

**MINUTES**  
**ZONING BOARD OF ADJUSTMENT**  
**CITY OF RICHARDSON, TEXAS**  
**JANUARY 15, 2014**

The Zoning Board of Adjustment met in session at 6:30 p.m. on Wednesday, January 15, 2014 in the Council Chambers, at the City Hall, 411 West Arapaho Road, Richardson, Texas.

**MEMBERS PRESENT:** Mike Walker, Chair  
Larry Menke, Vice Chair  
Chip Pratt, Member  
Shamsul Arefin, Alternate  
Jason Lemons, Alternate

**MEMBERS ABSENT:** John Veatch, Member  
Brian Shuey, Member

**CITY STAFF PRESENT:** Chris Shacklett, Senior Planner  
Whitt L. Wyatt, City Attorney  
Cindy Wilson, Administrative Secretary  
Jennifer Patrick, Residential Plans Examiner

Mike Walker, Chairman, introduced Chris Shacklett, Senior Planner; Whitt Wyatt, City Attorney and Cindy Wilson, Administrative Secretary, Jennifer Patrick, Residential Plan Reviewer, explaining that the City staff serves in an advisory capacity and do not influence any decisions the Board might make. Walker summarized the function, rules, and appeal procedure of the Zoning Board of Adjustment. Walker also introduced the Members of the Board and noted that all members present would be voting.

**MINUTES:**

The Zoning Board of Adjustment minutes of the November 20, 2013 meeting were approved on a motion by Arefin; second by Lemons and a vote of 5-0.

**PUBLIC HEARING ON ZBA FILE V 14-01:** A request by Robert Wondoloski for approval of the following variance to the City of Richardson Comprehensive Zoning Ordinance: 1) Article IV, Sec. 4(f)(3), for a 2-foot variance to the 3-foot side setback in the rear yard for an outdoor fireplace at 2210 Sutton Place.

Shacklett stated the applicant was requesting a 2-foot variance to allow an outdoor fireplace to be located within the required 3-foot side setback for structures located in the rear yard. As part of the applicant's update to their backyard to create an outdoor living space, they hired a contractor to construct the fireplace; however, the contractor was not aware a permit was required. After the fireplace had been constructed, the City informed

the applicant a permit was required, and he and the contractor filed for a permit. It was denied due to the structure's location in 3-foot side setback in the rear yard.

Shacklett noted the location of the structure had been chosen to provide a fireplace and seating area adjacent to the pool and the majority of the fireplace did not encroach into the side setback. He did add that the fireplace was located in a 10-foot utility easement; however, the applicant received approval from the appropriate utility companies stating they had no objections to the encroachment into the easement.

Shacklett explained the applicant was stating their hardship was due to: 1) the location of the pool and the entirety of the fireplace could not be placed in its current location without a partial encroachment; 2) due to the nature of the structure, the top of the fireplace chimney is required to be located at least two (2) feet above any other structure for a minimum of ten (10) feet from the chimney and the fireplace and seating area could not be placed on the other side of the pool near the house because of this requirement; 3) the applicant stated that although the fireplace had been constructed without a permit, it was in done in good faith; and, 4) the removal and reconstruction of the structure two (2) feet further in to the property would be an undue financial and physical burden making the area between the pool deck and fireplace too narrow, and the fireplace would essentially located in the same area.

Shacklett concluded his presentation by stating that based on the information provided by the applicant, and applicable codes and ordinances, it was staff's opinion the hardship appeared to be self-imposed, although the area where a fireplace could be located was limited in the rear yard due to separation requirements to other structures.

Lemons asked when the structure was originally built and Shacklett stated it was constructed in August 2013.

Menke asked to confirm if any of the surrounding homeowners had contacted staff to express their opinions. Shacklett replied he had not received any correspondence.

Arefin wanted to know if contractors had to be registered with the City to do work and Patrick replied at the time the non-permitted fireplace was built the contractor was not registered. Prior to permit issuance the contractor would be required to register with the City.

Pratt stated that with exception of the height requirement for the chimney, it could almost be treated as if it were a masonry fence.

Shacklett replied a masonry fence could be built on the property line behind the front building line of the home. He added that since the structure had a chimney and seating it was not defined as a fence.

Robert Wondoloski, 2210 Sutton Place, Richardson, Texas, stated his family wanted to invest in year round living space in their back yard including a patio cover that had to be

rebuilt to City specifications after an unlicensed contractor was originally hired. He added they learned from that experience and hired a licensed contractor, but did not realize a permit was required for an outdoor fireplace until after the fireplace was almost completed. At that time, steps were taken to contact the City and utility companies to secure the proper authorizations.

Wondoloski concluded his statement noting that he and the contractor had acted in good faith and to deny the variance would cost a great deal of money to move the structure essentially 2 feet from its current location. He added that he had signatures from eleven of the surrounding homeowners who did not object to the variance.

Menke asked if the homeowners most directly impacted by the variance had signed in agreement to the variance and Wondoloski said they were the first ones to sign the agreement.

Walker asked if any embers would come out of the chimney on the side as opposed to the top and Wondoloski replied that chimney was capped on the top.

Michelle Shook, 10 Forest Park, Richardson, Texas, the homeowner directly behind 2210 Sutton Place, expressed concern over safety because the chimney was directly below the power lines and transformer. She also wanted to know if the fireplace would use gas or wood and, if it is gas, was a licensed contractor used to run the gas line; if it uses wood, would there be a problem with embers floating out of the chimney.

Shacklett replied the fireplace was wood burning.

Shook wanted to know if there were any City requirements for outdoor, wood burning fireplaces and stated she was concerned about the new gate that gave access to her property.

Menke stated the Board's focus and position would only be looking at the specifics of the case before them, specifically the location of the fireplace in relation to the side property line and the other items mentioned were not something the Board could address.

Walker asked if there were any concerns with the fireplace being a fire hazard.

Shacklett replied the utilities companies (electric, gas, and communication) had all signed off on the fireplace. He added that having an outdoor fireplace with an open flame would be allowed in a single family zoning district.

Arefin asked if anyone from the utility companies had visited the site prior to signing off on the request.

Shacklett replied that whatever steps the utility companies takes they would have done prior to signing off on the structure. He added that any safety concerns would fall under building code issues and not under a variance request.

Wondoloski stated their first intent was to make the structure a gas fireplace, but during the permitting process it was decided not to use gas. He added that the utility companies did come out to inspect the fireplace with Oncor requesting the gate for access to the Shook residence.

Pratt noted that most chimneys in homes have caps with screening to prevent hot embers from getting out and wondered if that was a consideration for the fireplace.

Wondoloski said it would be possible to add screens to the chimney.

Menke wanted to know if the gate was required by Oncor because of the fireplace or other issues.

Wondoloski said he thought Oncor wanted a gate and used the requested sign off as an excuse to get a gate.

Pratt asked if Oncor was requiring the gate between the two properties remain unlocked and Wondoloski said Oncor did not make that a requirement, but he had locked it for safety.

Shacklett stated that probable reason for the gate was the utility easement.

With no further comments, Walker closed the public hearing and called for comments from the Board.

Menke stated that after reviewing the facts he understood the concerns expressed, but did not feel they should have any bearing on the variance before the Board.

Walker said safety relied upon neighbors being good neighbors and the fact that they were interested in the well-being of others as well as their own.

Menke made a motion to approve item number V14-01 as presented; limited to those specifics the applicant presented in the case. The motion was seconded by Pratt and approved 5-0.

**PUBLIC HEARING ON ZBA FILE V 14-02**, a request by Patricia Simmons, for approval of the following variance to the City of Richardson Comprehensive Zoning Ordinance: 1) Article IV-A, Sec. 4(e)(1), for a 1-foot variance to the 30-foot front setback for an unenclosed porch at 2 Roundrock Circle.

Shacklett advised the applicant was requesting a 1-foot variance to the 30-foot front setback for the construction of an unenclosed porch on an existing home which is being remodeled. The front setback requirement for the subject property is thirty-five (35) feet; however, the Comprehensive Zoning Ordinance allows unenclosed porches to encroach up

to five (5) feet in to the front setback. In addition, he mentioned that the home was located on a cul-de-sac so the 35-foot front setback line follows the curve of the street with the southern corner of the front of the home located within 1-foot of the 35-foot front setback line.

Shacklett stated that the proposed porch would be approximately six (6) feet deep and thirty-six (36) feet wide and, due to the depth, the maximum encroachment of one (1) foot occurs at the southwest corner of the porch. He added the applicant estimated that approximately eight (8) square feet of the proposed 215-square foot porch encroaches into the 30-foot setback.

Shacklett pointed out that the porch would provide a covered seating area on the west side of the home as well as provide shade from the western sun. In addition, he noted the applicant was stating the angling of the southwest corner of the porch to follow the 30-foot setback would not be architecturally desirable

Shacklett concluded his presentation by stating that based on the information provided by the applicant, and applicable codes and ordinances, it was staff's opinion the hardship appeared to be self-imposed; however, the applicant felt the hardship was a result of the curvature of the cul-de-sac that created geometric issues with the straight line of the home.

Patricia Simmons, 2 Round Rock Circle, Richardson, Texas, stated her family had lived at the current address since 1991 and have saved to make the new addition of the front porch. She added there is no overhang to block the elements from the front of the house and respectfully requested to allow the 1-foot variance on the south side of the residence.

William Simmons, 2 Round Rock Circle, Richardson, Texas, said the architect who designed the front porch had submitted the plans to the City for approval.

Lemons asked if the applicants had spoken with their adjacent neighbors and Ms. Simmons responded they had and there were no objections.

With no further comments in favor or opposed, Walker closed the public hearing and asked for any comments from the Board.

Lemons stated the Board was always in support of promotion the use and enjoyment of a property through improvements to properties, and thought the curvature of the cul-de-sac did cause a problem for the homeowner.

Menke and Arefin concurred and stated the request was reasonable.

Lemons made a motion to approve item number V14-02 as presented; limited to those specifics the applicant presented in the case. The motion was seconded by Arefin and approved 5-0.

**PUBLIC HEARING ON ZBA FILE V 14-03**, a request by Minh Nguyen for approval of the following variance to the City of Richardson Comprehensive Zoning Ordinance: 1) Article VI, Sec. 4(g), for a 17-foot variance to the 25-foot rear setback for an attached garage at 1212 Berkeley Drive.

Shacklett advised the applicant was proposing to construct an attached garage at the rear of the property that would encroach seventeen (17) feet in to the 25-foot rear setback. In addition, there had been discussions with the applicant in the past when he had requested a carport in-lieu-of a garage and staff suggested an enclosed garage would be more desirable.

Shacklett noted that the applicant could construct a detached garage in the same location, which would not require a 25-foot setback since a detached structure is only required an 18-inch rear setback along the alley. However, the applicant decided that would not be ideal because it would leave a narrow gap between the house and detached garage and the applicant felt that would create a maintenance issue and a possible safety hazard.

Shacklett concluded his presentation by stating staff had not received any correspondence on the case and it was staff's opinion that a property hardship did not exist. He added that the applicant was claiming a hardship existed because the conversion did not allow an attached garage to be constructed without removing usable living area.

No questions were asked of staff and Walker opened the public hearing.

Minh Nguyen, architect for the project, 11111 Williamsburg Lane, Frisco, Texas and hired by the owner, Tan Huynh, 3557 Annapolis Court, Sachse, presented their case.

Nguyen stated he had met the deadlines set by the City under the Building and Standards action and asked to be granted the variance because the current requirement could affect the health and safety of any child on the property.

Lemons asked where the entry would be from the house to an attached garage.

Nguyen replied the entry door will be on the left hand side.

Arefin asked if the architect considered putting the garage on the opposite side of the house.

Nguyen said they had thought about putting the garage on the southwest corner, but there would be a problem with the turn radius.

Menke mentioned that if the garage was located on the southwest side of the house it would be impacted by the transformer.

Lemons asked if there had been any discussion with the neighbors regarding the variance request.

Nguyen replied that the neighbors had stopped by to encourage them during the repairs of the house, but they had not discussed the garage.

No other comments were received in favor or opposed and Walker closed the public hearing.

Menke stated that in regards to all the options available to the applicant – detached garage on the same location with the same impact, it would be beneficial to all concerned and an attached garage would be better suited for the neighborhood.

Pratt made a motion to grant item number V14-03, as presented, limited to those specifics the applicant presented in the case. The motion was seconded by Lemons and approved 5-0.

There being no further business, the meeting was adjourned at 7:22 p.m.

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Mike Walker, Chairman  
Zoning Board of Adjustment