

**ZONING BOARD OF ADJUSTMENT**  
**Regular Meeting Minutes**  
**July 27, 2023**

**MEMBERS PRESENT**

Chair John Coker  
Vice Chair Brandon Mund  
Bobby Avary  
Jenny Wilson  
Steve Quidley

**STAFF PRESENT**

Frank Onion, Assistant City Attorney  
Jean Drew, Assistant Director  
Planning & Development Services  
Matthew Simmont, Planning Manager  
Mary Lovell, Senior Planner  
Colton Barker, Assistant Planner  
Evin Wilson, Assistant Planner

**Members Absent**

**1. CALL TO ORDER**

Chair Coker called the meeting to order at 6:00pm.

**2. ROLL CALL**

Roll was called, and a quorum declared.

**3. APPROVAL OF MINUTES**

**4. INDIVIDUAL ITEMS FOR CONSIDERATION**

**A) ZB23-0010 Hold a public hearing and consider a request for a variance to Section 144-3.4-2(b)(vii) to allow a lot to be created that does not meet the minimum size required in the “R-1A-6.6” Single-family District, addressed at 185 N. Live Oak Ave. (Applicant/Owner: Concepcion R. Urdiales; Case Manager: Laure Middleton)**

Mary Lovell presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** The applicant states that Lot 9 & 10 currently has two houses, however, the homes are situated on the property where the division would normally be required; **and**
- 2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** The applicant states that two families live in the homes and they want to be able to pay their own taxes, and remodel without affecting the taxes of the other home/family; **and**
- 3) That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area;** The applicant states that at the intersection of West Mill Street and North Plum Avenue a similar partition has been executed, three parcels with single family residences. Staff acknowledges the impact to the surrounding area is likely insignificant; **and**
- 4) Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** The applicant states that the variance will allow boundaries of the properties to be designated. Staff notes that the property is currently nonconforming with two dwellings on one lot in the R-1A-6.6 single family district; **and**
- 5) That an undue hardship exists;** The applicant states that the request is due to the limited size of the lot available for the minimum lot size required by the zoning district. Staff acknowledges that the original lots created in 1912 did not meet the lot dimension standards for the current zoning district since the corner lot originally had a width of 52.28 feet; **and**
- 6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** The applicant states granting of the variance will be in harmony with the spirit and purpose of the City's regulations. The applicant intends to remodel one of the existing homes and comply with the current city ordinances and build sidewalks for pedestrian safety. Staff notes the intent of the single-family zoning district will be met with the division of the lot.

Chair Coker asked if there were any questions for staff.

No one spoke.

Chair Coker invited the applicant to speak.

Justin Baranado, representing the owner, elaborated on the request and provided a brief history of the property.

Discussion followed on the distance between the two homes, the proposed dividing line, access to the property, and existing easements.

Chair Coker opened the public hearing and asked if anyone would like to speak.

No one spoke.

Chair Coker closed the public hearing and asked if there was any discussion or a motion.

Motion by Vice-Chair Mund, seconded by Member Quidley, to approve the request for a variance to Section 144-3.4-2(b)(vii) to allow a lot to be created that does not meet the minimum size required in the "R-1A-6.6" Single-family District, addressed at 185 N. Live Oak Ave. Motion carried (5-0-0).

**B) ZB23-0011 Hold a public hearing and consider a request for a variance to Section 144-5.4(d) to allow an accessory structure to be located within the minimum side setback required in the "R-2" Single and Two-family District, addressed at 1062 Mulberry Ave. (Applicant/Owner: Cecil M. Gregg III; Case Manager: Laure Middleton)**

Mary Lovell presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** The applicant states that the existing home was built in the 1930's with an addition in the 1980's. The footprint leaves a small L-shaped backyard with no outdoor storage or garage. The storage shed is intended to be used for a golf cart, river floats, yard equipment, etc. Placing the shed at the end of the driveway, behind the existing gate is the most logical location to maximize outdoor space in the backyard; **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** The applicant states that the placement of the shed is aesthetically pleasing from the street as it is centered on the gate. This placement also increases its functionality to pull heavy items directly out and down the driveway, and being located in the corner allows for maximum usage of the backyard area for entertaining and recreation; **and**
- 3) **That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area;** The applicant states that granting the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff acknowledges that the property owner will be required to retrofit the structure to meet the fire code standards for a structure less than 5 feet from the side property line; **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** The applicant states that the variance will not prevent the orderly use of other land within the area; **and**
- 5) **That an undue hardship exists;** The applicant states that the existing improvements dictate the size and configuration of the rear yard. The existing structure has no outdoor storage or garage. The home is located in a water recreation district, but lacks any storage for canoes, kayaks, pool floats, tubes, etc. which are frequently pilfered if left in the open. They are also unsightly and a haven for mosquitoes and vermin. Thus, a shed or garage is needed. Placing the shed in the corner at the terminus of the driveway maximizes the space for recreation and entertaining; **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** The applicant states granting of the variance will be in harmony with the spirit and purpose of the City's regulations. The neighbors have noted that the lack of outdoor storage has

long been an issue at this location causing unsightly clutter and unsafe hazards as former owners have resorted to running extension cords over the open driveway to charge their golf carts. Allowing residents to recreate and entertain friends and family is part of the cultural traditions of New Braunfels.

Chair Coker asked if there were any questions for staff.

Discussion followed on the construction and location of the detached structure relative to the property lines and setbacks.

Chair Coker invited the applicant to speak.

Cecil Gregg, 1062 Mulberry Avenue, elaborated on the request discussing the location of the structure and the existing foundation it was constructed on.

Chair Coker opened the public hearing and asked if anyone would like to speak.

The following Individuals spoke on the item: Brenda Chapman

Chair Coker closed the public hearing.

Chair Coker asked if there was any discussion or a motion.

Motion by Member Quidley, seconded by Chair Coker, to approve the request for a variance to Section 144-5.4(d) to allow an accessory structure to be located within the minimum side setback required in the "R-2" Single and Two-family District, addressed at 1062 Mulberry Ave.

Discussion followed on the precedence of past variances granted in the area, the lack of a permit for the structure's construction, and hardship of the property,

Coker reopened the public hearing.

The following individuals spoke on the item: Brenda Chapman.

Coker closed the public hearing.

Discussion followed on the construction and location of the structure, the existing foundation it was built on, and potentially tabling the request to the next month's regular meeting to allow time for the applicant to gather evidence of the previous structure.

Motion by Vice-Chair Mund, seconded by Member Wilson, to table the request until the August 24, 2023 regular meeting and the request that more information regarding the existing foundation be presented at that time. Motion carried (4-1-0), with Member Quidley in opposition.

**C) ZB23-0012 Hold a public hearing and consider a request for a variance to Section 144-5.4(c) to allow an accessory structure to encroach up to 5 feet into the minimum side setback required in the "R-1A-6.6" Single-family District, addressed at 198 E. Lincoln Street. (Applicant: Nathan Camp; Owner: Annette B. & Patrick S. Logan; Case Manager: Laure Middleton)**

Mary Lovell presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of the following facts:

- 1) **That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;** The applicant states that the existing attached storage structure was originally built on the property line which was acceptable at the time it was constructed. The structure became dangerous, and an "eye sore" to the public. To rectify these issues, the shed was rebuilt for safety reasons, and to enhance the visual aspects of the neighborhood. As it previously stood, the shed was seen by some children of the neighborhood as an abandoned structure that

was worthy of investigation. This could have potentially led to injury to such children, and a liability of the owners. The lot size and shape does not allow for any storage structure to be built with a 5-foot set back as is required by the city for new construction. This lot is in a flood zone, which restricts and limits the area upon which to build. The footprint of the foundation was NOT increased or changed during the repair/renovation. This attached structure was built with the house in 1930 and has now been there for almost 100 years; and

- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** The applicant states that this property is a river front property, and to get the benefit of and enjoy the river view and river access, as other river view properties in the area, and to have room to securely store personal property and have an outdoor living space, it is necessary to maximize the land space available for structures. This attached structure was infested with mice, mold, and other rodents, was impacted by extensive insect damage and water damage and was a hazard to the public and the property owners. It is within the rights of the property owners to repair and restore their dwelling to a safe and usable structure. The storage structure was in use at the time as it's the only storage area on the property. Without the variance, the homeowners lose the substantial property right that they have, which allowed the attached structure to be placed on the property line. The only other place for a storage structure might be in the front yard, but it would be unsightly, block the view of the house, and it would probably not be acceptable to the neighbors or the city. Staff notes that fire code does not allow soffits within 2-feet of the property line for fire safety. The original structure was not compliant with current fire code, but any new structures must comply. The structure would need to be designed to meet fire code to be built on the property line; and
- 3) **That the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property within the area;** The applicant states that granting the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. Staff notes that fire code standards for a structure built on a property line requires no roof overhang, no openings facing the neighboring property, and fire-rating of the walls and roof; and
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** The applicant states that the variance will not prevent the orderly use of other land within the area; and
- 5) **That an undue hardship exists;** The applicant states that the lot is in a flood zone, which restricts and limits the area upon which to build. Lot configuration and size did not allow for this part of the structure to be built within a 5-foot setback. The 5-foot setback may not have existed at the time the structure was built (1930), or this attached structure was allowed as an exception. Perhaps a variance was granted back in 1930. Staff acknowledges that current setback standards were adopted with zoning in 1961; and
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** The applicant states granting of the variance will be in harmony with the spirit and purpose of the City's regulations. This renovated structure is an improvement to the land, to the lot, and the neighborhood. It is no longer a public health hazard and is a safe structure. At this point in time the rebuilt structure is only missing the steel roof panels and a door. In other words the project is more than 90% complete. A great amount of time and dollars have been invested to get it to it's current state prior to the city's demand to stop work. It is hoped that the city will receive the above information and help us resolve the situation with an approval. There was no ill intent with this repair. We believed that we provided all the required documents and information about the project and receive the necessary permits before starting the work. The severe condition of the building was not fully known until we started taking it apart and uncovering how bad it truly was. We then only continued to replace all the bad materials and complete the project as planned and did not know we should have done something differently. Staff acknowledges that the scope of work that was reviewed with the permit was exceeded with a complete demolition of the nonconforming structure, and the new structure was not fully reviewed. It is necessary for the city to review the construction and plans, as built, to ensure that the structure was designed and built to meet fire code.

Chair Coker asked if there were any questions for staff.

Discussion followed on the construction of the structure and nonconforming structure regulations.

Chair Coker invited the applicant to speak.

Nathan Camp, 1111 Thorpe Lane, elaborated on the request, discussed property hardship and the condition of the original structure.

Discussion followed on the footprint and condition of the original structure, deviations from the original, building material and structure location.

Chair Coker opened the public hearing and asked if anyone would like to speak.

The following individuals spoke on the item: Annette & Patrick Logan

The applicant responded that he was very concerned for the safety of the building.

Chair Coker closed the public hearing.

Chair Coker asked if there was any discussion or a motion.

Discussion followed on property hardship.

Motion by Member Avery, seconded by Vice-Chair Mund, to approve the request for a variance to Section 144-5.4(c) to allow an accessory structure to encroach up to 5 feet into the minimum side setback required in the "R-1A-6.6" Single-family District, addressed at 198 E. Lincoln Street. Motion carried (5-0-0).

#### **5. STAFF REPORT**

No items.

#### **6. ADJOURNMENT**

Chair Coker adjourned the meeting at 6:47pm.

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**Chair**

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**Date**

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