



# City of Wimberley

221 Stillwater, P.O. Box 2027, Wimberley, Texas 78676

**CITY OF WIMBERLEY BOARD OF ADJUSTMENT MEETING**  
**WIMBERLEY CITY HALL-CITY COUNCIL CHAMBERS**  
**221 STILLWATER, WIMBERLEY, TEXAS**  
**SEPTEMBER 8, 2014- 6:00 P.M.**

## **AGENDA**

**CALL TO ORDER:**            SEPTEMBER 8, 2014 @ 6:00 P.M.

### **CALL OF ROLL**

#### **1.     CONSENT AGENDA**

APPROVAL OF MINUTES OF THE JULY 7, 2014 MEETING OF THE CITY OF WIMBERLEY BOARD OF ADJUSTMENT.

#### **2.     PUBLIC HEARING AND POSSIBLE ACTION**

*(Persons wishing to speak before the Board must register by signing in where indicated by Board Secretary. The Board will follow its adopted order of procedure for considering and acting on a variance request).*

(A)    PUBLIC HEARING AND CONSIDER POSSIBLE ACTION ON CASE NO. BA-14-012, A REQUEST FOR A VARIANCE TO THE CITY OF WIMBERLEY ZONING CODE, SECTION 155.036 (D)(3)(c) REGARDING THE REQUIRED INTERIOR (SIDE YARD) SETBACK ON THE WEST SIDE OF A PROPERTY ZONED RURAL RESIDENTIAL 1 (R-1) AND LOCATED AT 411 MILL RACE LANE, WIMBERLEY, HAYS COUNTY, TEXAS (*ALISON COURTNEY CAMPBELL, APPLICANT*)

(B)    PUBLIC HEARING AND CONSIDER POSSIBLE ACTION ON CASE NO. BA-14-013, A REQUEST FOR A VARIANCE TO THE CITY OF WIMBERLEY ZONING CODE, SECTION 155.036 (D)(3)(c) REGARDING THE REQUIRED INTERIOR (SIDE YARD) SETBACK ON THE EAST SIDE OF A PROPERTY ZONED RURAL RESIDENTIAL 1 (R-1) AND LOCATED AT 411 MILL RACE LANE, WIMBERLEY, HAYS COUNTY, TEXAS (*ALISON COURTNEY CAMPBELL, APPLICANT*)

### 3. BOARD MEMBER REPORTS

- ANNOUNCEMENTS
- FUTURE AGENDA ITEMS

### ADJOURNMENT

*THE BOARD MAY RETIRE INTO EXECUTIVE SESSION AT ANY TIME BETWEEN THE MEETING'S OPENING AND ADJOURNMENT FOR THE PURPOSE OF DISCUSSING ANY MATTERS LISTED ON THE AGENDA AS AUTHORIZED BY THE TEXAS GOVERNMENT CODE INCLUDING, BUT NOT LIMITED TO, HOMELAND SECURITY PURSUANT TO CHAPTER 418.183 OF THE TEXAS LOCAL GOVERNMENT CODE; CONSULTATION WITH LEGAL COUNSEL PURSUANT TO CHAPTER 551.071 OF THE TEXAS GOVERNMENT CODE; DISCUSSION ABOUT REAL ESTATE ACQUISITION PURSUANT TO CHAPTER 551.072 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF PERSONNEL MATTERS PURSUANT TO CHAPTER 551.074 OF THE TEXAS GOVERNMENT CODE; DELIBERATIONS ABOUT GIFTS AND DONATIONS PURSUANT TO CHAPTER 551.076 OF THE TEXAS GOVERNMENT CODE; DISCUSSION OF ECONOMIC DEVELOPMENT PURSUANT TO CHAPTER 551.087 OF THE TEXAS GOVERNMENT CODE; ACTION, IF ANY, WILL BE TAKEN IN OPEN SESSION.*

### CERTIFICATION

I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on September 5, 2014 at 12:00 p.m.

  
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CARA MC PARTLAND, CITY SECRETARY

The City of Wimberley is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request. Please contact Don Ferguson, City Administrator, at (512) 847-0025 for information. Hearing-impaired or speech-disabled persons equipped with telecommunication devices for the deaf may call (512) 272-9116 or may utilize the stateside Relay Texas Program at 1-800-735-2988.

**City of Wimberley**  
City Hall, 221 Stillwater, Wimberley, Texas  
**Minutes of Board of Adjustment Meeting**  
Monday, September 8, 2014 at 6:00 p.m.

The meeting was called to order at 6:05 p.m. by Chair P. Jason Aldridge. Board members present were Dick Larson, Barry Tyler, Darin Maroni, and Bill Cline.

Staff members present: City Administrator Don Ferguson, City Secretary Cara McPartland and City Attorney Brad Young

**1. Consent Agenda**

Approval of minutes of the July 7, 2014 meeting of the Board of Adjustment.

Boardmember Larson moved to approve the minutes, as presented. Boardmember Tyler seconded. Motion carried on a vote of 5-0.

**2. Public Hearings and Possible Action**

- A. Public hearing and consider possible action on Case No. BA-14-012, a request for a variance to the City of Wimberley Zoning Code, Section 155.036(D)(3)(c) regarding the required interior (side yard) setback on the west side of a property zoned Rural Residential 1 (R-1) at 411 Mill Race Lane, Wimberley, Hays County, Texas. (*Alison Courtney Campbell, Applicant*)

City Administrator Ferguson reviewed the subject property's location, zoning/use, existing structures, and proposed four (4) and six (6) encroachments into the required ten (10) foot interior (side yard) setback by the southwest and northwest corners of the pole barn structure, respectively.

City Administrator Ferguson referenced statements submitted in support and in opposition to the variance request. He noted that the applicant must secure a variance for any setback encroachments relating to the pole barn in accordance with a previously issued conditional use permit (CUP). Should the Board wish to approve the variance request, City Administrator Ferguson recommended specific motion language as written in the handout distributed to Board members at the beginning of this meeting.

Chairman Aldridge opened the public hearing

Attorney for adjacent property owner (Creekhaven LLC), Jimmy Alan Hall, spoke on the optimal placement of the pole barn structure on the subject property (versus its existing placement), and did not feel that the applicant should be rewarded for violating the law by constructing the pole barn without proper permitting. He cited issues with vehicle access and the easement that is currently the subject of litigation between his client and the applicant.

Discussion addressed:

- Status of pending litigation
- Jurisdictional authority of the Board of Adjustment
- Application of *res adjudicata* to Agenda Item 2B
- Prior ownership and civil litigation history involving easements

Mill Race Lane resident Merry Gibson spoke in support of the applicant, Alison Campbell, and cited difficult circumstances causing Mrs. Campbell to overlook the CUP's compliance deadline condition. She felt the Board treated the applicant fairly at her former hearing and urged the Board to grant the requested variance.

Adjacent property owner, Scott Johnson, President of Cedar Stump LP, referenced his emailed correspondence dated September 6, 2014, and spoke in support of Campbell's variance request. He approved of the pole barn structure's location and style of construction and felt that the applicant has been greatly inconvenienced by unnecessary delays. As the closest neighbor to the Campbell property, Mr. Johnson said the variance request is logical and wished all of his neighbors could be like the Campbells.

Chairman Aldridge closed the public hearing.

Discussion addressed:

- Lack of a valid building permit for the pole barn structure
- Stop work orders issued for pole barn construction
- Lack of "grandfathered" status for the pole barn
- Efforts on the part of the applicant and the City to achieve compliance with Code requirements
- Issue of traffic routing as relevant to Agenda Item 2B

Boardmember Tyler called the question.

After discussion of proposed motion language, Boardmember Tyler made the motion to approve the variance, as requested, with an affirmative finding on required condition numbers 1, 2, 3, 4 and 6 and a requirement that the following be satisfied, within ninety (90) days of the date of this Board action, to meet requirement of condition number 5:

1. A smoke detector shall be installed in the second floor living area of the Pole Barn.
2. A properly sized grab bar shall be installed on the hand railing of the exterior staircase used to access the second floor living area of the Pole Barn.
3. A thumb operated dead bolt lock shall be installed on the front door to the second floor living area.
4. A Certificate of Occupancy has been issued by the City of Wimberley.

Boardmember Larson seconded.

Before the vote was taken, City Administrator Ferguson read the following list of conditions required for granting of a variance pursuant to City of Wimberley Ordinance No. 2001-010, Section 10, as referenced above in Boardmember Tyler's motion:

1. That there are special circumstances or conditions affecting the property involved such that the strict application of the provisions of this ordinance would (a) deprive the applicant of the reasonable use of the property; and (b) create an unnecessary hardship in the development of this property; and
2. That such circumstances or conditions are (a) not self-imposed; (b) not based solely on economic gain or loss; and (c) do not generally affect most properties in the vicinity of the property; and
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
4. The variance if granted will not: (a) adversely affect the public health, safety or welfare; (b) be contrary to the public interest; and (c) be injurious to or adversely affect the orderly use of other property within the area; and
5. The property involved is otherwise in compliance with all other applicable City ordinances, rules, and regulations; and
6. The granting of the variance will be in harmony with the spirit and purpose of this ordinance.

Motion carried on a vote of 5-0.

- B. Public hearing and consider possible action on Case No. BA-14-013, a request for a variance to the City of Wimberley Zoning Code, Section 155.036(D)(3)(c) regarding the required interior (side yard) setback on the east side of a property zoned Rural Residential 1 (R-1) and located at 411 Mill Race Lane, Wimberley, Hays County, Texas. (*Alison Courtney Campbell, Applicant*)

City Administrator Ferguson reviewed the subject property's location, zoning/uses, and existing pole barn structure constructed over the last ten-plus years south of the main residence. He advised that the pole barn encroaches one (1) foot, ten (10) inches into the required ten (10) foot interior (side yard) setback. The location of the pole barn (within the floodplain) was reportedly chosen after consultation with the then Hays County Floodplain Administrator. While the structure encroaches into the interior (side yard) setback, the applicant indicates the location of the structure is the best possible location on the property to minimize the flood risk to life and property.

It was noted that the pole barn is located on a portion of shared access easement that is currently the subject of litigation between the applicant and an adjacent property owner. The requested variance shall not be construed to alter, interfere with, abrogate, or annul any easements, covenants, or other agreements between parties. Written comments have been submitted to Board members supporting and opposing the variance request.

City Administrator Ferguson advised that the variance request is one of several actions being taken by the applicant to resolve Code compliance issues with the City relating to the

construction and occupancy of the pole barn. These Code compliance issues include the lack of a valid building permit for the structure and evidence that the structure was being used as a residence. To help resolve these concerns, the applicant has secured a conditional use permit (CUP) to allow the pole barn to be used as a secondary residence. One of the CUP conditions is that the applicant must secure variances for any setback encroachments relating to the pole barn that might exist prior to using the subject structure as a secondary residence.

City Administrator Ferguson noted that this is the second time the subject variance request has been presented to the Board of Adjustment. In October 2013, the applicant sought and received Board approval of the subject variance – one of two encroachment variances required for the referenced CUP. The variance approval was conditioned on the applicant resolving all Code compliance issues relating to the pole barn by March 2014. An adjacent property owner stalled the applicant's efforts to comply with the Board's order by filing a suit challenging Board approval of the subject variance. The Court has not yet resolved the legal challenge to the previous Board action. Due to the aforementioned delay, City staff recommended the Board reconsider the subject variance request, without mention of a specified compliance date.

Chairman Aldridge opened the public hearing.

Jimmy Alan Hall, attorney for adjacent property owner Creekhaven LLC, disagreed that the lawsuit filed challenging the previous Board action has prevented the applicant from complying. He stated that under *res adjudicata*, the applicant cannot come before the Board a second time, and referenced case law provided to the Board supporting his position that the Board has no jurisdiction over this matter. He stated that the property lines and pole barn location have not changed, therefore, without a change in relevant facts or circumstances, the Board does not have jurisdiction to act again. He stated that the applicant has not met required condition number 2, because the applicant's need for a variance is self-imposed. He noted that the applicant repeatedly failed to obtain building permits and disregarded stop work orders.

Mr. Hall stated that the applicant continues to violate City regulations by parking in the setback and displayed photos of trucks entering his client's property in order to make deliveries to the applicant's property. Mr. Hall spoke on past and current litigation and conflicts regarding fence/easement issues between his client's property and the subject property. In response to Boardmember Larson's inquiry on vehicle access, Mr. Hall clarified how the pole barn prevents trucks from circling through the applicant's property and now must turn onto his client's property to turn around, as backing up is difficult. He stated that allowing illegal construction of the pole barn structure adversely affects his client's property. City Administrator Ferguson reminded that the Board's action relates to the variance request on encroachment of the pole barn, not on the legality of the structure.

Mr. Hall reiterated that the Board lacks jurisdiction, has no authority to proceed, and that the previously approved variance has expired. He stated that the applicant has continued to incrementally build the structure without proper permitting and hoped that the parties can work out their issues, possibly by moving the property line, thereby eliminating the need for a variance. He stated that his client has made various offers to purchase all or part of the subject property in an attempt to reach a peaceful resolution between neighbors. He hoped the Board

will either determine it has no jurisdiction to act or it will deny the applicant's variance request. Referring to required conditions numbers 2 and 5, Mr. Hall stated that the applicant's need for a variance is clearly self-imposed and that she is not in compliance.

City Administrator Ferguson disagreed with Mr. Hall on the issue of *res adjudicata* and Board's jurisdiction because this variance request is a new case with different conditions from the case heard by the Board in October 2013. He reminded that the Board cannot decide issues related to the litigation pending over easements and associated agreements. While hoping that the parties can resolve their differences, City Administrator Ferguson clarified that the Board can only consider this variance request needed to meet the applicant's CUP conditions.

At 6:58 p.m., Chairman Aldridge adjourned Open Session and convened into Executive Session, pursuant to Chapter 551.071 of the Texas Local Government Code for consultation with legal counsel.

Chairman Aldridge adjourned Executive Session and reconvened Open Session at 7:08. No action was taken in Executive Session.

Discussion continued on location of the gate to the subject property and the applicant approached the Board to display documents and commented on past and current litigation regarding fence/easement issues. Mrs. Campbell pointed out routes taken by trucks to make deliveries to her property and the adjacent property owned by Creekhaven LLC. She stated that the pole barn was constructed in a location recommended by the Hays County Floodplain Administrator and that a former City of Wimberley Planning and Zoning Commission member (Glenn Fryer) had advised that a City building permit was not needed for construction of the pole barn. Mrs. Campbell referred to the incremental approach to building the pole barn and in response to Boardmember Tyler, advised that she had no documentation regarding these statements. She said that when a stop work order was placed on the pole barn project, a building permit was subsequently signed by former City Administrator Steve Harrison. She apologized for missing the March 2014 deadline included as a CUP condition, due to her husband's passing on March 19th.

Discussion addressed the pole barn's change in use from an unenclosed structure to an enclosed secondary residence and the timeframe of events from initial construction to the structure's current use as living quarters for family members.

After clarification on motion language from City Administrator Ferguson, Boardmember Larson made the motion to approve the variance, as requested, with an affirmative finding on required condition numbers 1, 2, 3, 4 and 6 and a requirement that the following be satisfied, within ninety (90) days of the date of this Board action, to meet requirement of condition number 5:

1. A smoke detector shall be installed in the second floor living area of the Pole Barn.
2. A properly sized grab bar shall be installed on the hand railing of the exterior staircase used to access the second floor living area of the Pole Barn.
3. A thumb operated dead bolt lock shall be installed on the front door to the second floor living area.

4. A Certificate of Occupancy has been issued by the City of Wimberley.

Before the vote was taken, City Administrator Ferguson read the following list of conditions required for granting of variance pursuant to City of Wimberley Ordinance No. 2001-010, Section 10, as referenced above in Boardmember Tyler's motion:

1. That there are special circumstances or conditions affecting the property involved such that the strict application of the provisions of this ordinance would (a) deprive the applicant of the reasonable use of the property; and (b) create an unnecessary hardship in the development of this property; and
2. That such circumstances or conditions are (a) not self-imposed; (b) not based solely on economic gain or loss; and (c) do not generally affect most properties in the vicinity of the property; and
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
4. The variance if granted will not: (a) adversely affect the public health, safety or welfare; (b) be contrary to the public interest; and (c) be injurious to or adversely affect the orderly use of other property within the area; and
5. The property involved is otherwise in compliance with all other applicable City ordinances, rules, and regulations; and
6. The granting of the variance will be in harmony with the spirit and purpose of this ordinance.

Boardmember Cline seconded. Motion carried on a vote of 5-0.

### 3. Board Member Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Boardmember Larson moved to adjourn.

Chairman Aldridge called the meeting adjourned at 7:18 p.m.

**Adjourned at 7:18 p.m.**

Recorded by:

*Cara McPartland*  
Cara McPartland

These minutes approved on the 2<sup>nd</sup> day of February, 2015.

**APPROVED:**

*P. Jason Aldridge*  
P. Jason Aldridge, Chair

