne area. He said this is a rare incidence but does not make it any better. Member Terrian asked if the garage at the rear of property is 5-6' off property line and is there currently a fence. Mr. Valenciano answered yes. Member Harris asked if it is a chain link fence. Mr. Valenciano answered yes. Mr. Pinfield offered to put up a privacy fence. Mr. Valenciano feels it would be a fire hazard and would feel boxed in with a privacy fence. Member Terrian asked from an architectural standpoint the plans are livable. Going to 11' allows living space but still it is not common to the area, so difficult to associate. Mr. Valenciano said it comes down to privacy that is his biggest concern. Vice Chair Lowry allowed Mr. Pinfield to come back up. Mr. Pinfield said that it would not set a precedence. It is unusually sized. The request is specifically for this property. We are looking at putting a house on it. Taxes have been paid on the property for over 60 years. The driveway not actually a driveway it is a property they have been using as a driveway. He said we can't enjoy our property but they can enjoy theirs. We are willing to put any size fence they would like. Mrs. Pinfield said the remark about fire hazard is that they

will comply with codes and there will be no debris on this property. Chairman Taylor asked if total distance from your structure to the neighbor's structure. Mr. Pinfield doesn't have exact dimensions. He said he is approximating 6' or 7' from the other side is garden space. Mr. Pinfield approached the board with more pictures. The board reviewed the pictures. Chairman Taylor said the fire codes are not for the board to worry about. Mr. Pinfield explained the pictures and that this will look like a cottage. Vice Chair Lowry closes comments on this variance for the north side as well as the second variance for the south side. He asked if there were any questions or comments from the audience. There were none and this hearing closed at 6:12 p.m.

c: Receive comments on Variance No. 16-03, Lot 9, Block 5,  
Sunrise Addition (108 Ebensberger).

d: Receive comments on Variance No. 16-04, proposed Lot 16A,  
Nagel Addition (207 Becker).

Chuck Artale approaches and explains that he and his brother own this property. Mr. Artale said that there used to be a house there and after tenants moved out they ended up tearing it down. He further explains that there are two lots there Lot 16 and Lot 17. He said Lot 17 is an unbuildable lot and is asking for a variance to make Lot 17 a buildable lot. Mr. Artale said based on the lot size determines the frontage. He explained that they looked at many different ways to make the lot bigger. He said it was difficult to get the frontage right no matter how they moved the lot lines. Mr. Artale said that if he can't get the variance, he will only be able to build on one lot, Lot 16. However, if Lot 17 is useable, the lot will be maintained and taken care of. Member Terrian asked if he owns both lots. Mr. Artale replied that yes they do and said they were bought together as one lot. Member Terrian also asked if the lot lines drawn in are proposed? Mr. Artale replied that they were. Mr. Artale explained that the house to the right will be toward the front of street and the lot on the left, the house will sit far back. So, curb appeal will still look like a subdivision. Vice Chair Lowry asked if there are any additional neighbor responses besides what is there. Mrs. Rivera replied no. Mr. Artale explained that he

talked with the neighbors and said they like what they are doing especially since the house that was there was an eye sore. Member Terrian asked if there are any folks here that are on either side of this property. Mrs. Kennel said yes that she lives next door. Vice Chair Lowry asked if anyone else was present. No one answered. Member Terrian asked what the vision was for Lot 17 A. Mr. Artale responded by explaining a 2200 square foot single story home could be built there, but wants to sell the two lots. He said he is not currently looking to build, just sell. Mr. Artale explained that he spoke with a builder and they said they can build a 2200 square foot house. Member Harris asked Mr. Artale if he and his brother have any plans at this time to build on these lots. Mr. Artale replied that there are no plans to build at this time. Member Taylor asked if the other lots are same size, less than a half acre. Mr. Artale said he was not sure about houses on the right side, but they appear smaller. The Board asked to zoom in on the map. Member Taylor mentioned he would like to hear from others from the audience. Mr. Mann explained that Mrs. Talley was present and can provide copies of the lot lines. Mrs. Talley approached the board and explained. Mr. Mann points out the location of the old house on google earth and house that remains. Vice Chair Lowry asked if there were any comments. Mrs. Kennel said she has comments and that she lives on Lot 15. Mrs. Kennel explained that she is happy they tore down the blue house. She said she bought a house there because of the large lots. It gave her a sense of being outside the city and invested in this street because of the wide lots. She further explained when they first moved in they were surrounded by houses in bad shape. She said she is concerned if this is approved, it will put their lots further into her lot. She mentioned that she just got letters on Saturday. I'm not sure why there was a tiny lot put on a larger lot. She said all the lots on the right side of the street are just an acre after the street curves. She said it will change the feel of the street by forcing a house in. Changing wide lots will change density. She said several other neighbors are out of town and couldn't be here. She is opposed to any changes. Member Harris said you feel this would push toward your lot. Mrs. Kennel said it would and doesn't understand how they

would build on these lots. Member Harris also asked her if they build a house will it affect her property. Mrs Kennel said it would, but said that she thinks it would be great if they built on the lot, but not squishing another lot in there. Vice Chair Lowry asked if there were any more comments. Mr. Mann and Mrs. Talley clarified that the side yard setbacks are 15 feet with 40 feet of frontage. Vice Chair Lowry closed this hearing at 6:32 p.m.

6. ITEMS FOR DISCUSSION/ACTION

a: Consider Variance No. 16-01: A request from Michael Velasco regarding a variance to the City of Boerne Zoning Ordinance to allow for a 30-foot encroachment into the required 50-foot rear setback for Lot 189, Unit 4B, Menger Springs (602 Menger Springs).

The board begins discussion on variance 16-01. Member Terrian said he is familiar with the property in Menger Springs and the power line that backs it up. He also said with the south side drainage that goes through isolates the property. He feels no neighbors would have any conflict because there would be no changes to neighbors. He further explains that building on a flat piece of ground is more desirable. Member Terrian motions to grant the variance Member Taylor seconds. All in favor. Passed 4-0 at 6:35pm.

Vice Chair Lowry opens discussion on variance 16-02 and 16-03. Member Terrian begins by explaining that it is a unique situation and can appreciate the ideas created to develop this lot. He said he doesn't know how it existed in the beginning. He said he also understands the situation with the neighbors because it is not just a house but another potential family living in such a small environment. He likes the creativity and solution but understands that there will be more people. Member Harris feels a concern for fire. He said the uses are limited to the amount of people. Member Taylor said he has the same concerns regarding fire. Member Terrian said he wonders if it will affect resale on all three dwellings. Vice Chair Lowry asked if there are any more comments. Member Taylor said it is unusual as is without the variance. He said if we don't do anything now nothing can

be done. Member Terrian said it can be purchased, however nothing became of the offers to purchase. Member Taylor said they are paying taxes that they can't do anything with. Member Taylor asked Mrs. Talley what the City rules are. Mrs. Talley said the section in the ordinance under 3-12.004 is where this falls which is under the category of a non conforming lot. The ordinance allows them to build on 40% of the lot and they are under that percentage. Mrs. Talley explained that they would need a variance to encroach on the setback to do that. Member Taylor asked if when the lot was created were the rules the same. Mrs. Talley doesn't know how the lot was created in the first place. She said the date of the plat is so old there were probably no setbacks at the time. She said it is not grandfathered, it is a non conforming lot and it was subdivided prior to the Zoning ordinance. Member Terrian said what could be done with architecture or landscaping to help with privacy. Member Harris said anything with landscaping there is just not enough room. Vice Chair Lowry said there is a space issue. Member Taylor motion to grant variance 16-02. There was no second motion on 16-02 and the motion died. Member Harris moves to decline 16-02. Vice Chair Lowry motioned to deny. Member Terrian seconds the motion. 2 in favor and 2 opposed. Mr. Mann explained that the motion died when there was not a second motion to grant the variance. The variance was then defeated.

b: Consider Variance No. 16-02: A request from Gregory and Kristin Pinfield 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 along the north side of the property at Lot 9, Block 5, Sunrise Addition (108 Ebensberger).

c: Consider Variance No. 16-03: A request from Gregory and Kristen Pinfield 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 along the south side of property at Lot 9, Block 5, Sunrise Addition (108 Ebensberger).

Vice Chair Lowry asked for questions regarding variance 16-03. Member Harris moves to deny. Member Terrian seconds. Vice Chair Lowry and Member Taylor in favor of variance 16-03. Variance



rejected with a 2-2 vote.

d: Consider Variance No. 16-04: A request from Chuck Artale regarding a variance to the City of Boerne Zoning Ordinance, Table 5-2, Residential Lot and Dimension Standards, providing for lot frontage of 75.03-feet, rather than the required minimum of 100-feet, for proposed Lot 16A, Nagel Addition (207 Becker).

Member Terrian said he is having a hard time finding a hardship other than creating revenue from the property. He feels it's not a hardship. Member Terrian said he is opposed and feels they should make 16 and 17 all one lot. Member Harris agrees and asks the question has a hardship been created. Member Taylor said there is an option to merge lots or offer a piece to neighbor if this is denied. Mr. Mann said there are currently two lots now. The purpose of the variance is to make the frontage on the larger lot smaller to give more frontage to the other lot. He said it is legal either way. The variance is on larger lot. The variance on the larger lot is made small to reduce the frontage. Mrs. Talley explains that Lot 17 is non conforming. She said amending lot lines makes the frontage of the larger lot less than what is required by ordinance. The larger the lot the wider the frontage. She said it is two legal lots. Vice Chair Lowry asked if all members understand the variance. Member Terrian said if we dont allow then we will have a triangular shaped lot to place a small structure in the future. Or do we allow the lot to reconform for a decent size house now. Member Taylor asked about average frontage widths closer to Blanco. Mrs Talley explained the ones closer to Blanco are more narrow some 50' in width and some lots 100' after turn. Member Harris asked if owner owned both lots could they build on both. Mr. Mann explained they are legal lots and can build in them if something could fit, as long as they comply with the Zoning Ordinance. Member Terrian said Lot 17A is similar in size to other lots in Boerne and little houses could be built. Lot 16A is a concern what they might want to build on the lot. It would be 30' from the next lot over. Member Harris said he is concerned a small lot would not fit in with the neighborhood. Member Terrian moves to deny 16-04. Member Harris seconds. 2-2 vote. Variance denied.

7. ADJOURNMENT

**MEETING WAS ADJOURNED AT 7:22 P.M.**

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Chair

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Secretary