



# Board of Adjustment

## Minutes

### City Council Chambers, Lower Level April 10, 2012

**Board Members Present:**

Garrett McCray, Chair  
Nicholas Labadie, Vice-Chair  
Tyler Stradling  
Dianne von Borstel  
Cameron Jones

**Board Members Absent:**

Greg Hitchens - excused  
Danette Harris - excused

**Others Present:**

**Staff Present:**

Gordon Sheffield  
Angelica Guevara  
Mia Lozano-Helland  
Kaelee Wilson

The study session began at 5:10 p.m. The Public Hearing meeting began at 5:33 p.m. Before adjournment at 5:53 p.m., the following items were considered and recorded.

**Study Session began at 5:10 p.m.**

A. Zoning Administrator's Report:

1. Updated the Board on the progress of the proposed Form Based Code implementation. The Planning and Zoning Board will hold their first public hearing on the new code on Wednesday, April 18<sup>th</sup>, 2012 and an anticipated second public hearing in May with a possible recommendation to City Council.

A brief discussion followed with questions and comments from the Board.

2. Mr. Sheffield discussed the upcoming Sign Code update. He asked for volunteers from the Board of Adjustment to assist with the review work. He explained that he would need two members from the Board for the discussions that will start in May.

B. The items scheduled for the Board's Public Hearing were discussed.

**Public Hearing began at 5:33 p.m.**

A. Consider Minutes from the March 20, 2012 Meeting a motion was made to approve the minutes by Board member Stradling and seconded by Board member Jones. Vote: Passed 5-0-2 (Hitchens and Harris - absent)

B. Consent Agenda a motion to approve the consent agenda as read was made by Board member Jones and seconded by Board member von Borstel. Vote: Passed 5-0-2 (Hitchens and Harris - absent)

**Case No.:** BA11-054

**Location:** 3709 East Adobe

## **Board of Adjustment Meeting April 10, 2012**

**Subject:** Requesting a Variance to allow an addition to encroach into the required side yard in the RS-9 zoning district. (PLN2011-00316) **Continued from the March 20, 2011 meeting**

**Decision:** Denied

**Summary:** Diana Keiffer, the applicant and owner of property, read the most recent statement of justification into record. Ms. Keiffer stated she was misled by her construction crew that told her the trellis was up to City Code. The trellis was built to help lower her energy bill due to the extreme afternoon heat. Moving the existing posts back would block the sidewalk. The cost of removing the trellis and the rise of Ms. Keiffer's electric bill would place a financial hardship on her and her family.

Angelica Guevara provided the staff report and recommendations.

Chair McCray stated it is a beautiful structure but unfortunately does not meet code. He verified that it was Ms. Keiffer's desire to leave the trellis the way it is and not alter it in any way to meet City Code. Chair McCray stated that based upon the code, he could not approve the variance.

Chair McCray opened it for discussion from other board members.

Board member Jones agreed with Chair McCray and stated he could not approve the case.

Board member Stradling stated he was also unable to support the request for a variance.

A brief discussion ensued regarding the various options available to the property owner.

Board member von Borstel agreed with comments and stated she could not support the request.

Vice Chair Labadie clarified with Ms. Kieffer that she was not willing to alter her trellis to meet a reduced setback

A discussion began regarding setback options.

**Motion:** It was moved by Board member Stradling seconded by Board member Jones to deny case BA11-054.

**Vote:** Passed 5-0-2 (Hitchens and Harris - absent)

### **Findings:**

- 1.1** This variance was requested to allow construction of an attached trellis shade structure within the side yard setback of the subject parcel. The shade structure would have encroached 4'-6" into the required seven-foot side yard setback. Including an existing detached structure in the rear yard, the attached shade structure would result in total lot coverage of 38 percent, which is less than the 45 percent lot coverage allowed in the RS-9 zoning district.
- 1.2** The shade structure was constructed and was the subject of a Code Compliance Case (COD2011-02329), for encroachment into the side yard setback and construction without the benefit of a building permit. While the shade structure is constructed, the Board did not review this case as if it were still just a plan on paper, giving neither penalty for the construction completed without the correct authorization, nor concern for having to maintain the applicant's investment.

**Board of Adjustment Meeting**  
**April 10, 2012**

- 1.3** As justification, the applicant had noted: 1) the shade structure was constructed by a contractor 10 years ago with the assumption of compliance with all applicable codes; 2) the subject property and all adjacent properties fronting on Adobe Street are zoned RS-9, which requires a seven-foot side yard. Over 90 percent of the Crosspointe Subdivision is zoned RS-7, which requires a five-foot side yard; 3) construction of the shade structure consistent with the requirements of the majority of the Crosspointe Subdivision setback requirements (five-foot setback with three-foot overhang) could result in two-foot setback from the side property line, which is only three-inches greater than requested; 4) the shade structure had been constructed with a lattice covering intended to provide shade only and does not direct runoff from the roof toward any adjacent property; 5) the adjacent property owner to the west does not intend to construct any building additions on the east side of his property, which would maintain building separations; and 6) a letter supporting the request had been provided by Dean M. Leonard, 3703 E. Adobe Street, the owner of the property to the west.
- 1.4** The subject parcel is of similar size (9,343 s.f.) and orientation as the other parcels adjacent to Adobe Street and is consistent with the minimum required size for lots in the RS-9 zoning district (9,000 s.f.). The applicant did not provide sufficient justification related to ***special or unique conditions of the land*** to support the requested variance.
- 1.5** The justification noted by the applicant related to the RS-7 zoning for the majority of the Crosspointe Subdivision did not provide a unique condition of the land that related to unique conditions of the subject property. The construction of the shade structure without compliance with setback requirements or the benefit of a building permit was a self-imposed hardship. While not ideal for the property owner, options were available to construct the shade structure consistent with required side yard setbacks, such construction in the rear yard or within the side yard by setting the post at the seven-foot setback with a three-foot overhang, which would result in an overall shade structure width of 10-feet.
- 1.6** Not related to the Zoning Ordinance requirements, the Building Code requires a five-foot fire-separation of all buildings from adjacent property lines, or use of fire-rated construction methods. As shown, the shade structure is not in compliance with Building Code fire separation requirements and significant modifications would be required before building permits would be issued.

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**Board of Adjustment Meeting  
April 10, 2012**

**Case No.:** BA12-015

**Location:** 1524 East University Drive

**Subject:** Requesting a Substantial Conformance Improvement Permit to allow the expansion of an existing restaurant in the LC zoning district. (PLN2012-00094)

**Decision:** Continued to the May 8, 2012 meeting

**Summary:** This case was on the consent agenda and not discussed on an individual basis.

**Motion:** It was moved by Board member Labadie seconded by Board member Harris to continue case BA12-015 to the May 8, 2012 meeting.

**Vote:** Passed 5-0-2 (Hitchens and Harris - absent)

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**Board of Adjustment Meeting  
April 10, 2012**

C. Other Business:

None

Respectfully submitted,

Gordon Sheffield, AICP  
Zoning Administrator

Minutes written by Mia Lozano, Planning Assistant

G: Board of Adjustment/Minutes/2012/April 2012