

**ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
December 17, 2020**

MEMBERS PRESENT

Chair John Coker
Vice Chair Brandon Mund
Bonnie Leitch
Steve Quidley
Cynthia Foster

STAFF PRESENT

Chris Looney, Planning & Development Services Director
Frank Onion, First Assistant City Attorney
Maddison O'Kelley, Assistant Planner
Sam Hunter, Planning Technician

MEMBERS ABSENT

None

Chair Coker called the meeting to order at 6:00 p.m. Roll was called, and a quorum declared.

APPROVAL OF MINUTES

Motion by Vice Chair Mund, seconded by Member Leitch, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of November 19, 2020. The motion carried (5-0-0).

PUBLIC HEARINGS

(A) Z-20-017 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(v) and Section 5.4(c) to allow a proposed single-family home to encroach 2 feet into both of the required 5-foot side setbacks addressed at 674 W. Edgewater Terrace. (Applicant: David Mills; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding 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 the subject property is smaller than a typical lot within the City limits. The applicant further states the existing home is set back 1 foot from the side property and the proposed home would increase the setback by 2 to 3 feet if the variance is approved. Staff acknowledges the 50-foot width of the lot is smaller than the minimum lot width of 60 feet required within the "R-2" District, however, it is not an uncommon lot width in New Braunfels with other single-family zoning districts that allow a 50-foot lot width or narrower to accommodate newly built homes. Furthermore, staff has not identified a special circumstance of the property that is not shared with adjacent properties in the neighborhood.) **and**
- 2) *That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary to preserve an aesthetic front elevation by allowing the garage to shift over to show the front building façade. Staff does not recognize the substantial property right to a residential use of the property has been removed due to the setback requirements for main and accessory structures within the Zoning Ordinance.) **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 granting of the variance will not be detrimental to the public health, safety or welfare or injurious to other property within the area as the applicant has built other homes where encroachment variances of similar nature were approved. Staff acknowledges the impact to the surrounding area is likely minimal, however, the ZBA is not authorized or obligated to grant a variance due to a similar variance having been granted in the past.) **and**
- 4) *Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;*** (The applicant states the variance should not prevent orderly use of other land nor set an unusual precedent. Staff notes all neighboring properties are still required to comply with the setback requirements for any new construction.) **and**
- 5) *That an undue hardship exists;*** (The applicant states an undue hardship of the land does not exist. The ZBA may only authorize a variance upon finding an undue hardship of the land itself that is not self-created, personal, or financial.) **and**

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (Side setbacks are intended to preserve open area on residential property.)

Chair Coker asked if there were any questions for staff.

Chair Coker requested the applicant address the Board.

Evy Washburn, 674 W Edgewater Terrace, stated she is the property owner and elaborated on the request.

Chair Coker asked if there were any questions for the applicant.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Motion by Vice Chair Mund, seconded by Member Leitch to approve the proposed request for a variance to Section 3.3-2(b)(v) and Section 5.4(c) to allow a proposed single-family home to encroach 2 feet into both of the required 5-foot side setbacks addressed at 674 W. Edgewater Terrace. Motion carried (4-0-1) with Member Foster in opposition.

(B) Z-20-019 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed single-family home to encroach 10 feet into the required 25-foot corner side setback, addressed at 120 E. Edgewater Terrace. (Applicant: Melvin Nolte & Chad Nolte; Case Manager: Maddison O'Kelley)

Ms. O'Kelley stated this item has been postponed to the January 28, 2021 meeting.

(C) Z-20-020 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(iii) and Section 3.3-2(b)(v) to allow a proposed addition to a single-family home to 1. encroach up to 2.3 feet into the required 5-foot side setback and 2. encroach up to 13 feet into the required 20-foot rear setback, addressed at 307 N. Guenther. (Applicant: Greg Williams; Case Manager: Maddison O'Kelley)

Ms. O'Kelley presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding 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 the special circumstances affecting the property is the limited space available to construct the addition due to the existing structures on the property. The applicant cites the location of an accessory structure, labeled as "brick BBQ" on the provided survey. The applicant further states the driveway side of the property would be the least obtrusive location to construct and addition onto the historically designated home. Staff notes the existing side setback of the house is 21.3 feet from the side property line and a special circumstance of the property that does not affect other properties with historic structures has not identified.) **and**

2) That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; (The applicant states the variance is necessary because due to the lack of area to construct on the property, the addition could not reasonably be constructed on any other part of the property. The applicant further states the proposed addition would allow for closet, utility, and bathroom space that is more consistent with a modern standard of living. Staff does not believe the substantial property right to

a single-family residence has been removed due to compliance with the setback requirements within the Zoning ordinance.) **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. The applicant further states there is already a current detached garage encroaching the same distance into the side setback and that the proposed addition would make a natural connection in line with the existing garage. Staff notes the existing detached garage encroaches 2.3 feet into the side setback for a distance 20.1 feet. The addition as proposed will reduce the rear setback for a two-story structure to 7 feet where code requires a minimum 20-foot setback. At 76.25 feet, the proposed addition increases the length of the encroachment into the side yard by 261%.) **and**

4) Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter; (The applicant states the variance should not prevent orderly use of other land nor set an unusual precedent because the proposed addition will adjoin an existing structure on the property. Staff notes all neighboring properties are still required to comply with the setback requirements for any new construction.) **and**

5) That an undue hardship exists; (The applicant states that, if the variance is not approved, the applicant would have to demolish the historical structures on the land to add to the rear of the house. The applicant further states there are a number of large heritage pecan trees around the proposed that limit the buildable area. The applicant states the addition will need to be planned to be the least obtrusive in nature due to the landmark designation of the home.) **and**

6) That the granting of a variance will be in harmony with the spirit and purpose of these regulations. (The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations.)

Chair Coker asked if there were any questions for staff.

Discussion followed on the provided plans, elevations, and clarification on the nature of the addition.

Chair Coker requested the applicant address the Board.

Greg Williams, 307 N Guenther, clarified the intent of the request and addressed the historic nature of the property.

Chair Coker asked if there were any questions for the applicant.

Discussion followed for clarification on the lack of elevation and floor plans, the hardship on the property, run-off from the roof, and preservation of the historic aspects.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Motion by Member Leitch, seconded by Member Quidley to approve the proposed request for a variance to Section 3.3-2(b)(iii) and Section 3.3-2(b)(v) to allow a proposed addition to a single-family home to 1. encroach up to 2.3 feet into the required 5-foot side setback and 2. encroach up to 13 feet into the required 20-foot rear setback, addressed at 307 N. Guenther. Motion carried (4-0-1) with Member Foster in opposition.

(D) Z-20-021 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(ii)

to allow an attached carport with a deck to encroach approximately 18 feet into the required 25-foot front setback, addressed at 1021 Cole Avenue. (Applicant: Patricia & Dane Herbert; Case Manager: Chris Looney)

Mr. Looney presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding 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 the special circumstance affecting the subject property is its proximity to the City golf course and the resulting stray golf balls hit onto the existing driveway. The applicant states the concrete driveway was built in 1962 without a cover and, at the time, the golf course tee box was located next to the river and was therefore 75 yards farther from the subject property. The applicant states that, now that the tee box is closer to the subject property, errant golf balls frequently fly onto the driveway. Furthermore, the applicant cites the lot width and size as additional special circumstances of the property. Staff acknowledges the area of the subject property is 3,000 square feet less than the minimum lot area of 7,000 square feet required for corner lots in the "R-2" District and therefore, the buildable area is limited. Staff notes that the stray golf balls hit onto the driveway is not a special circumstance that isn't shared by other properties adjacent to the golf course and is therefore not a circumstance of the land itself.) ***and***
- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary because the ability to park in the existing driveway is removed due to risk of injury or property damage from stray golf balls, and therefore the applicant must park on Cole Avenue which has limited street width. The applicant further states the risks associated with golf balls hit onto the property removes the ability to use and enjoy the property, if the variance is not granted. Staff acknowledges the concerns regarding risk of injury or damage due to stray golf balls, however, the substantial property right to a single-family dwelling is not removed due to the setback requirements in the Zoning ordinance.) ***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 because the carport will be open for visibility and constructed with top grade materials. The applicant further states if the carport is constructed, public safety will improve as the property owners will be able to move their vehicles from the right-of-way and allow for the easy flow of traffic and emergency vehicles along Cole Avenue.) ***and***
- 4) ***Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;*** (The applicant states the variance should not prevent orderly use of other land nor set an unusual precedent. Staff notes all neighboring properties are still required to comply with the setback requirements for any new construction.) ***and***
- 5) ***That an undue hardship exists;*** (The applicant states the undue hardships that exist are the risk of being hit with golf balls and suffering from serious injury, the risk of damage to cars from hail and golf balls, and safety issues associated with parking on the street. The applicant further states that a building permit was issued for the carport by the City and therefore the subject structure is partially constructed. Staff acknowledges the possibility for stray golf balls to cause injury or damage, however, a hardship of the land itself has not been identified. Furthermore, the hardship of an incorrectly issued permit due to an inaccurate site plan is not a hardship of the land itself.) ***and***
- 6) ***That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*** (The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations and that adjacent property owners are in favor of the proposed carport. The applicant further states the carport will improve the health and safety for the community and enhance their enjoyment of the property. Staff notes the purpose of the front setback requirement is to maintain a visual setback from the street and ensure adequate visibility for drivers.)

Chair Coker asked if there were any questions for staff.

Chair Coker requested the applicant address the Board.

Dane & Trish Hebert, 1021 Cole Ave, provided clarification of the request.

Chair Coker asked if there were any questions for the applicant.

Discussion followed on concerns for the proposed second story of the deck.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Discussion followed on if the permit process would be factored in the Board's decision and a potential motion with conditions.

Motion by Member Foster to approve the proposed request for a variance to Section 3.3-2(b)(1)(ii) to allow an attached carport with a deck to encroach approximately 18 feet into the required 25-foot front setback, addressed at 1021 Cole Avenue with the condition no enclosed structure may be built. With no second, the motion failed.

ITEMS FOR INDIVIDUAL CONSIDERATION

- A) Identify code sections or topics the Board may want to discuss on a future agenda to consider a recommendation to City Council to initiate process to amend or revise.

No discussion.

ADJOURNMENT

Chair Coker adjourned the meeting at 6:59 pm.

Chair

Date

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