

# 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**  
**JUNE 13, 2016- 6:00 P.M.**

## AGENDA

**CALL TO ORDER:**            JUNE 13, 2016 @ 6:00 P.M.

### **CALL OF ROLL**

1.    **CONSENT AGENDA**

APPROVAL OF MINUTES OF THE MAY 16, 2016 MEETING OF THE BOARD OF ADJUSTMENT.

2.    **PUBLIC HEARINGS 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).*

PUBLIC HEARING AND CONSIDER POSSIBLE ACTION ON CASE NO. BA-16-003, A REQUEST FOR A VARIANCE TO THE SETBACK REQUIREMENTS OF THE CITY OF WIMBERLEY ZONING CODE TO ALLOW FOR AN ENCROACHMENT INTO THE REQUIRED FRONT BUILDING SETBACK FOR A PROPERTY ZONED SINGLE FAMILY RESIDENTIAL 2 (R-2) LOCATED AT 4 PALO PINTO PATH, WIMBERLEY, HAYS COUNTY, TEXAS. *(KEVIN AND MARY YEARY, APPLICANTS)*

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**

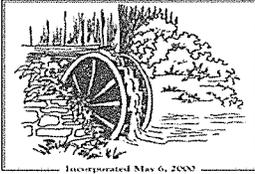
I hereby certify the above Notice of Meeting was posted on the Bulletin Board at the Wimberley City Hall on June 10, 2016 at 5:30 p.m.



\_\_\_\_\_  
Cara McPartland, Assistant City Administrator/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.

# Board of Adjustment Agenda Item Form



Date Submitted: June 10, 2016

Agenda Date Requested: June 13, 2016

**Project/Proposal Title:** APPROVAL OF MAY 16,  
2016 MINUTES OF BOARD OF ADJUSTMENT  
MEETING

**Funds Required:**

**Funds Available:**

**Council Action Requested:**

- Ordinance
- Resolution
- Motion
- Discussion

**Project/Proposal Summary:**

Attached are the minutes for the May 16, 2016 Board of Adjustment meeting for review and consideration.

**City of Wimberley**  
City Hall, 221 Stillwater, Wimberley, Texas  
**Minutes of Board of Adjustment Meeting**  
Monday, May 16, 2016 at 6:00 p.m.

The meeting was called to order at 6:00 p.m. by Chair P. Jason Aldridge. Board members present were Barry Tyler, Darin Maroni, and Bill Cline.

Staff members present: City Administrator Don Ferguson

**1. Consent Agenda**

Approval of minutes of the March 7, 2016 meeting of the Board of Adjustment.

Boardmember Cline moved to approve the minutes, as presented. Boardmember Tyler seconded. Motion carried on a vote of 4-0.

**2. Public Hearings and Possible Action**

Public hearing and consider possible action on Case No. BA-16-002, a request for a variance to the sections of the City of Wimberley Zoning Code relating to maximum building footprint for a property located at 14711 Ranch Road 12, Wimberley, Hays County, Texas. (*St. Mary's Catholic Church, Applicant*)

City Administrator Ferguson reviewed the subject property's location, PF zoning, and the applicant's plans to construct a new 8,432 square foot Parish Hall to meet current and future space needs of the Church. He noted that City Code limits the maximum building footprint on PF-zoned property to 7,500 square feet. He advised the proposed Parish Hall will accommodate eight 20' x 20' meeting rooms and has been designed to maintain a residential scale and to fit visually on campus. He said one (1) inquiry was received; however, City staff has received no comments opposing the requested variance. He explained that the subject property's previous WPDD zoning designation has expired as development plans were abandoned by the applicant and the property has returned to its base PF zoning district.

Chairman Aldridge opened the public hearing.

Applicant's representative, Mike Steinert, explained the Church is very short of space and the proposed building will be fit well with the surrounding area. He provided details on projected capacity, proposed commercial kitchen facilities, and approximate number of parishioners.

Hearing no further comments, Chairman Aldridge closed the public hearing.

Discussion addressed projections of future growth for the Church and the Wimberley area, anticipated uses for meeting rooms, impervious cover, parking, long-term plans for existing buildings, and maximum footprint requirements for PF-zoned properties.

Boardmember Maroni moved to approve the requested variance, as presented, with the inclusion of affirmative findings on all six conditions listed below, required for granting of variance pursuant to City of Wimberley Ordinance No. 2001-010, Section 10:

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 4-0.

### **3. Discussion and Action**

Discuss and consider possible action regarding an appeal of the City Administrator's determination of grandfather status for a short-term rental property located at 401 Rocky Springs Road, Wimberley, Hays County, Texas. (*City Administrator*)

City Administrator Ferguson provided background information on the City's zoning enforcement effort, obtaining grandfather status, and City Council's recent action to adopt a modified policy relating to existing short-term rental facilities identified in the aforementioned enforcement effort. The modified policy allows property owner(s) to obtain grandfather status if no complaint has been received by the City about the subject facility and the property owner has submitted a sworn affidavit to the City indicating the subject facility has been operated continuously for the five (5) years preceding the date of the affidavit.

City Administrator Ferguson advised that following adoption of the modified policy, Bruce and Carole Boatner submitted an affidavit on March 17<sup>th</sup> stating their existing short-term rental facility at 401 Rocky Springs Road has been used on a continuous basis as a short-term rental for at least five (5) years. In addition, the Boatners submitted copies of a rental activity report from their booking agent along with a letter from one (1) of their previous renters. Upon review of information provided, and with no documentation of a previous complaint regarding the subject short-term rental, the City determined the modified grandfather requirements for the short-term rental had been met and a grandfather letter was issued to the property owners on April 14, 2016. He said that the City received written request for appeal of the City Administrator's grandfather

status determination from Sandy Wall on April 18, 2016 and from Kathy McClain on May 4, 2016.

City Administrator Ferguson noted that the Board of Adjustment has the authority to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the City's Zoning Code. The Board may reverse or affirm, in whole or in part, or may modify the administrative official's order, requirement, decision, or determination, from which an appeal is taken and make the correct order, requirement, decision, or determination, which in effect, means the Board has the same authority as the administrative official. He stressed that the Board shall consider whether two-pronged requirements of the modified policy as adopted by Council were met, not whether the Board agrees or not with Council's adoption of the modified policy. City Administrator Ferguson explained the two-pronged requirements as follows: 1.) Submission of the affidavit by the property owner indicating that the short-term rental has been in continuous operation for five (5) years preceding the date of the affidavit; and 2.) Whether there have been any complaints received by the City about the subject short-term rental facility prior to the enforcement effort. He advised that City Attorney Brad Young is present to answer questions.

City Attorney Young explained differences between hearing variance requests versus administrative appeals and the role of the Board of Adjustment, which is to implement policy as decided by City Council. He stressed that while the Board has the same authority as the administrative official in considering appeals it is City Council that has the authority to make policy decisions.

Chairman Aldridge stated procedures for speakers on this item.

Bruce Boatner of 401 Rocky Springs Road stated his ownership history of the subject property and design of the residence for use as a short-term vacation rental. He said deed restrictions did not prohibit use of the residence as a short-term rental. Mr. Boatner noted that construction was completed on the residence in 2008 and its use began as a short-term rental. Mr. Boatner said that in 2014 he contracted with Aaron Scott of SkyRun Rentals to professionally manage the short-term rental operation, which he hoped to continue in order to be able to keep the residence, much of which he said was built with his own hands.

Commissioner Tyler asked Mr. Boatner if he was aware of the City's requirement that a conditional use permit (CUP) be issued for vacation rentals and Mr. Boatner replied he thought there might be such a requirement for bed and breakfasts, but did not specifically recall knowledge of a CUP requirement for vacation rentals. Mr. Boatner said he received a letter from the City regarding the CUP requirement and found out later about the grandfathering policy.

Sandy Wall of 395 Rocky Springs Road spoke of his love for the Hill Country and his property ownership history in Woodcreek and the Rocky Springs subdivision. He disliked rental activity in Woodcreek and felt the move to Rocky Springs would be more residential and cited a covenant filed with Hays County prohibiting businesses. He said there is not a homeowners association (HOA) with deed restrictions to help protect residents. Mr. Wall noted the Planning and Zoning Commission's recommendation of denial for the Boatners' CUP application based

on opposition voiced at its public hearing and felt that the Boatners should not be grandfathered, as they were operating outside of the rules and were caught. Mr. Wall questioned the definition of “continuous use,” and felt that there is very little evidence the short-term rental has been used much, with the exception of the last two years. He said no signed letters of approval were provided by the Boatners from property owners within two-hundred feet of the subject property. He noted that he does not live within two-hundred feet of the subject property, but stood with his neighbors in opposition to short-term rentals in his neighborhood.

Discussion addressed Council’s policy to not require the referenced approval letters, direction from Council to the City Administrator on implementation of the modified policy, and existing grandfathering policy (referred to as “pre-existing, non-conforming” uses in the City’s Code) as applicable to properties that are not identified in the current enforcement effort. Boardmember Cline felt that Council could not change an existing ordinance with a resolution changing a policy. City Attorney Young explained Council’s reasoning for adopting its two-pronged requirements to prove grandfathered status. City Administrator Ferguson clarified that Council’s modified policy was specifically targeted as applicable to properties identified in the current enforcement effort, as opposed to modifying the policy for all properties.

Chairman Aldridge said the Board’s role is to consider an appeal regarding the determination made on the subject property’s grandfathered status in accordance with Council’s adopted modified policy. City Attorney Young stated his understanding that Council reasoned it would be very difficult for many property owners to prove continuous use from adoption of the City’s original ordinance on pre-existing, non-conforming uses, which was approximately fifteen years ago and favored the five-year requirement as a more viable option.

An audience member expressed concerns that questioning of the five-year modified grandfathering policy could affect all other property owners who have been granted or are seeking grandfathered status. Chairman Aldridge and City Administrator Ferguson clarified that the Board is not considering the validity of Council’s action on the modified policy, but only the issue of appeal of an administrative decision regarding the subject property. The audience member also questioned the Board’s discussion of Council’s adoption of the policy as beyond the scope of what should be allowed for this agenda item. Councilmember Tyler said discussion of Council’s policy helps the Board in its determination process and formulate an answer to this circumstance.

Kathy McClain of 301 Rocky Springs Road stated her understanding that there were deed restrictions in her residentially zoned neighborhood prohibiting businesses. She cited Council minutes and questioned specific requirements under Council’s original and modified grandfathering policies, including consideration of neighbors’ objections. She said one City Council member expressed concerns at Council’s March 3<sup>rd</sup> meeting regarding the impact rentals have on the character of neighborhoods. Ms. McClain stated that Council’s action did not promote harmony in the neighborhood and leaves no option but to sue neighbors.

Barbara Reitz of 504 Rocky Springs Road spoke of the establishment of Rocky Springs Subdivision in 1970 and of the City’s incorporation and subsequent residential zoning. She said property owners were not aware that they had recourse to complain if people starting renting

their homes to make extra money from their vacation homes. She said Rocky Springs is a small neighborhood of ten homes with dead-end streets. Ms. Reitz said rentals only benefit those who do not live in the community as residents and brings in strangers to her neighborhood. She asked that the Board uphold the Planning and Zoning Commission's recommendation for denial and "keep us residential."

An audience member stated she lives next door to the Boatners and would love to have them as neighbors.

Rodger Marion of 151 Rocky Springs Road spoke of the two-pronged requirement and said that four area property owners have been complaining since they heard of the Boatners' original CUP application. He said the Boatners' documentation shows only two years of operation as business and referenced one letter from an individual who rented the Boatners' property twice in several years. He said he did not consider renting out the house twice in several years as a continuous operation. He also said the "no complaint" requirement was not met. Mr. Marion cited the Planning and Zoning Commission's recommendation to deny and asked for reversal of the decision to grant grandfathered status.

Wimberley Hills resident Mary Cureton stated she is a friend of the Boatners and noted her son was granted a CUP by the City for his vacation rental property. Speaking as a resident of Wimberley who has a vested interest in the local economy, Ms. Cureton cited Texas court decisions which held that single family residential is not changed by using a property as a single family residential rental property and does not affect the zoning of the property. She said a business run out of a home is a business which involves having clients come to your house. She stated that having your home leased to a family for the purpose of a single family residential use is by definition of Texas courts not a violation of a single family zoning ordinance. Ms. Cureton said the whole premise of the opposition's argument is completely wrong. She cited previous speakers' comments made regarding complaints from neighbors and said none of the complaints were registered before the City's enforcement effort. She said Council's modified policy referred to complaints received before the City's enforcement effort as a requirement. Ms. Cureton stated that "continuous" is an ambiguous term and Texas courts have held that whenever there is an ambiguity in the definition of a deed restriction or relating to use of a property, it is to be interpreted in the least restrictive way to the person who owns the property. She said public policy favors a person being able to use their property as they wish, even if off and on over a period of time. Ms. Cureton said an adjacent property owner who has expressed opposition to the Boatners' rental operation requested to rent the property for visiting family members several years ago.

An audience member objected to comments made by those who do not reside in the neighborhood. Ms. Cureton said that she was speaking for herself as a citizen of Wimberley.

Barbara Reitz explained her reasoning for asking to rent the Boatners' property for visiting family members and said she was not thrilled about having a nearby rental property, but did not know she had recourse to complain.

Chairman Aldridge called for a brief recess at 6:56 p.m.

Chairman Aldridge reconvened the meeting at 6:59 p.m.

Subject property owner Carole Boatner stated that she and her husband consider themselves residents of Wimberley who are here once each month and one week at Christmas. Mrs. Boatner noted everyone here has attended her annual New Year's Eve parties and she said they work very hard to be a presence in the community and take good care of their home. She said they do not want to do anything to offend or upset anybody. She stated there have never been complaints regarding rental operations to her, Mr. Boatner, or to law enforcement. She stated that the requested documentation was submitted to the City on rental activity, which was informally managed by the Boatners until 2014, when SkyRun Rentals was hired to manage the rental property. Mrs. Boatner said that she and Mr. Boatner vote in Wimberley and pay taxes, including hotel occupancy taxes. She said a vacation rental is not considered a commercial business and this appeal decision does not affect any other homes in the neighborhood but theirs. Ms. Boatner felt that some people here tonight hold misconceptions and did not know the Boatners' property was a vacation rental until they received a notice. She said they love the house and the neighborhood because the houses are so far apart and asked that the Board uphold City Administrator Ferguson's carefully considered decision.

In response to Boardmember Tyler's inquiry, City Administrator Ferguson clarified that the Board of Adjustment has the authority to hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of the City's Zoning Code. The Board may reverse or affirm, in whole or in part, or may modify the administrative official's order, requirement, decision, or determination from which an appeal is taken and make the correct order, requirement, decision, or determination. In effect, the Board has the same authority as the administrative official.

Chairman Aldridge adjourned Open Session and convened Executive Session at 7:10 p.m., pursuant to §551.071 of the Texas Government Code for consultation with legal counsel.

Chairman Aldridge adjourned Executive Session and reconvened Open Session at 7:40 p.m.

No action was taken in Executive Session.

Boardmember Tyler moved to reverse the determination of grandfathered status made by City Administrator Ferguson. Boardmember Cline seconded.

City Attorney Young reminded that a reversal of the determination requires a unanimous vote of all four (4) Board members present. Motion failed for lack of majority on a vote of 3-1, with Boardmember Maroni voting against.

Discussion addressed alternative options for the Board to act on this item, including the ability of Board members to make additional motion(s).

#### **4. Board Member Reports**

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Boardmember Cline moved to adjourn. Boardmember Maroni seconded. Motion carried on a vote of 4-0.

**Adjourned at 7:46 p.m.**

Recorded by:

Cara McPartland

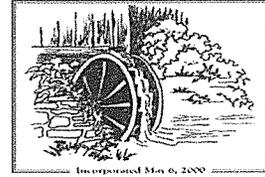
These minutes approved on the \_\_\_\_ day of June, 2016.

**APPROVED:**

P. Jason Aldridge, Chair

**DRAFT**

# Report for Board of Adjustment BA-16-003



## Summary:

The applicant has requested a variance to allow for an encroachment into the required front building setback for a property located at 4 Palo Pinto Path

## Applicant Information:

**Applicant:** Kevin and Mary Yeary  
**Property Owner:** Kevin and Mary Yeary  
 20006 Encino Ridge  
 San Antonio, TX

## Subject Property:

**Legal Description:** Eagle Rock Ranch Section 3, Lot 13, Block 13  
**Location:** 4 Palo Pinto Path  
**Existing Use of Property:** Vacant  
**Existing Zoning:** Single Family Residential 2 (R-2)  
**Proposed Use of Property:** Residential  
**Planning Area:** II  
**Overlay District:** None

## Surroundings:

**Frontage On:** Palo Pinto Path

**Area Zoning and Land Use Pattern:**

	Current Zoning	Existing Land Use
<b>N of Property</b>	Unzoned	Residential
<b>S of Property</b>	R-2	Vacant
<b>E of Property</b>	Unzoned	Residential
<b>W of Property</b>	R-2	Residential

## Legal Notice

**200' Letters** 6/2/16  
**Published** 6/2/16  
**Sign Placement** 6/2/16  
**Responses** None

## Comments:

The applicants, Kevin and Mary Yeary, are seeking a variance from the City's building setback requirements to allow a planned single-family residence to encroach into the required front setback for a property located at 4 Palo Pinto Path. The property is currently vacant. It is located in Planning Area II and zoned Single Family Residential 2 (R-2).

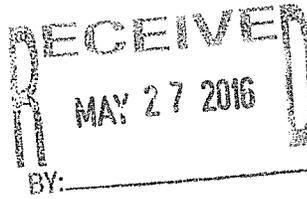
The applicant is proposing to construct a new 3,182 square foot home that would encroach thirteen (13) feet into the required forty (40) foot front setback. The encroachment is necessary to preserve several older oak trees located on the property,

to minimize runoff and drainage issues and to help maintain a native and natural vegetative buffer according to the applicant.

It should be noted that while the City Zoning Code requires a forty (40) foot setback on the subject property, the neighborhood association restrictions only require a twenty-five (25) foot setback. The proposed home location complies with the association's setback requirement.

To date, City staff has received no comments opposing the requested variance.

Upon review of the application, City staff recommends approval of the requested variance relating to the proposed encroachment.



**FOR OFFICIAL USE ONLY**

APPLICATION DATE: 5/27/16 FILE NO. \_\_\_\_\_

HEARING DATE: \_\_\_\_\_ PLANNING AREA: \_\_\_\_\_ ZONING: \_\_\_\_\_

VARIANCE FEES: \$ 15000 DATE PAID: 5/27/16 RECEIVED BY: MAA  
CK# 5297

## City of Wimberley APPLICATION FOR VARIANCE

**OWNER/AGENT INFORMATION**

1. Owner's Name: Kevin Patrick Yeary Home Phone: (210) 497-7623  
 Business Phone: (512) 463-1595  
 Cell Phone: (210) 382-1767  
 Fax: ( ) \_\_\_\_\_

Current Mailing  
 Address: 20006 Encino Ridge City San Antonio State TX Zip 78259  
 Email: [REDACTED] [REDACTED]

2. Agent's Name: \_\_\_\_\_ Business Phone: ( ) \_\_\_\_\_  
 (Must be accompanied by letter of authorization from owner) Cell: ( ) \_\_\_\_\_

Current Mailing  
 Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Email: \_\_\_\_\_

**PROJECT DATA**

1. Property ID#: R2-6958 (Appears on your Tax Statement) Present Zoning: R2  
 Street Address of Project: 4 Palo Pinto Path Wimberley, Texas 78676  
 (Note: If you do not have an assigned street address, please call 512-393-2160 Directions to Project)  
 Subdivision: Eagle Rock Ranch Lot: 13 Block: 13 Recorded in Vol. \_\_\_\_\_ Page \_\_\_\_\_

2. IS PROPERTY IN AN OVERLAY DISTRICT? YES \_\_\_\_\_ NO \_\_\_\_\_ UNKNOWN   
 TYPE OF OVERLAY ZONE(S) (if applicable) \_\_\_\_\_

**Project Data (Continued)**

3. FLOOD PLAIN (What, if any, flood zone does your property Occupy?): N/A

4. WASTEWATER SYSTEM: ( ) Septic; ( ) Aqua Utility; ( ) GBRA  
HAYS COUNTY SEPTIC PERMIT NUMBER (if applicable): To be applied for (septic)

5. Directions to your Project: Head North on RR12 from town center to  
Cypress Creek Lane. Turn left on cypress creek lane. Turn  
left on Concha Canyon. Turn left on Sasha. Turn right on  
Palo Pinto Path. Property is on the right immediately as  
you turn onto Palo Pinto Path. (AKA: <sup>4 Palo Pinto Path</sup> Lot 13, Block 13, Eagle Rock Ranchites  
Wimberley, Texas 78676)

Please clearly mark your property so it is easily identifiable.

**SPECIFIC SECTIONS OF ZONING ORDINANCE NO. 2001-010 FOR WHICH A VARIANCE IS REQUESTED:**

§ 155.037(D)(3)(a)

**REASON FOR NEED OF VARIANCE (Attach separate sheet if necessary)**

(see Attached sheet)

**ACKNOWLEDGMENT OF EXISTING  
Subdivision Plat Notes, Deed Restrictions Restrictive Covenants  
and/or Zoning Conditional Use Permits**

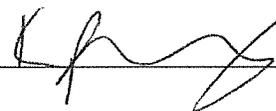
I, the Applicant herein, have checked the subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional use permits prohibiting certain uses and/or requiring certain development restrictions (for example, height, access, screening) on the property for which a variance is now being considered on my behalf.

If a conflict should result with the request I am submitting to the City of Wimberley due to subdivision plat notes, deed restrictions, restrictive covenants and/or which do not conform with the City ordinances, it will be my responsibility to resolve it. I also acknowledge that I understand the implications of use and/or development restrictions that are a result of subdivision plat notes, deed restrictions, restrictive covenants and/or zoning ordinances.

I understand that if requested, I must provide copies of any and all subdivision plat notes, deed restrictions, restrictive covenants and/or zoning conditional use permit information, which may apply to this property.

Date: May 27, 2016

APPLICANT Kevin Patrick Yeary

SIGNATURE 

WHEN APPLICABLE:

Date: \_\_\_\_\_

AGENT \_\_\_\_\_

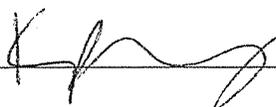
SIGNATURE \_\_\_\_\_

**SITE INSPECTION AUTHORIZATION**

Applicant/owner, or Applicant's authorized agent, hereby authorizes the City of Wimberley Board of Adjustment Members and City representatives to visit and inspect the property for which this application is being submitted.

Date: May 27, 2016

APPLICANT Kevin Patrick Yeary

SIGNATURE 

WHEN APPLICABLE:

Date: \_\_\_\_\_

AGENT \_\_\_\_\_

SIGNATURE \_\_\_\_\_

SUBMITTAL CHECKLIST

TO ENSURE THAT YOU HAVE COMPLIED WITH THE VARIANCE APPLICATION REQUIREMENTS, REVIEW THE FOLLOWING LIST. GRANTING OF A VARIANCE IS CONDITIONAL ON MEETING THE FOLLOWING REQUIREMENTS:

FAILURE TO COMPLY WITH THE REQUIREMENTS MAY CAUSE A DELAY IN PROCESSING YOUR APPLICATION.

- (  ) Complete "Application for Variance"
  - (  ) Provide plat map of property to which variance applies.
  - (  ) Provide names and addresses of property owners within 200 feet of any portion of Applicant's property.
  - (  ) Provide a legal description of the property to which variance applies.
  - (  ) Sign/date Submittal Verification form.
  - (  ) Sign/date Site Inspection Authorization form.
  - (  ) Sign/date Acknowledgement Form.
  - (  ) Pay Variance Fee (this fee is based on the cost of services incurred by the City of Wimberley in reviewing, processing and recording this variance request).
  - (  ) Applicant agrees to attend the Board of Adjustment Public Hearing.
  - (  ) **I have reviewed the Conditions Required and believe they are met:** (Wimberley Zoning Ordinance No. 2001-010, Section 10) No variance shall be granted without first giving public notice and conducting a public hearing on the variance request in accordance with Section 10.8, and unless the Board of Adjustment makes specific, written findings of fact as follows:
    1. That there are special circumstances or conditions affecting the property involved such that the strict application of the provisions of the Zoning Ordinance would (a) deprive the applicant of the reasonable use of the property; and (b) create and unnecessary hardship in the development o the property; and
    2. That such circumstances and 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.
    3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
    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;
-

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.

**Special Circumstances:**

(see Attached sheet describing Reasons for Need for Variance)

Also - A) to save trees include oaks and old-growth cedar trees

B) to retain native and natural vegetative barrier in back yard next to my neighbor for as the trees and privacy

C) to reduce unsightly larger foundation due to slopy on property

D) to reduce run-off issues and drainage problems

E) to allow room for pool, playscape, Gas or Propane tank, and septic

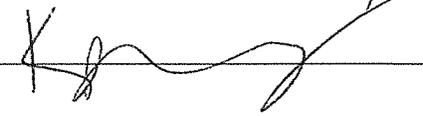
F) to allow fair development of my lot given that several neighbors do not appear to be in compliance with the same setback requirements

**SUBMITTAL VERIFICATION AND/OR WAIVER OF APPEARANCE**

My signature attests to the fact that the attached application package is complete and accurate to the best of my knowledge. I understand that City review of this Application is dependent upon the accuracy of the information provided and that any inaccurate or inadequate information provided by me, my firm, or agent, may delay the review of the Application.

Date: 5-27-16

APPLICANT Kevin Patrick Yeary

SIGNATURE 

WHEN APPLICABLE:

Date: \_\_\_\_\_

AGENT \_\_\_\_\_

SIGNATURE \_\_\_\_\_

YEARY VARIANCE REQUEST FOR LOT 13, BLOCK 13, EAGLE ROCK RANCHITOS - 4  
PALO PINTO PATH, WIMBERLEY, TEXAS

REASONS FOR NEED FOR VARIANCE:

I own Lot 13, Block 13, of the Eagle Rock Ranchitos development, also known by the street address - 4 Palo Pinto Path, which is just inside the Wimberley city limit boundary on the North side of town. When seeking a building permit for my property, I was told that my lot is zoned R 2, and that as a consequence, there is an applicable 40 foot setback requirement from the property line<sup>1</sup> on the dominant street side, which I believe to be the Palo Pinto Path side. This set back is 15 feet further than the set back required by the neighborhood association. When I had my home plans drawn for this lot, I relied on the neighborhood association setback requirement of 25 feet, and planned to place my home at approximately 27 feet from my property line, not imagining that the city setback requirement would be greater than the setback required by the neighborhood association. Consequently, in order to build my home as designed, I need and request at least a 13 foot variance to be granted for my property.

I have designed a 3182 square foot home for my property, with a foundation planed to occupy 3642 square feet, when porch, patio, and attached garage space is included. I have planed to build a swimming pool on the property, in the back yard, behind the home. I have planned to include a septic system, a gas or propane tank for appliances in the home, and a play-scape system for children as well, all of which will take up additional space on the property in the area behind the home. The home is designed in a country style with a wrapping-around style front porch and metal roof, and it is planned to match both the style and character of the neighborhood as well as the style and character of a family home in the City of Wimberley.

My lot is a heavily treed lot. It has several old-growth oak trees on it and many old-growth cedar trees as well that I would like to save and maintain on the property. I have had stakes placed on the property by a surveyor, which identify the footprint of the foundation. After examining the location of the footprint of my planned structure, it is apparent to me that, if we are required to move the structure back further away from the dominant street to accommodate the R 2 required 40 foot setback from the property line, we will then be required to remove at least one of our beautiful oak trees that we wanted to save, as well as several of our old-growth cedars that we had hoped to leave intact as well. This will also very likely have a negative impact on the density of the natural and native vegetation existing between the back of my planned home and the side yard of my neighbor who resides behind

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<sup>1</sup> I have been unable to locate in the Wimberley City Code a definition for "setback."  
[http://library.amlegal.com/nxt/gateway.dll/Texas/wimberley\\_tx/cityofwimberleytexascodofordinances?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:wimberley\\_tx](http://library.amlegal.com/nxt/gateway.dll/Texas/wimberley_tx/cityofwimberleytexascodofordinances?f=templates$fn=default.htm$3.0$vid=amlegal:wimberley_tx)

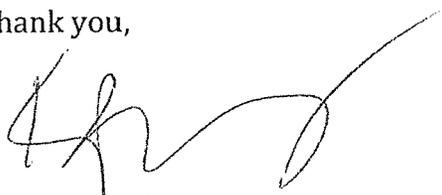
my home – Mrs. Becky Beaty – which will reduce privacy on both sides of our properties.

In addition, our lot is an eastward sloping lot, located to the East of Mount Baldy, and sloping in the direction of Cypress Creek. The property has a steep slope on its West side and a steep slope on its East side, with a certain fairly well leveled area in the center. Because of the location of the sloping areas on the lot, the current placement of the home is ideal for the accommodation of a minimum foundation height. If we are required to move the footprint of the home to accommodate the 40 foot setback requirement, the home will likely need to have a more involved and visible foundation structure, negatively impacting the aesthetic appeal of the structure. If we are required to move the structure of the home it will also very likely have a negative impact on drainage coming from Mount Baldy and passing through our property on its way to our down-slope neighbors and Cypress Creek.

What is more, I have walked most of the neighborhood and have identified several homes near my property that appear to be non-compliant with the 40 foot setback requirement. This indicates to me that if our property is granted a variance so that we can leave our structure where it is currently planned, it will not look out of place in our neighborhood, nor will it seem at all to be inconsistent with the over-all style and character of the neighborhood. It seems to me also that it would be unfair to require me to meet the requirement on our lot, when so many of my nearby neighbors do not seem to have been required to comply with it.

Finally, I have spoken directly with four of my direct neighbors about this requested set back variance, and all four of them have expressed no objection to me concerning my requested variance. To the contrary, they all express excitement to me at the prospect of our moving into the neighborhood in our planned structure.

Thank you,



Kevin Patrick Yeary  
20006 Encino Ridge  
San Antonio, Texas 78259  
210-387-1767



Vol. 187 p. 2-2



Lot 13  
Block 13

**EAGLE ROCK RANCHITOS**

SECTION THREE  
36.24 ACRES PART OF THE ELIZA SANDRICK LANDS OF EDWARDS AND US  
RANCHMAN AND RESERVE

1873

BEFORE ME, the undersigned authority, on this \_\_\_\_\_ day of \_\_\_\_\_, 1873, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
 Notary Public

BA-16-003  
200<sup>1</sup> letters: Mailed 6/2/16

Susan Elizabeth Cranshaw  
1 Palo Pinto Path  
Wimberley, TX 78676-3611

Dona L. Hughes  
P.O. Box 2754  
Wimberley, TX 78676-2754

David Mason  
15402 Cobre Valley  
Houston, TX 77062

David E. & Janice M. Herreth  
14 Susha Rd.  
Wimberley, TX 78676

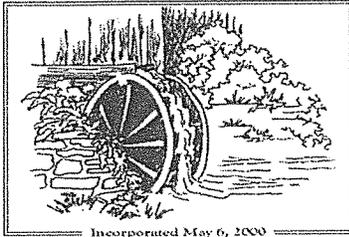
Richard A. Beaty  
18 Susha Rd.  
Wimberley, TX 78676-3607

Wayne L. & Jacqueline R. Mattice  
46 La Toya Trl.  
Wimberley, TX 78676

Stasey & Mary Mitchell  
2403 Humble Ave.  
Midland, TX 79705-8512

Thomas A. & Shellie G. Jones  
7 Palo Pinto Path  
Wimberley, TX 78676-3611

Lynda M. Lackner  
5 Palo Pinto Path  
Wimberley, TX 78676-1653



# City of Wimberley

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

Phone: (512) 847-0025 - Fax: (512) 847-0422

Mac McCullough, Mayor - John White, Mayor Pro-Tem  
Council Members - Bob Dussler, Craig Fore, Sally Trapp, Gary Barchfeld  
Don Ferguson, City Administrator

June 2, 2016

## NOTICE OF PUBLIC HEARING

Re: **File No. BA-16-003**  
**Front Building Setback Variance**  
4 Palo Pinto Path

Dear Property Owner:

You are receiving this letter because you own property within 200 feet of the above-referenced location.

The applicants, Kevin and Mary Yeary, have requested a variance from the City of Wimberley Code requirements to allow for an encroachment into the required front building setback on property located at 4 Palo Pinto Path, Wimberley, Texas. The City of Wimberley Zoning Board of Adjustments will consider this request at a public hearing on **Monday, June 13, 2016, at 6:00 p.m.** in the Wimberley City Hall, 221 Stillwater.

Because the granting of this request may affect your property, you are encouraged to participate in the zoning process. The public will be given an opportunity to speak during the hearing. If you wish to comment but are unable to attend, written comments may be submitted to the City Administrator prior to the meeting.

Additional information regarding the proposed zoning is available for public review at City Hall during normal business hours. Should you have questions, please contact the City Administrator at 512-847-0025.

**CITY OF WIMBERLEY**

# Advertising Receipt

## Ad 29962

# San Marcos Daily Record

P.O. Box 1109  
 San Marcos, TX 78667  
 512-392-2458

Accounts Payable  
 City of Wimberley  
 P.O. Box 2027  
 Wimberley, TX 78676

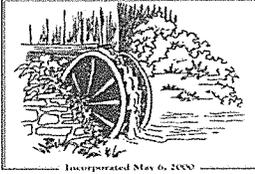
**Customer:** RA0684  
**Phone:** 847-0025  
**Ad No.:** 29962  
**Date:** 05/27/16  
**Sales Rep:** Barker, Taffy

Legals	Publication	First Date	Last Date	Days	Cost
<b>NOTICE OF PUBLIC HEARING (Request for Variance)</b>	Wimberley Legal Classifieds	06/02/16	06/02/16	1	\$60.84
				Total Days: 1	Total Cost: \$60.84

Notice is hereby given that the City of Wimberley Board of Adjustment will hold a public hearing at the Wimberley City Hall on Monday, June 13, 2016, at 6:00 p.m. to consider the following: BA-16-003 – an application for a variance from the City of Wimberley Zoning Code to allow for an encroachment into to the required front building setback for a property located at 4 Palo Pinto Path, Wimberley, Texas. Following the public hearing, the Board of Adjustment will consider action regarding the subject variance request. Comments on this request from any member of the public may be presented in person or by mail (PO Box 2027) at City Hall prior to the hearing. The public will be granted an opportunity to speak at the hearings. Additional information concerning the proposed action is available for review at the Wimberley City Hall, 221 Stillwater, Wimberley, Texas.

<b>Payment Type:</b>	<b>Payment Date:</b>	<b>Payment Amount:</b>
<b>Check/Card No.</b>	<b>Other Credits:</b>	<b>Amount Due:</b> \$60.84

# Board of Adjustment Agenda Item Form



Date Submitted: June 10, 2016

Agenda Date Requested: June 13, 2016

Project/Proposal Title: BOARD MEMBER REPORTS

Funds Required:

Funds Available:

Council Action Requested:

Ordinance

Resolution

Motion

Discussion

## Project/Proposal Summary:

This item was placed on the agenda to allow for reports to be presented by Board members and for future agenda item requests.