

Be it said and remembered that at 8:30 a.m. on the 18<sup>th</sup> day of January, 2017 there came on and was held a Zoning Board of Adjustment meeting in the Council Chamber, 5<sup>th</sup> Floor, City Hall, 411 W. 8<sup>th</sup> St., Odessa, Texas.

MEMBERS PRESENT: Ludie Warner, Chairperson  
Geraldo Arzate  
Brooke Harper  
Edith Vandervoort  
Mark Windham

MEMBERS ABSENT: Libby Campbell (Alternate)  
Rosa Valdez (Alternate)

OTHERS PRESENT: Randy Brinlee, Director of Planning and Development; Sherry Bailey and Danielle Pittman, Planners; Anthony Rios, Alternate Zoning board of Adjustment Member; Konrad Hildebrandt, Assistant City Manager; Todd Stephens, Senior Assistant City Attorney; and Anne Roney, Secretary.

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Chairperson Warner called the meeting to order, with Member Windham giving the invocation.

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The minutes of the January 4, 2017 Zoning Board of Adjustment meeting were approved, motion for approval being made by Member Windham, seconded by Member Harper, with the vote being a unanimous "aye".

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DOCKET NO. 2017-02-V (approved with conditions)

Open a public hearing to consider approval of the request of Michael Thompson, owner, Colby Brazile, representative, for a variance from Section 8-601 of the City of Odessa Zoning Ordinance to allow a structure (cabana) to be located zero feet (0') instead of the ten feet (10') required rear yard setback and a variance from Section 13-101-1 of the City of Odessa Zoning Ordinance to allow a fence on the rear property line to be ten feet (10') in height instead of the maximum eight feet (8') in height allowed in a Single Family-Estate (SF-E) Zoning District, Lot 12, Block 22, Country Club Addition. (6216 Riders Rd.)

Ms. Pittman gave the following presentation: There were 16 notices mailed to surrounding property owners, with no notices returned, no written protests and 1 written approval.

The property involved in this request is located southeast of the intersection of Riders Rd. and Palo Verde Dr. The site is zoned Single Family-Estates (SF-E) and is currently occupied by a single-family residence. Land use in the general area consists of residential development.

The applicant is Michael Thompson, owner, Colby Brazile, representative, the request is for a variance in order to allow a structure (cabana) to be located zero feet (0') instead of the ten feet (10') required rear yard setback and a variance in order to allow a fence on the rear property line to be ten feet (10') in height instead of the maximum eight feet (8') in height allowed in a Single Family- Estate (SF-E) Zoning District. The applicant is requesting a variance from Section 8-601 and a variance from Section 13-101-1 of the City of Odessa Zoning Ordinance which states:

8-601            There shall be no rear setback line for main or accessory buildings unless no alley exists, in which case a 10' setback line shall be observed. No single family or two-family residential building and all accessory buildings on a lot shall cover more than fifty (50) percent of that portion of the lot lying to the rear of a line erected joining the midpoint on one side lot line with the midpoint on the opposite side lot line. For accessory building standards, see 8-902.

- 13-101-1 Any fence or wall erected on the side property line and located to the rear of the minimum required front yard as determined by the provisions of 8-401 shall not exceed eight (8) feet in height above the adjacent grade. Interior fences in commercial or industrial districts erected on or behind the required front, side, or rear yard line shall be subject to the same height restrictions as buildings in the specified districts in which the fence is located.

The following criteria as outlined in the Zoning Ordinance are to be used by the Board of Adjustment in evaluating variance requests. The burden of proof in meeting each of these criteria is upon the applicant.

- A. The variance request is not contrary to the public interest.
- B. Special conditions exist for the applicant that do not generally exist for others.
- C. A literal enforcement of the ordinance will result in unnecessary hardship.
- D. The spirit of the zoning ordinance is observed and substantial justice is done.

The property involved in this request has a total lot area of approximately 61,950 sq. ft. and is occupied by a single family dwelling (approximately 4,675 sq. ft.) and a detached accessory building (approximately 100 sq. ft.) Building setbacks for the existing residential structures, lot coverage, and parking all meet ordinance requirements.

Staff analysis of this request is that the applicant does have a special condition that does not exist for others in the area due to the shape of the lot to reduce the rear yard setback to zero feet (0'), however the applicant does not have a special condition to raise the height of the rear fence to ten feet (10'). The applicant's request of a zero feet (0') building setback adjacent to the south property line is reasonable and will not create any hazards or any hardship to surrounding properties related to light, air, or open space. The Planning Staff has no objections to the request in order to allow a structure (cabana) to be located zero feet (0') instead of the ten feet (10') required rear yard setback.

Due to the safety issues the fence presents for the Fire Department, the Planning Staff cannot support the variance request to allow a fence on the rear property line to be ten feet (10'). A firefighter would have difficulty clearing a ten feet (10') fence in full bunker gear, therefore recommends that the request for the fence be denied. If the Board chooses to approve this request the Staff would recommend the fence height not be increased in the future.

There being no questions for City Staff, Chairperson Warner opened the public hearing. Mr. Colby Brazile, applicant's representative, approached the lectern. He stated the proposed fence will be tied into the neighbor's fence. The fence height will be 9'4" tall. They are requesting the additional height on the south side of the property next to the neighbor's fence and the fence height as they build away from the neighbor's property will be the required height of 8'. He pointed out this is an older subdivision and they do not wish to remove any of the vegetation for the building.

Mr. Windham asked where the fence would start from the neighbor's fence, with Mr. Brazile showing the location on the map. Mr. Brazile stated they wanted to continue the height to the building. He also indicated where an existing Onco line is located that will be buried. Mr. Brazile stated the neighbor did not have any plans to build in the area where the proposed fence will be located. Ms. Warner stated in case of emergency the firefighters can access the property through the alley and the driveway. There being no further questions or comments, Chairperson Warner closed the public hearing.

Member Windham moved the structure be approved as submitted. Member Harper seconded the motion, with the vote being a unanimous "aye".

#### FINDINGS OF FACT

The Zoning Board of Adjustment for the City of Odessa finds as a matter of fact that:

1. The variance request is not contrary to the public interest.
2. Special conditions exist for the applicant that do not generally exist for others.
3. A literal enforcement of the ordinance will result in unnecessary hardship.
4. The spirit of the zoning ordinance is observed and substantial justice is done.

**ORDER OF THE BOARD**

Therefore, the Zoning Board of Adjustment of the City of Odessa acting on the basis of the required concurring vote of four (4) members of the Board hereby orders the variance sought by the applicant in this case be, in all things granted subject to the following appropriate conditions and safeguards, to wit: Approved as requested.

Ms. Warner asked about the concerns from the Fire Department. Mr. Brinlee stated when this type of request is presented to the Fire Department they do not support anything above 8'. Mr. Windham stated since the fence will not be next to an alley or street would this present a problem, being told it would not. Mr. Windham asked if they just want to tie into an existing 9'4" fence, with Mr. Brazile stating that was correct. Ms. Warner stated the Fire Department would have access from the alley. If this proposed fence were across the alley it would be a problem. Where the fence is proposed the Fire Department would have to cross the neighbor's property.

Member Windham stated the fence is not across an alley and will be tied into an existing fence and moved the proposed fence be approved with the following condition:

1. The fence height of ten feet (10') not be increased in the future.

Member Harper seconded the motion.

Mr. Arzate stated the recommendation of the Fire Department is not to build a fence above 8'. Mr. Brinlee stated that is the standard recommendation. He did not know if the Fire Department was aware of the property involved in this request. Mr. Windham stated if the proposed fence was along an alley or roadway he would have concerns. Ms. Warner also pointed out in this request there are special circumstances that affect this property owner that would not affect other property in the area, with Mr. Brinlee stating the lot is an unusual shape.

There being no further discussion, the vote for approving the fence was as follows: Members Harper, Warner, Vandervoort and Windham – "aye"; Member Arzate – "nay".

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There being no further business to come before the Board, the meeting was adjourned at 8:40 a.m.

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Anne Roney, Secretary, placed the minutes in the Minute Book on January 18, 2017.

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Ludie Warner, Chairperson