

MINUTES OF THE VILLAGE OF WIMBERLEY BOARD OF ADJUSTMENT MEETING
AND PUBLIC HEARING (BA-03-011)

September 25, 2003

5:30 P.M. The meeting of the Board of Adjustment was called to order by Sue Johnson, Chair. Members present: Sue Johnson, Susan Thurber, Steve Gartside (alt.), and Bob Flocke. Bill Cline and Mike Stevens were unable to attend. Steve Gartside, alternate appointed by Mayor Klepfer appointed Steve Gartside served on the Board to make up a quorum at the meeting. Minutes of the August 28, 2003 Board of Adjustment meeting were unanimously approved on a voice vote on the motion. The approved minutes were given to the City Administrator. The Board then met in a workshop session. At that time there was a discussion about shortening the number of findings required to grant a variance. Bob Flocke had researched other cities and the Board liked the Bulverde findings over the others. Bob Flocke will circulate a draft of this document. Sue Johnson will inquire as to the proper procedure to change its ordinance to match the Board's recommended changes. Bob Flocke moved adoption of the revised form. Susan Thurber seconded the motion and the motion was approved unanimously. Meeting was adjourned at 6:15 p.m. After a short break, the public hearing was called to order by Chair Sue Johnson at 6:30 p.m.

Chair Johnson made a roll call. The following were present: Susan Thurber, Steve Gartside (alt), Bob Flocke, and Sue Johnson. Also present were Patty Akers, legal counsel for the Village, and Steve Harrison, City Administrator. Adelle Turpen, City Secretary acted as Recording Secretary for the public hearing.

A motion was made to accept Steve Gartside as the alternate on the Board for this hearing, which was passed unanimously.

Chair Johnson announced that the matter before the Board was File No. BA-03-011, Rasijihad Franklin, 295 Blue Heron Run, and opened the public hearing and requested that the City Administrator introduce the case.

Steve Harrison stated that the basic facts of the case were that an application had been received on property located at 295 Blue Heron Run, located in Wimberley's city limits, for a setback variance for a double-wide manufactured home, which was installed 18.401 feet from the right-of-way, where Zoning Ordinance No. 2001-010 requires a setback of no less than 30 feet.

Sue Johnson accepted jurisdiction and called on Attorney David Junkin, who appeared on behalf of Rasijihad Franklin, the homeowner, to present applicants request.

David Junkin stated that Ms. Franklin was owner of the mobile home and not the property. He explained that the mobile home had been acquired in the mid 70's and that it had deteriorated over time and had been moved off, being replaced by the double-wise manufactured home. He presented a detailed application, with exhibits, and pointed out that:

- (1) Manufactured home was set on the same spot as the prior dwelling;
- (2) The City being incorporated is what made it illegal;
- (3) The setback of the home conforms to the homes in the area;
- (4) The closest point [of the building] is in line with other buildings on the street;

- (5) It would be difficult to move the home back because of the existing trees. Removal of limbs would help but that would not allow full compliance (See Exhibit G of Application);
- (6) In Exhibit H of Application--the home was well off the edge of the road;
- (7) In Exhibit I of Application shows that other properties are not anywhere near the 30 foot setback.

Mr. Junkin then showed the Board a video of the surrounding neighborhood to support applicant's position that the building conformed to other structures in the neighborhood. He further pointed out that:

- (1) The building conforms and actually benefits the neighborhood;
- (2) The property is near the end of a dead end road;
- (3) The home was placed on an existing pad, in an established area, and preserves an area established for over 30 years.

Sue Johnson asked if there was any opposition. There was none. The public hearing was closed.

Steve Harrison stated that Mr. Junkin had pretty much outlined the facts. There were two points that should have more elaboration. Ms. Franklin is not the owner of all of the property. She was aware that permits were required for building activity, obtaining a permission proceed with the County, but the home itself was placed without a permit. The City had tried to make contact with Ms. Franklin on numerous occasions to advise her for the violation, but correspondence was returned to the City. Later the City made a more diligent search, sending letters out of state. Since the City had no dialog with Ms. Franklin, after the City had determined that the venue was correct, a complaint was filed with the Municipal Court based on the fact that no building permit had been issued on the project. At a hearing before the Municipal Court, the Judge granted a continuance to allow Ms. Franklin to meet with the City and bring the home into compliance. She was given two options. The property is located on approximately 25 acres. Land with 5 acres or more need to be zoned RA, which didn't solve Ms. Franklin's problem. So consideration was give to ways of resolving the problem. Looking at the neighborhood the City felt that by zoning only a smaller piece of the property—after a survey—R-4 zoning would resolve the problem and would be appropriate zoning. A zoning application was brought before the Planning and Zoning Commission and City Council and the property was zoned R-4, which requires a setback of 30 feet. Thirty feet is the smallest setback in the Zoning Ordinance. The reason for the setback requirements on all sides [of the property] are for health and safety. One example would be if there were a fire, there would be a concern of access; and if there was an automobile accident, we wouldn't want a vehicle to end up in the residence. Sometimes the function concerns future planning, i.e. sidewalks, ambiance, landscaping esthetics, improvement to the property values.

David Junkin stated that it was his understanding that the City was not in dispute of the pictures of the surrounding properties; and that the home was in compliance with current uses in the neighborhood. He understood that setbacks for new buildings must be complied with. He did not know of any current road improvement plans; that this road was not a thoroughfare.

Susan Thurber questioned the zoning of other properties in the area. Would they be R-4?

Steve Harrison: Assuming all properties are not less than 6,000 sq. feet, they would.

Patty Akers stated that there were issues of split zoning. Part of it could be different. The Board could grant a conditional variance as long as the property is not subdivided to a size that would change the setback.

Steve Harrison commented that there is denser use in the Civic Center with commercial buildings. There, some setbacks are 6 feet.

Sue Johnson: What was the most intense use?

Steve Harrison: WPDD's are allowed in all areas.

Steve Gartside requested a definition of setback—road vs. right-of-way.

Steve Harrison: From right-of-way.

Steve Gartside asked what is required for the placement of a new home when owner wants to remove and put in a new home.

Steve Harrison: Zoning—if they don't expand the footprint.

Patty Akers: It would also be necessary to take into consideration whether the home had been abandoned.

Bob Flocke questioned whether the smaller tree could have been removed and the home moved back 10 feet.

David Junkin: Tree is about 11-12 feet from corner of house. Additionally, there is a back porch. Would not resolve the entire problem.

Steve Harrison: Applicant had been granted permission to proceed with Hays County for a septic tank. The permission to proceed is a letter to be sure sewage needs are met.

Steve Gartside: When was the home placed?

David Junkin: Late March or April 2002.

Steve Gartside asked when the property had been zoned.

Steve Harrison: On September 4, 2003. No building permit was issued.

Sue Johnson asked if there were any more remarks.

Steve Harrison commented that the Zoning Ordinance was designed to shape the community and that setback requirements were established for health and safety

Sue Johnson: Inquired about split zoning.

Patty Akers: It's legal but in this case, what happens is that there are additional conditions to the variance.

Steve Gartside: If we put conditions on the variance, what happens?

Patty Akers: If they add to the structure or replace it, that would be a problem.

Steve Harrison: In Section 22, Mobile Homes—the setback is 40 feet from the dominant street.

Patty Akers: One factor to take into consideration is that it's on a dead end street.

Steve Gartside: Only way it will change is if the 25 acres is subdivided. Where is the septic tank located? What was the ability to move because of the drain fields? Mr. Gartside suggested that it was possible that she did not realize just replacing the home she was unaware she was in violation.

David Junkin stated that Ms. Franklin took the permission to proceed letter the wrong way.

Sue Johnson called for a motion.

Steve Gartside: I move that "The Board finds that it is able to respond "Yes" to all 10 conditions for granting a variance and that this variance shall be granted conditioned upon the property not being subdivided to a size requiring a setback of larger than 30 feet."

Bob Flocke: Second.

Sue Johnson called for a vote. The Board granted the variance under the provisions of the motion by a vote of 4 (Ayes) to 0 (Nays).

Sue Johnson: The meeting is adjourned.

Adjourned 7:45 p.m.



Adelle Turpen, City Secretary.

ORDER GRANTING/DENYING ZONING VARIANCE WORK SHEET

File No.: BA-03-011
Date of Hearing: 9/25/03
Applicant: Rasijah Franklin
Address: 295 Blue Heron Run

Conditions Required for a Variance (Wimberley 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:

	YES	NO
1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of the reasonable use of his/her land; and	✓	
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and	✓	
3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area; and	✓	
4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance; and	✓	
5. That the land involved is otherwise in compliance with other applicable Village regulations; and	✓	
6. Literal enforcement of the Zoning Ordinance will create an unnecessary hardship or practical difficulty in the development of the affected property; and	✓	
7. The situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district; and	✓	
8. The relief sought will not injure the permitted use of adjacent conforming property; and	✓	
9. The granting of a variance will be in harmony with the spirit and purpose of these regulations; and	✓	
10. The granting of a variance is based on the specific facts related to this application and does not render the applicable Zoning Ordinance provisions meaningless.	✓	

Special Circumstances:

Split-zoning

Additional Findings:

Board Action: Grant ~~4~~ Deny _____ Grant with Conditions: 4

Conditions for Variance:

Variance here with property unless subdivided to required setbacks larger than 30'

PASSED AND APPROVED this 25th day of September, 2003, by the Board of Adjustment of the Village of Wimberley, Texas, by a vote of 4 (Ayes) 0 (Nays) 0 (Abstain).

VILLAGE OF WIMBERLEY
Board of Adjustment

By: Sue Johnson
Sue Johnson, Chair

ATTEST:

Adelle Turpen
Adelle Turpen, City Secretary

Present - Johnson, Koeke, Thurber, Garlside