

CITY OF SULPHUR SPRINGS
ZONING BOARD OF ADJUSTMENTS AND APPEALS
MEETING MINUTES
SEPTEMBER 17, 2019
5:30 P.M.

Present: Chairman Brad Burgin, Vice-Chairman Matt Johnson, Board Member Kevin Mohl, Board Member Jay Julian, Alternate Board Member James Litzler,

Absent: Board Member Kyle Robinson

Staff: Tory Niewiadomski, Community Development Director, Jennifer Graham, Admin Asst., Community Development, Tim Green, Chief Building Official

Others: Matthew Mattison, Taylor Nye

CALL MEETING TO ORDER:

Chairman Brad Burgin called the Zoning Board of Adjustments and Appeals Meeting to order at 5:30 P.M.

DISCUSSION/ACTION ON ZONING BOARD OF ADJUSTMENTS AND APPEALS MEETING MINUTES OF AUGUST 20, 2019.

Consider for approval the Zoning Board of Adjustments and Appeals meeting minutes of August 20, 2019. Vice-Chairman Matt Johnson moved to approve the meeting minutes. Board Member Jay Julian seconded. Motion carried, all voting aye.

DISCUSSION/ACTION ON A VARIANCE REQUEST FOR ENCROACHMENT INTO REQUIRED REAR AND SIDE YARD SETBACK FOR PROPERTY LOCATED AT 628 RASURE.

The applicant has started construction for a detached roofed outdoor kitchen that is 18' x 22'. Due to the proximity of the structure to the home, it is not considered a detached accessory structure in the Zoning Ordinance and is required to meet the principle structure (home) setbacks from the rear and side lot lines. Principle structures are required to be 10' from the rear property line in the SF-6 Zoning District. Detached accessory structures are required to be located 3 feet from the rear and side lot lines.

The outdoor kitchen is not like an enclosed garage next to a house that would be similar to the principle structure. The outdoor kitchen does not have enclosed sides. Building codes do not require a distance separation of structures on the same property but do typically require 5 feet from property lines, which provides for a minimum 10 foot separation between principle structures. If less than 5 feet from the property line, the International Residential Code (IRC) allows for it provided that there is a fire rated wall. In this case, the structure is not enclosed on the sides of the structure and is 7'3" from the home which satisfies building code requirements from fire separation. Staff believes the intent and purpose of the provision is to have adequate separation between enclosed buildings for fire protection purposes.

Tim Green, the Chief Building Official, was doing an inspection in the neighborhood and noticed the structure and stopped to check and see if they had a permit and they did not. There were notices sent to all the residents within 200ft. of the property. No negative responses were received. Where it is placed will not hinder the Fire Department.

Board Member Jay Julian's research on this topic, based on the reports of several different law professionals, spoke on the responsibilities of the Zoning Board of Adjustments in these types of situations and the rules that should be followed. There are four powers of the Zoning Board of Adjustments. The one dealing with this request states "Authorize in specific cases a variance to the terms of the Zoning Ordinance when the variance is not contrary to the public interest and due to special conditions a literal enforcement would result in the unnecessary hardship and so the spirit of the ordinance is observed and substantial justice is done" In further research it must show that there is a hardship unique to the property and not common to the area. A self-created or financial hardship is not enough nor are personal circumstances, design preferences, or desire for additional space qualify a variance being granted. Based on his research he determined that he could not support the variance request.

Tory spoke about our ordinance and how other cities publish their findings of fact in their ordinances that outlines what Board Member Julian stated. If those guidelines published it could be inconsistently applied if it not using the same decision criteria over and over.

Alternate Board Member Litzler ask if this type of issue has come before the Board at another time. The answer is yes.

Board Member Kevin Mohl questioned that if the structure did not have a roof would there be a reason for a variance. The answer was no, there would not be a need.

Board Member Litzler asked for a definition of what constitutes a detached structure or shed. It is that the structure must be setback 3' from the rear and side property line. This structure is 3' and 6 ½'. Because it is closer than 10ft. it becomes part of the principle structure and it has a different setback than an accessory building. In order to be considered a detached structure or shed it must be 10' from the rear property line. This structure is 6'9" ft. in violation. If it were 10' from the house it would not require a variance.

Chairman Brad Burgin moved to approve the request. Board Member Kevin Mohl seconded. Motion carried with Chairman Brad Burgin, Vice-Chairman Matt Johnson, Board Member Kevin Mohl and Alternate Board Member James Litzler voting aye and Board Member Jay Julian voting nay.

ADJOURN

With no further business the meeting was adjourned at 6:15 P.M.