

**CITY OF SANTA FE
ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
SEPTEMBER 11, 2023 7:00 P.M.
COUNCIL CHAMBERS
12002 HWY. 6, SANTA FE, TEXAS**

MINUTES

The meeting was called to order at 7:00 p.m. by Chairperson Dawn Sharp.

Roll Call: Present: Chairperson Dawn Sharp
Associate Chairperson Raymond "Tommy" Gass
Commissioner David Unger
Commissioner Samuel "Jack" Helton
Alternate Commissioner Position #1 Ron Dailey
Alternate Commissioner Position #2 Tim Clark

Absent: Commissioner Alec Dobson

Chief Building Official Ray Burgess led the Invocation. The Pledge of Allegiance to the U.S. Flag and the Texas Flag were led by Chairperson Dawn Sharp.

IV. Citizens' Comments

There were no comments from citizens.

V. Approval of the Minutes from the July 10, 2023, Zoning Board of Adjustment Meeting

Commissioner Unger made a motion to approve the Minutes of the July 10, 2023, Zoning Board of Adjustment Meeting. Commissioner Dailey seconded the motion and the motion carried unanimously.

VI. Business:

A. Old Business

- 1. Consideration and possible action: Update on case BOA221101, requesting the Board close the case due to compliance from the property owner at 15730 North Tower Circle, Santa Fe, Texas, legally described as LOT 311 BLK 1 TOWER ROAD ESTATES PH II (2021) ABST 15 regarding previous noncompliance with City of Santa Fe Code of Ordinances Section 4.02.06, which states that the rear setback of an accessory building requires a fifteen (15) feet rear setback, and a six (6) feet side setback. The structure in question previously encroached into the fifteen (15) feet rear setback and six (6) feet side setback, and has now been moved in accordance with the Board's order**

Chief Building Official Ray Burgess gave an update on the accessory building that first came before the Zoning Board of Adjustment on January 16, 2023, stating that the building has been moved and the property is now in compliance with the City of Santa Fe Code of Ordinances Section 4.02.06.

Commissioner Dailey made a motion to close the case due to compliance from the property owner. Commissioner Unger seconded the motion and the motion passed unanimously.

2. **Consideration and possible action: Update on case BOA230601, requesting the Board close the case due to compliance from the property owner at 12141 23rd St., Santa Fe, Texas, legally described as ABST 149 E MITHCELL SUR LOT 11 & 12 E PT OF LOT 13 BLK 36 ALTALOMA TOWNSITE regarding previous noncompliance with City of Santa Fe code of Ordinances Section 4.02.06, which states that the rear setback of an accessory building requires a five (5) feet rear setback and a six (6) feet side setback. The structure in question encroaches one (1) foot and five (5) inches into the required five (5) feet rear setback, and two (2) feet and five (5) inches into the required six (6) feet setback, and the property owner has complied with the Board's order to erect fencing and install gutters.**

Chief Building Official Ray Burgess gave an update on the property at 12141 23rd Street that first came before the Zoning Board of Adjustment on July 11, 2023, wherein the property owner was granted a variance on the setback requirements with the stipulations that the property owner erect fencing and install gutters. Mr. Burgess informed the Board that the property owner has complied with these conditions and requests that the case be closed.

Commissioner Unger made a motion to close the case due to compliance from the property owner. Chairperson Sharp seconded the motion and the motion passed unanimously.

B. New Business

1. **Public Hearing: BOA230801 – Request for a variance at 4002 Pecan Grove, Santa Fe, Texas, legally described as ABST 47 PAGE 6 LOT 13 PECAN GROVE UNRECORDED SUB regarding City of Santa Fe Code of Ordinances Section 4.02.04, which states that the rear setback of an accessory building requires a five (5) feet setback, and City of Santa Fe Code of Ordinances Section 4.02.06, which states that no primary or accessory structure shall be erected on any utility or drainage easement. The structure in question is eight (8) feet into the required five (5) feet rear setback which encroaches on the utility easement.**

Chairperson Sharp opened the Public Hearing at 7:03 p.m.

Gregg Vicknair, of 3802 Avenue L, Santa Fe, Texas, approached the podium to inform the Commission that he owns the land that is adjacent to the property in question, 4002 Pecan Grove, and he has no issue with the patio cover that was erected on that property. Mr. Vicknair added that he plans to replat his property and sell to his father, who is the property owner at 4002 Pecan Grove.

Mr. Vicknair also brought to the Commission's attention that the Zoning Board of Adjustment approved a variance for the patio cover that he had previously built on his property behind Pook's Crawfish Hole, which is on the same easement as the patio cover in question under this Item.

Chairperson Sharp closed the Public Hearing at 7:04 p.m.

2. **Consideration and possible action: BOA230801 – Request for a variance at 4002 Pecan Grove, Santa Fe, Texas, legally described as ABST 47 PAGE 6 LOT 13 PECAN GROVE UNRECORDED SUB regarding City of Santa Fe Code of Ordinances Section 4.02.04, which states that the rear setback of an accessory building requires a five (5) feet setback, and City of Santa Fe Code of Ordinances Section 4.02.06, which states that no primary or accessory structure shall be erected on any utility or drainage easement. The**

structure in question is eight (8) feet int the required five (5) feet rear setback which encroaches on the utility easement.

Earl Vicknair, property owner at 4002 Pecan Grove, told the Zoning Board of Adjustment (BOA) that he is asking for a variance for the structure that he built in the easement where he said he has had a generator sitting for the past thirteen years with no issues from the utility company. Mr. Vicknair added that the BOA had, in the past, granted a variance for a similar structure in the same easement on an adjoining property. Mr. Vicknair stated that he is planning to replat the area once he and his son, Gregg Vicknair, receive the final drainage plan for the new restaurant on his son's adjoining property.

Community Services Director Georgia Carmack advised the Commission that granting the requested variance is not something that the City would recommend approval of since the property encroaches a utility easement. Ms. Carmack added that the plans that were submitted by the applicant were rejected due to being misrepresented as a movable structure, when there is evidence that the awning is attached to the ground to adhere to windload requirements. Ms. Carmack added that the concrete under the awning as well as the concrete driveway both encroach the utility easement.

Mr. Earl Vicknair reapproached the podium to explain that he did not have a permit when he poured the concrete slab. He stated that he was contacted by Santa Fe Chief Building Official Ray Burgess with instructions to apply for a permit. Mr. Vicknair advised that he sent his son, Gregg Vicknair, to City Hall to obtain a permit and to pay any fines that may have been incurred. Mr. Earl Vicknair stated that his son was unable to obtain the permit due to the location of the slab being inside the utility easement.

Mr. Earl Vicknair stated that approximately three to four months later, construction began on the awning, and that about seven days after the frame was erected, he received a call from Mr. Burgess advising him that he needed to apply for a permit. Mr. Earl Vicknair stated that once he arrived at City Hall to apply for the permit, he was informed that a permit could not be issued for a structure that is located inside of a utility easement.

In response to a question by Commissioner Clark on whether the structure would be able to be moved out of the easement should the utility company require access, Mr. Vicknair responded affirmatively. Chairperson Sharp asked if the structure was bolted to the ground and Mr. Vicknair responded that it is, but that he would be able to unbolt it and move it with a set of wheels that he designed for that purpose.

Commissioner Unger questioned whether the Zoning Board of Adjustment has the authority to grant a variance for a structure that is located on an easement owned by a utility company, and both Chairperson Sharp and Mr. Burgess responded that it does not.

Mr. Earl Vicknair informed the Commission that he had contacted CenterPoint Energy, the owner of the utility easement, to inquire about the process of obtaining permission to build in the easement. He stated that the customer service representative that he spoke to informed him that he has the right to ask for a variance from CenterPoint Energy for a \$1,500.00 filing fee, but it would result in an automatic denial because CenterPoint Energy does not grant variances. She further explained to Mr. Earl Vicknair that homeowners build over easements all the time, but the property owners should be willing to move any structures that are in the easements.

Mr. Gregg Vicknair reiterated that when he received a variance by the BOA for the same type of structure that is attached to the building where Pook's is located, there were no conditions about moving it if necessary. He also added that the structure has not been an issue any time that CenterPoint Energy has accessed the easement.

Commissioner Clark stated that since the structure in question and its location in the easement does not pose a threat to public safety or health, he believes that the variance should be approved. Commissioner Unger again questioned the BOA's authority on granting a variance on an easement that is owned by a separate entity.

City staff learned that only five Commissioners are authorized to vote on any possible action, and since there were four Commissioners and two Alternate Commissioners seated at the dais, state law provides that Alternate Commissioner #1 would be allowed to vote, and Alternate Commissioner #2 would not. Alternate Commissioner #1 is Ronald Dailey and Alternate Commissioner #2 is Tim Clark.

Chairperson Sharp asked Mr. Earl Vicknair if he would mind putting pavers on the structure instead of concrete, and he responded that he preferred the concrete. He added that, should the need arise to move the structure, he would be able to fabricate wheels in approximately eight hours.

Commissioner Helton made a motion to approve the variance and Associate Chairperson Gass seconded the motion. Those opposed to approving the variance were Chairperson Sharp, Commissioner Unger, and Commissioner Dailey. The motion failed with two votes in favor and three votes opposed.

3. Discussion and possible action: Board Members' attendance at Board meetings, and possible recommendation of removal of a Board Member due to excessive absences

The Commissioners opted to table this agenda item since Community Services Director Georgia Carmack has so far been unable to contact Commissioner Dobson to ask if he has been receiving notices about the meetings. There has also been an issue with some of the emails that have been sent to the other Commissioners not consistently being delivered.

VII. Adjournment

Chairperson Sharp adjourned the meeting at 7:48 p.m.


Chairperson Dawn Sharp


Community Development Director Georgia Carmack