

The City of La Vernia Zoning Board of Adjustment held a Regular Meeting on March 19, 2014 at 1:00 p.m. at the City Hall, La Vernia, and Texas.

Item No. 1. Call to Order Robert Gregory called the meeting to order at 1:00 p.m. Other Board members present were Marie Gerlich, Randy Leonard, John Richter, Eloi Cormier, and Jennifer Moczygamba. Staff members present were City Secretary-Treasurer Angela Cantu and Municipal Development District Director Jennifer Kolbe. City Attorney Jameene Banks was also in attendance.

Item No. 2. Pledge of Allegiance and Invocation The Pledge of Allegiance was recited and Mr. Gregory gave the invocation.

Item No. 3. A. – E. Discussion Mr. Gregory reminded the Board that this item is in reference to Chapter 38-208 of the City of La Vernia Code of Ordinances.

Mr. Joseph Farmer, property owner, stated that he did not know there was a problem with his property until last week so he is not sure exactly what to say to the Board.

Mr. Gregory stated that the house has been built within the two feet and eleven inches within the 20 foot setback. Mr. Farmer stated that got approval from Janet Thelen (the City's Code Enforcement Officer at the time) before he started any work. Mrs. Moczygamba asked if the plan was reviewed then why is the land survey different from the site plan that was submitted. Mr. Farmer stated that he was told by Code Enforcement Officer Thelen that he could fluctuate in the front because he was on a cul-de-sac lot. He stated that his neighbor is closer to the street then he is so he did not think it would be a problem. He also stated that Code Enforcement Officer Thelen came out and took measurements a couple of times and he was given the green light to proceed. Mr. Gregory stated that the neighbor's building permit was acquired in 2004 therefore a different set of rules apply which the home builder was required to follow. Mr. Leonard asked who found that this home has been built within the City's required setbacks and Mr. Farmer stated that the title company found it and will not issue a clear title because of the encroachment. Mr. Leonard asked if the size of the home increased because the original site plan showed a 21 foot setback. Mr. Farmer stated that the size did not change, that the home was moved because of the side encroachment. He stated that he was never told how far he could or could not move the home. Mrs. Moczygamba asked if he ever submitted a revised site plan and Mr. Farmer stated that he did not because he was not told that this was required. Mr. Leonard asked if he heard it correctly that Code Enforcement Officer Thelen came out and measured before the foundation was poured and Mr. Farmer said she did and gave him approval to pour. Mr. Gregory stated that at this time he would like to go into executive session under Local Government Code §551.071 Consultation with Attorney.

The Zoning Board of Adjustment entered into executive session at 1:19 p.m. and returned to open session at 1:46 p.m.

Mr. Gregory explained though Code Enforcement Officer Thelen stated that it was ok for him to proceed with the building of his home does not mean that this Board is legally required to grant the variance. There are issues with encroachment on the front of the home, one of the sides of the home, and along the back setback of the property. Mr. Farmer asked what the questions are regarding the side and back setbacks. Mr. Leonard stated that there is a basketball court that encroaches on the back and one side of the property. Mr. Farmer stated that Code Enforcement Officer told him that was ok since it was just a slab and there are no walls. Mrs. Gerlich asked when he was aware that there was a problem and Mr. Farmer stated he found out

last month at closing. Mr. Gregory stated that Mr. Farmer came to us in January requesting a letter stating that the City was ok with the home encroaching in the subdivision's 25 foot setback requirement. Based on the original site plan that showed a 21 foot setback he issued a generic letter stating that the City was fine with the position of the home. Then at the end of February Mr. Farmer came back saying the lender was not happy with the letter that was issued and requested a variance based on the survey from Berger Land Survey dated February 13, 2014. Mrs. Gerlich asked if Mr. Farmer has considered what he would need to do to come into compliance. Mr. Farmer stated that he would have to take off his garage and remove his basketball court.

Mr. Gregory called for a motion and Mrs. Moczygemba made a motion, with a heavy heart, to deny Mr. Farmer's variance request. The motion died for lack of a second. Mrs. Gerlich made a motion, also with a heavy heart, to approve Mr. Farmer's variance request. The motion died for lack of a second. Attorney Banks stated that the Board needs to continue deliberation until they come to a resolution one way or the other on the subject.

Mr. Gregory stated that while he sees it from the homeowner's point of view regarding getting approval from a City official, it is up to the homeowner to be aware of the rules. Mr. Farmer stated that he thought he was doing the right thing by coming to the City before he built and relied on the information that he was given as true and correct. Mrs. Moczygemba stated that she reviewed the City's ordinance and did not find anything regarding any encroachment of amenities. Mr. Farmer stated that he was given permission. Mrs. Moczygemba asked if he recognizes that if the amenities were to be damaged by the City, he, the homeowner, is responsible for replacement and/or repairs. Mr. Farmer stated that he was. Mr. Leonard stated that he does not feel that Mr. Farmer displayed a disregard for the City's ordinances and Mr. Gregory agreed stating that he does not feel that malice was intended.

Item No. 4. Deliberation and Board Determination Mrs. Gerlich made a motion to grant the variance request of Mr. Farmer and Mr. Leonard seconded. Attorney Banks stated that the motion needs to give the basis for the record. Mr. Leonard stated that there isn't one and Mr. Cormier stated it would be a hardship to re-do the completed home. Mrs. Moczygemba stated that our ordinance states hardship created by the property owner is not a basis for granting a variance. Mr. Leonard stated that this is a no win situation and Mrs. Gerlich agreed stating that there are possible negative ramifications either way the Board decides. Mrs. Gerlich withdrew her motion. Mr. Gregory made a motion to grant Mr. Farmer's variance request due to the hardship created by the miss-information from the building official representing the City at the time and Mr. Leonard seconded. **Motion carried 5 – 1** with Mrs. Moczygemba regretfully voting against due to principal.

Item No. 5. Adjourn With no further business Mr. Cormier made a motion to adjourn and Mr. Richter seconded. The meeting was adjourned at 2:40 p.m.



Robert Gregory, Chairman



Angela Cantu, City Secretary-Treasurer

