

MINUTES
ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING
CITY COUNCIL CHAMBERS
124 Old San Antonio Road
Boerne, TX 78006
Wednesday, November 16, 2016 – 5:30 p.m.

Regular Board Members Present: Bill Kessler-Chair, Scott Lowry-Vice Chair, Jim Terrian-Secretary, and Tom Harris

Alternate Members Present: Cayman Gentry and Richard McCormick

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

Visitors Present: Robert Stone, Kelly Owen

1. CALL TO ORDER – 5:30 PM

Meeting was called to order by Chairman Kessler at 5:30 p.m.

2. ADMINISTER OATH OF OFFICE FOR NEW BOARD MEMBERS CAYMAN GENTRY AND RICHARD MCORMICK.

Oath of Office and Oath of Statement of Officer was administered by Recording Secretary of the board, Andrea Rivera.

3. APPROVE MINUTES OF OCTOBER 19, 2016

Vice-Chair Lowry moved to approve the minutes of October 19, 2016, the motion was seconded by Secretary Terrian, all in favor to approve the minutes.

4. DESIGNATE VOTING MEMBERS

Chairman Kessler designated four regular members and designated Alternate Member Cayman Gentry as fifth voting member.

5. CONFLICT OF INTEREST DECLARATION

There were none.

6. PUBLIC HEARINGS:

Receive comments on Variance No. 16-06, Lot 27, Currey Creek
(236 Latigo Lane).

Kirsten Cohoon approached the board and said she is here to give guidance to the board on this variance. She explained that this variance falls under the Fair Housing Act and Americans with Disabilities Act. The Fair Housing Act does apply to municipalities and does state that it is unlawful to refuse to make reasonable accommodations for persons with disabilities. She said we have included this in our ordinance. Council enacted a provision providing a reasonable accommodation if it is deemed necessary by the Board of Adjustments to afford persons with a disability an equal opportunity to use and enjoy the dwelling. She said the board is here tonight to determine if this request is reasonable. Chairman Kessler asked about the relationship between a hardship when dealing with this type of variance request. Mrs. Cohoon said this is our first variance request of this type. We just passed the ordinance in 2014. We do not have a precedent in this type of request. This request will enable their son to enjoy the outdoors. Secretary Terrian asked if they have to have a certified disability. Mrs. Cohoon said yes, you do. Chairman Kessler asked if this is defined in our code or the USC code. Kirsten said it is defined in the USC code and we reference it in our code. Member Harris asked how new this ordinance is. Mrs. Cohoon said about three years old. She said she worked with Laura Talley from Planning on this ordinance to become compliant with the law. Robert Stone and Kelly Owen approached the board and explained they just received 100% custody of Robbie in January of this year. He said they live in this house with their two other children and the house is a 2 bedroom 2 bath house. They said they turned the upstairs living area into a third bedroom for their teenage daughter for her privacy which pushed the family downstairs. They said they want to respect Robbie's privacy as well by providing him his own space. Mr. Stone explained that they had some issues or concerns with Robbie where he has wandered into the street and stopped traffic or approached other children that he doesn't know which made other parents concerned. He said they want a space for Robbie to do his activities

and to be able to watch him at the same time on the same level of the home. He has had multiple surgeries on his legs and ankles and has a treadmill he uses for therapy. He said we need space for his treadmill. We got approval from the HOA and thought we were ok to build this sunroom. He said we were wrong and apologized. We ask that you grant us the seven feet of the rear setback. Kelly Owen said Robbie loves dogs and our dogs are always in the back yard. He loves the outdoors and we work from home. So, the backyard opportunity with the dogs works best. We want to give him his freedom, but we need to keep an eye on him at the same time. Mr. Stone said he will be an adult soon but we will have custody of him and he will live in this house the majority of his life so this is not a temporary thing. Secretary Terrian said he noticed some of the structure is up he and wanted to know what kind of roofline will be built. Mr. Stone said it will be a pitched roof or whatever the City requires. He said he can make it match the house. Secretary Terrian also asked if there was a patio. Mr. Stone said there will be a patio with 1 or 2 steps down into the yard. He said there will be windows all the way around. He said the plan is to repaint the house and use the same shingles so the structure will match. Secretary Terrian said if we grant you this variance, the structure will be only three feet from an electric easement. Mr. Stone said he is aware of this and will not build in this easement. Chairman Kessler asked if Robbie receives social security benefits. Mr Stone said yes he receives SSI and he will have that the majority of his life. Secretary Terrian asked if they will have any play structures or trees for Robbie. Mr. Stone said yes that this sunroom was the first step but once he adapts to his environment it is a possibility in the future to have additional play structures or things to keep him engaged. He said he will be in BISD district until he is 21. Member Gentry asked if they thought about a four foot picket fence in the front yard or use of the garage. Mr. Stone said a fence structure in the front yard would not be allowed by the HOA. He said they keep the kids bikes and toys in the garage and we did not consider either of those options because we have a beautiful back yard that wasn't being utilized. Member Harris asked when they became aware of this ordinance. Mr Stone and Ms. Owen said they

were not aware of this ordinance and that the City brought it to their attention.

7. ITEMS FOR DISCUSSION/ACTION

Consider Variance No. 16-06: A request from Robert Stone & Kelly Owen regarding a variance to the City of Boerne Zoning Ordinance to allow for a 7-foot encroachment into the required 20-foot rear setback for Lot 27, Currey Creek (236 Latigo Lane).

Secretary Terrian said this is close to Adler and if we proceed with a motion to approve that we stipulate they construct a hipline roof to match the house with matching materials. He said he would like to see the back and sides slope up to the two story house. Chairman Kessler said we try to do the right things according to the definitions and the rules and the reason he asked the question about the social security benefits is with respect to the issue of disability. He said Robbie is considered disabled under federal law which affects the definition in the city code, and as we face other issues regarding disabilities, we need to determine what constitutes a disability. Secretary Terrian said he can see cases in the future where some may try to use this to their advantage. Chairman Kessler begged the question, what constitutes a disability? However, he said in this case, it has already been determined for us. Vice Chair Lowry moved to approve the variance on the condition that they construct a hipline roof. Member Harris seconded. Motion carried 5-0.

8. ADJOURNMENT

Meeting was adjourned at 6:01 p.m.

Chair

Secretary