

CITY OF OLMOS PARK  
BOARD OF ADJUSTMENT  
MINUTES OF PUBLIC MEETING  
HELD JUNE 13, 2018

The Board of Adjustment for the City of Olmos Park, Texas held a public meeting at 4:30 p.m. on Thursday, June 13, 2018, at City Hall. Members present were Melissa Phillips, Lee Sandoloski, Sandra Hornberger, Sarah Cochran and Dorothy Jo Weiss. Administrative Staff present were Celia DeLeon, City Manager; Diane Gonzales, City Secretary; Ricardo Cavazos, Building Official and City Attorney, Richard Lindner. Also present was Judy Hibri and Nadi Hibri, 312 Park Hill; Mr. and Mrs. Quirck, 315 Park Hill and Clyde Johnson and Paula Johnson, 320 Park Hill.

Chairman Melissa Phillips called the meeting to order at 4:41 p.m. and announced a quorum was present.

Approve minutes of meeting held May 10, 2018.

Sandy Hornberger moved to approve the minutes for May 10, 2018.

Sarah Cochran seconded the motion.

The vote in favor of the motion was unanimous by all Board members present.

Dorothy Jo Weiss joined the meeting at 4:44 p.m.

Mr. and Mrs. Nadi Hibri of 312 Park Hill AKA CB 5680 BLK LOT 53 is requesting a variance from Chapter 40, section 40-189 Buildings. The current garage encroaches the 10' foot utility easement by 4 ½' feet. The proposed carport would encroach the utility easement by 7' feet and this would additionally require a release agreement with CPS. The proposed carport is being attached to a non-conforming garage and this would require a variance.

City Secretary Diane Gonzales stated all the required mailings went out to the residents within 200 feet and have received one letter in favor of the project from Mr. and Mrs. Pittman of 309 Park Hill.

Building Official, Ricardo Cavazos stated on April 30, 2018 Mr. Soto applied for a building permit on behalf of Mr. and Mrs. Nadi Hibri of 312 Park Hill to add a new carport at 312 Park Hill Drive. Upon examination the proposed site plan survey, he noticed that the current garage encroached the 10-foot utility easement by 4 ½ feet. The proposed carport would encroach the utility easement by 7 feet and would require an additional release from CPS and is in the packets. City Zoning Ordinance *40-189 Non-Conforming Buildings* allows continuous use provided no structure alterations are made and since the proposed carport is being attached to the non-conforming garage this would require a variance.

Chair Phillips asked would the carport be conforming?

Building Official Ricardo Cavazos stated no it is encroaching 7 feet into the utility easement.

Lee Sandoloski asked will the proposed carport encroach any other setback?

Building Official Ricardo Cavazos stated it encroaches the 10-foot utility easement by 4 ½ feet. Mr. and Mrs. Hibri have a release for the current garage and proposed carport from CPS. There are two things in the utility easement and he did a print out of the gas location and the sewer location. The sewer line and the gas line run in front of the street so therefore there is nothing in the utility easement other than the overhead power lines.

Chair Phillips asked if without the CPS setback, it would be nonconforming.

Building Official Ricardo Cavazos stated yes, because it still stipulates on the survey that there is a 10-foot utility easement and our City Ordinance prohibits any building there.

Mike Brenan stated his clients are Mr. and Mrs. Clyde Johnson at 320 Park Hill the next-door neighbor to the east. He asked if he could ask Mr. and Mrs. Hibri some questions, and after being advised they weren't required to answer, they agreed.

Mr. Brenan asked why are you building this further back than the garage that is already there?

Mrs. Hibri stated she would like to use the little space where the stone wall is there.

Mike Brenan asked is it going to be a one car garage or two car garage and do you use it as a garage?

Mrs. Hibri stated it is a one car garage and yes, we use it.

Mike Brenan asked will it be converted into some other use, and you will park one car in the existing garage and how many cars will you park in the proposed carport?

Mrs. Hibri stated it can only fit one car.

Mike Brenan asked do you know the depth and the length of the carport that you are proposing?

Building Official Ricardo Cavazos stated the existing garage width is somewhere between 15 feet in width on the side.

Chair Phillips stated past the utility easement everything you will be building will be con-forming.

Mike Brenan stated it is already non-conforming and they are proposing to make it more non-conforming.

Mike Brenan asked is there something about this property that is difficult for you to use, is your property flat?

Mrs. Hibri stated no it is not flat there is a slop on the property.

Mr. Hibri stated when it rains the mud goes down the road and we want to put a concrete slab and extend the existing roof so we can cover the car.

Mike Brenan asked is there any irregularity to the shape of this lot, is it a plain rectangle lot?

Mrs. Hibri stated as far as he knows yes.

Mike Brenan read off a flow chart for variances and the fundamental requirement of a variance and there has to be a hardship in the property that requires the variance and can't be a self-imposed hardship and can't be one based on economic reasons. The setback rules of the City is these rules are developed to promote harmony in the City, protect property rights, and not to obstruct views to the extent possible and when you move to a City you give up your rights to do whatever you want to your property and subject yourself to City rules and requirements. Mr. and Mrs. Hibri have asked for a variance that they object the setback code that has been developed by the City Council and they want to build into the utility easement and already have a garage that is built into the utility easement which is a violation of your City code. They want to aggravate the building by building further into the utility easement and that has the effect of further obstructing the backyard view of Mr. and Mrs. Johnson

who purchased their house 44 years ago and have lived there peacefully with all their neighbors and never had issues or problems. He stated these folks want to build a new structure out into the area between their existing garage and run it back further to the back that obstructs their view of the elements that people buy their properties to enjoy their comfort.

He also stated the fundamental to obtain a variance is there has to be a hardship in the property, irregular shape, odd shape, unusual topography, or something in the property that prevents someone from using their property in the way the property was designed. The lots for this proposed project are rectangular lots and there is nothing unusual about the shape and there is some degree of slop but not a cliff. They have already failed the first step of State law and there has to be a special condition apparent in the property to entitle a person to obtain a variance from the City codes and there does not appear to be a problem with the property, no cliffs or ravine and. The second step in the analysis is a condition unique to the property requesting the variance and there is nothing unique about this property. When they bought the property, they knew what the boundaries were and they are trying to overload the property if they are going further into the utility easement which is a violation of the City code. The next step is condition self-imposed or self-created and the variance they are seeking is self-created because they want to build a building onto the property that is too big for the property and that is a self-imposed action. Will a literal enforcement of the zoning ordinance result in any unnecessary hardship, and the question is does this property have a hardship suffered by the general public and they are the same condition as the general public as there is nothing unusual about their property. Will the hardship prevent any reasonable use whatsoever? They bought the property and have been using it for their enjoyment, so therefore they can use the property as it exists without building a new structure. Is the request within the spirit of the ordinance and does it further substantial justice? The granting of the variance furthers substantial justice, so you have to prove a fundamental hardship in the land to legally entitle a person to obtain a variance and there is no hardship in the land and Mr. Cavazos would agree and Mr. and Mrs. Hibri are seeking to bend the rules that negatively affects the Johnsons because the garage that is already there affects their view and their right to open space.

Building Official, Ricardo Cavazos stated the 4.5 feet of the current garage would have to be brought back and the carport would have to be brought back to the 10 foot, and everything should be aligned to the 10-foot utility easement.

Chair Phillips asked City Attorney Richard Lindner to read off a definition of a hardship.

City Attorney Richard Lindner stated under section 40-222 Powers. *Grant zoning variances.* To authorize, upon appeals and specific cases, variances from the terms of this chapter as will not be contrary to the public interest. This authority is to be used in instances where, owing to special conditions, a literal enforcement of the provision of this chapter will result in unnecessary hardship, and in such a manner that the spirit of this chapter shall be observed and substantial justice done. The special conditions must be unique to the applicant's property and beyond the applicant's control. Any variance will be deemed contrary to the public interest if it adversely affects other property owners in the vicinity of the subject property.

He stated the State law states the Board of Adjustment may authorize specific cases of variances from the term of the Zoning Ordinance if the variance is not contrary to the public interest and through a special condition a literal enforcement of the Ordinance would result in a necessary hardship and so that the spirit of Ordinance observed substantial justice is done. The State law gives the Board of Adjustment umbrella powers and the Board has some ability to move and further limit that slightly in your ordinances. There is some case law that Mr. Brennan is correct in some of the words he used that has been heard by the Court of Appeals and Supreme Court. He stated his understanding of economic is it can't be a purely economic reason and not that it is a hardship but a necessary or excessive hardship. His understanding of self-creating is not that someone wants to build something because then every variance request could be self-created, it's whether the applicant created the problem in the plat lines.

Lee Sandoloski asked Mr. Brenan do the Johnson's have an attached rear garage and does it encroach the utility easement?

Mike Brenan stated yes, I believe they do and does not know if it encroaches into the utility easement.

Lee Sandoloski asked does their garage set further north than the applicant's garage?

Mr. Johnson stated he did not know.

Mr. Hibri stated the neighbor to the west of us encroaches more all the way back and that house was built last year. If you extend the line that goes along everybody is on it so we are not an exception. We live 8 feet away from the Johnson's and they have a wall with a fence and their wall is obstructing their view and the existing structure that we have we are just going to extend the shed going down with the same roof we already have and is not going to increase the obstruction that they already have. When it rains the dirt goes down and we have to have a concrete slab and he is not sure they would be encroaching on anybody.

Lee Sandoloski stated he is in favor of granting the variance because it does not encroach any of the setbacks which he understands are for the preservation of the views and density. His belief is the utility easement exists only for the provision of utility easements and CPS has given them permission and they are not adding any great amount of density.

Chair Phillips stated she thinks this is unique to have a 10-foot setback when the only point of the setback is so the utility can run the utilities. For that reason, she thinks this is a unique hardship to have a 10-foot setback that has no purpose at all, when anyone else in the neighborhood can run his garage within 3 foot of either side. If you move into the neighborhood you know the size of the lot and you know things are going to be close and she believes this is a hardship and they should not be punished by having that 10-foot setback.

Sandy Hornberger stated if it is for someone's convenience, it is not a hardship. Variances are for necessities not for enjoyment.

Chair Phillips stated if the whole purpose of the setback doesn't exist then that could be considered a hardship.

Sarah Cochran stated she thinks it is overbuilding for the lot and does not see a hardship.

Chair Phillips stated that is not why they have the 10-foot setback.

Sarah Cochran stated it is the utilities, she understands.

Lee Sandoloski moved to approve the variance as requested at 312 Park Lane given that the hardship is a 10-foot utility easement which is not being utilized and the proposed addition meets all the other Olmos Park setbacks.

Dorothy Jo Weiss seconded the motion.

Sarah Cochran	Aye
Sandra Hornberger	Nay
Melissa Phillips	Aye
Lee Sandoloski	Aye
Dorothy Jo Weiss	Aye

The motion passes and the variance was granted.

There was no other business and the meeting adjourned at 5:25 p.m.

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Richard Specia  
Chairman

ATTEST:

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Kyndra Munoz  
City Secretary