



City of Harker Heights
Zoning Board of Adjustment Minutes
Aug 03, 2016

Present:	Carl Ford	Chairman
	David Brown	Board Member
	Chris Diem	Board Member
	Brian Brannock	Board Member
	Dietrich Weiss	Board Member
Staff:	Joseph Molis	Director of Planning & Development
	Leo Mantey	City Planner
	Steve Philen	Building Official
	Ty Hendrick	Administrative Assistant
		Planning & Development

A quorum was established, and the meeting was called to order at 6:00 p.m.

The first item on the agenda was the approval of the minutes from the July 7, 2016, meeting. Mr. Diem made the motion to approve the minutes and Mr. Brown seconded the motion. The motion passed unanimously (5-0).

Following the approval of the minutes, Chairman Ford asked everyone to rise and be sworn in.

Mr. Molis presented Case #2016-01, to discuss and consider a request for a variance from the required 20' side yard setback to a 13' side yard setback and allow 1.7' encroachment into the 15' utility easement on the west side of the property located at 1609 Gold Splash, described as lot 11, block 3, Evergreen subdivision phase V, Harker Heights, Bell County, Texas. Mr. Molis stated that this request is to allow the existing single-family residence to comply with the regulations stipulated in the R-1 (One Family Dwelling District) zoning district as well as the city subdivision regulation. He also mentioned that Per Section §155.039 Setback Required (Table 21-A) side setbacks required for this lot zoned R-1 (One Family Dwelling District) is 20' because of a side-entry garage that fronts a side street. Additionally, the plat indicates a 15' utility easement along the property line adjacent to the Side Street from which the side-entry garage fronts. However, due to a survey error, the building was constructed as to encroach 7' into the 20' yard side setback and 1.7' into the 15' utility easement. This encroachment is on the west side of the building where the side entry garage is located off Alpine Fir Drive as indicated on the attached location map. He also stated that the water line is on the opposite side of the street from the house and that the sewer line is in the ride away and doesn't affect the home at 1609 Gold Splash. Mr. Molis stated that staff met with the applicant and informed him that for a variance to be granted, a hardship or necessity needs to be established per §155.222 (A) (3). Staff sent out thirty (30) notices to property owners within the four-hundred foot (400ft) notification area. There were five (5)

responses received in favor and no responses received in opposition of the request. Mr. Molis stated that according the staff's findings that the reason for the variance is a drafting error. The plot plan was submitted and approved by the city. The drafter missed the required side yard setback requirement. The building is completed and ready for habitation. He also stated that the staff feels that the granting of the variance would not cause substantial detriment to the public good. The front setback that is addressed off Gold Splash meets the required setback regulation. The encroachment is on the side yard setback, which will only be used to access the garage. Staff believes the use of the side yard will not have any significant impact on traffic, safety and compatibility of land uses since all other activities of a house takes place in the front yard. Staff therefore believes granting this variance will not have any adverse impacts on the adjoining property and that it will comply with all other aspects of the Zoning Ordinance.

Mr. Diem asked when in the process was it noticed that the City codes had been broken. Mr. Molis brought Steve Philen the building official up to answer the question. Mr. Philen stated that he was contacted by the builder when he had it surveyed to sell and realized that it was not in compliance. Mr. Diem then asked when the property owner put the house up for sale. Mr. Philen stated that it was about thirty days ago. Mr. Ford then asked if the owner had been given a certificate of occupancy. Mr. Philen stated that the owner had not been given a certificate of occupancy because he had not done a final inspection. Mr. Molis then asked Mr. Ford to go over the questions that Mr. Sweeney had posed and sent as a courtesy due to his absence. Mr. Ford stated that questions could not be accurately answered due to a lack of information and key witnesses not being present. Mr. Mitchell (Bob Mitchell, Mitchell and Assoc.) was called to the stand as a representative for Mr. Hord. He stated that Mr. Hord submitted the sight plans on his own and that he did not get involved until Mr. Hord called for a survey. It was at this point that Mr. Mitchell (Mitchell & Assoc.) noticed the problem. Mr. Mitchell (Mitchell & Assoc.) stated that Mr. Hord could not be there because of pending health issues that would not allow him to be present. Mr. Ford asked if Mr. Philen knew if there was a penalty pending against the builder. Mr. Philen stated that there was not a penalty pending. Mr. Ford and Mr. Philen then had a brief discussion about whether or not the builder should receive a penalty for his actions.

Mr. Diem then asked about validity of the builder. Mr. Mitchell (Mitchell & Assoc.) stated that they had never had any issues with the builder over the past 20 years. Mr. Ford then asked a few questions about the sight plan and the utility easement. Mr. Brown voiced a few questions in regards to what the consequences would be if the variance was not passed. Mr. Ford then asked a few questions in reference to the other utility services being willing to abandon the 1.7 feet that was encroached upon.

Mr. Ford then opened the public hearing and asked if there was anyone to speak in favor or against the variance being passed. No one was present to speak for or against the variance. Mr. Ford then closed the public hearing.

Mr. Brown, Mr. Diem and Mr. Ford all voiced concerns about the utility providers willingness to abandon the 1.7 feet that was encroached. Mr. Diem stated that he felt it would be unfair to a homeowner if they purchased the property and then found out that

they were responsible for the encroachment on the easement. The rest of the board members agreed.

Mr. Brown made a motion to adjourn without decision until a later time. In which the board and City staff would receive a response of approval or disapproval from the Utility companies, a time which would allow time for the applicant to be present to defend himself if his health would permit him as well as a time that would be convenient for all of the board members. Mr. Diem seconded the motion. The meeting was closed at 6:42 pm.



Carl Ford, Chairman

ATTEST:

