

MINUTES
ZONING BOARD OF ADJUSTMENT AND APPEALS MEETING
CITY COUNCIL CHAMBERS
124 Old San Antonio Road
Boerne, TX 78006
Wednesday, May 30, 2018 – 5:30 p.m.

1. CALL TO ORDER – 5:30 PM

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

2. APPROVE MINUTES OF JANUARY 31, 2018

Vice Chair Lowry moved to approve the minutes of January 31, 2018.
Member Harris seconded the motion. All were in favor.

3. DESIGNATE VOTING MEMBERS

Chair Kessler stated that all regular members will be voting tonight.

4. CONFLICT OF INTEREST DECLARATION

There were none.

5. PUBLIC HEARINGS:

Receive comments on Appeal No. 18-02, Lot 11, Block 3, Oak Park
I Addition (120 Third St.)

Chair Kessler started the meeting by explaining to Mike Mann that they have not had an appeal before and asked Mike if he could explain the process. Mike Mann began by explaining that this board hears two types of issues, one is a variance that must show a hardship, can't be merely financial and are applicable to the Zoning Ordinance. The second issue is an appeal which allows the public to come to the board and state their

case why they think City Staff's decision is the incorrect decision. The difference in voting between an appeal and a variance is that an appeal only requires a 3/5 vote where a variance requires a 4/5 vote.

Chair Kessler opened the hearing at 5:34 p.m. Mike Mann explained that the protocol is for City Staff to state their case and also for the applicant to state their case. Chair Kessler asked for City Staff to go first and Riley Metcalfe approached the podium to represent the P&Z department. Riley stated that the City's case is simply that this is how we've always interpreted it. What determines what lot type you are is first and foremost the area of the lot. What comes second to that is the lot frontage. The area is the most important. This is based on something an attorney told us long ago. The ordinance is vague. Chair Kessler asked what was taken into consideration when determining the lot size. Riley said the area of the lot falls between a 1/4 acre and 1/2 acre lot, and we go with the minimum lot size which is a 1/4 of an acre. Chair Kessler and Riley discussed Table 5-2 of the Zoning Ordinance. Riley said area takes precedence over frontage. Chair Kessler asked if Table 5-2 was revised in April of this year. Riley said the Zoning Ordinance was updated, but no changes to this table were made.

Chair Kessler reviewed applicant Ben Adams' letter that stated that there are different setbacks across the street from the variance property and asked Riley to explain. Riley said across the street they may have had different setback requirements at the time they built their homes. Riley said that he wasn't sure what exactly caused the different setbacks but that the ordinance changes or the enforcement of the ordinance may change over the years. There are a lot of different things that could have happened. Chair Kessler asked Secretary Terrian if he is familiar with the changing of the ordinances over the years. Secretary Terrian explained different officials may interpret them differently. Chair Kessler asked Mike Mann if the decision was made by City Staff to hear this variance as an appeal. Mike Mann explained staff's discussion on this and how they came to an appeal. Mike explained that they can file for a variance if the board denies the appeal at a different meeting. Mike Mann explained the more stringent the requirements at the time of platting applies. If the plat has a setback but the Zoning Ordinance is more restrictive, then the

Zoning Ordinance controls. P&Z plans to clarify the ordinance in an upcoming Council session, this is not the first time this has come up. The Board doesn't usually set a precedence for a variance, but for an appeal it is different, the Board in this case will clarify on how you think it should read. The P&Z department will take that under advisement. Chair Kessler clarified with Mike Mann that what the Board needs to do tonight is to determine whether or not this lot is a low density or a standard lot. Mike Mann replied yes.

Secretary Terrian asked if the Board's decision would be for just this lot or for all future properties with this lot size. Mike explained the decision tonight will only affect this property. The Board could take different action on a different property the next meeting. Mike Mann and Andrea Rivera explained the neighbor responses and how this was advertised as a variance and as an appeal. Ben Adams approached the podium. He explained he is an architect and Chairman of the HLC for City of Boerne. Oak Park Addition was platted in 1907. Developers had a different mindset at that time. At the time of plat there were no setbacks. Owners have had a number of thefts and brought up the issue to build a garage. Looking at the Table 5-2, a and b, in a grid staggered front setbacks are required. If he were to apply this in a new development. Article 3, Section 7, sub-section 3c, these variable relationships do not apply to lots wider than 80'. This tells us if the lot is less than 80' wide, then it could still be a standard lot because of the staggering application of lots that should be applied. We feel the implication is strong enough because of the minimum standards and the staggering section where it explains you would not apply staggering if the lot is wider than 80'. Both of these together support the standard lot and a 20' setback would apply. Because of the minimum and the staggering. We feel it would be appropriate to call this a standard lot. If this were a variance, there are alternatives if you want to hear them. Chair Kessler said they don't believe they can hear that. Mike Mann explained the board can consider whatever they would like to consider and mentioned there are items in the variance package they originally submitted that are not in the appeal application. Chair Kessler said we can hear it but cannot take it into consideration. He said he will leave it up to Ben Adams if he would like to discuss the variance.

Ben Adams explained that he looks at different alternatives. He said he looked at designing a front facing two car garage but would have to cut down three heritage legacy trees. Another alternative is we can put a side entrance where the garage does not face the street and only cut down one tree an Arizona Ash. Chair Kessler asked if there is a way to design that is consistent with the City's requirement. Ben Adam replied that he could, but that would mean cutting down three trees. We did the design according to the standard lot. We didn't meet the 80' width so I assumed we would go to the standard lot size. We did a preliminary design and presented to P& Z to see if there were any concerns and that's when I learned of the size requirements. Chair Kessler asked if he considered the 14,000 sq. ft. size of the lot. Ben Adams said the 65' was a standard size and I needed 80' to be a larger lot, that's how I interpreted it. You wouldn't run into this with a new subdivision because it would be clear that you wouldn't meet both of them. It's because this subdivision was developed in 1907 before the 2007 ordinance was brought in.

Judy Musgrove approached, she explained she knew many of the previous owners that lived in this home. She said she lives on the east side of Third Street at 213. Several neighbors are older on this street. She is concerned the neighborhood will be destroyed due to this garage. They have a carport that is already in the setback, she believes they can enclose the existing carport. She said no one on this street has ever had anything stolen and that her lot is half the depth of their lot and her carport is flush with her house. She said that this is old Boerne and the charm will be ruined and the views from the front porches will be changed with this new garage. She said they need to also consider the rainwater and the flows. Member Harris asked her if the carport was an eyesore. She said she can live with the carport because it is open. She said there's a difference between looking at a double car garage and a double car carport.

Ben Adams explained the trees they intend to cut down is the Ash trees. The trees on the North side are Live Oak. The carport was there in 2002. Its 14 feet deep and with a triangular storage room to make room for the tree and a standard car would not fit. The new garage would be on the

south side of the lot. Member Harris asked about the side facing garage. Ben Adams said the doors will not face the street. The preference from the Zoning Ordinance is to not have the garage door face the street. It would look more like a house and not a garage. Ben said it is not the owner's fault they've had things stolen and explained Boerne is a different town now and things need to be addressed. You could put a garage in the rear but there is not enough room on either side to drive down the side to get to it. Chair Kessler said he wants to discuss the issue of precedent and this decision today will not affect future areas in this city. It will affect the way the City looks at it when they are determining issues. Will City look at minimum frontage requirement as opposed to lot area? Mike Mann explained prior legal advice that no action of the BOA sets precedence. P & Z will stay consistent until council changes the wording in the ordinance. Mike said the board needs to decide lot classification which sets the front setback. If you grant the appeal, the lot will be considered a standard lot. The board needs to grant or deny the appeal for classification of the lot size. Chair Kessler closed hearing at 6:29 p.m.

6. ITEMS FOR DISCUSSION/ACTION

Consider Appeal No. 18-02: A request from Benedict Adam, on behalf of Matthew & Jodi Priesmeyer (120 Third St.), for an appeal to the Director of Planning & Zoning's interpretation of the minimum lot size standard for low density and standard detached dwelling lots as set forth in Table 5-2 Residential Lot and Dimension Standards in the City of Boerne Zoning Ordinance.

Secretary Terrian explained we are here to address the appeal only. They could have a variance at a later date and then we would consider all the information we've heard tonight regarding the proposed new garage. Member Harris said if we hear a variance, it will put us back to who created the hardship. Vice-Chair Lowry said we can't think about what may or may not happen. It's about the interpretation of the City. We can't think about what action may happen in the future. Chair Kessler said we can't re-write the rules. Is the interpretation correct looking at the definition? I can understand why the City made this decision looking at the lot area. I can't see how I could overrule their decision. It's the P & Z's responsibility to define the ordinance. Secretary Terrian said the City is addressing the ambiguity in the ordinance and feels it is more of a variance situation. Mike explained it was originally presented as a variance request. He explained to Ben Adams that the requirements for approving an appeal are much less stringent than the variance. Harris asked Terrian if this changes the look and charm of the neighborhood. Terrian replied if we were hearing this as a variance, from a design standpoint a side entry garage makes more sense. We are not asked to make that decision tonight. Secretary Terrian motioned to deny the appeal of changing the current city's interpretation of a standard lot compared to a low density lot. Vice-Chair Lowry seconded the motion. 4 votes to deny with 1 abstention. Appeal is denied.

7. ADJOURNMENT

Adjourned at 6:42 p.m.

Chair

Secretary

