

Chair Carol Richtsmeier, PL1
Ozzie Molina, PL2
Barbara Betik, PL3
Stephanie Heimbuch, PL4

City of Ovilla

Vice Chair, Richard Ware, Jr, PL5
ALT- Patricia Halyard - King, PL6
ALT- Mark Clark, PL7
Mike Dooly, Code Enforcement

AGENDA

Board of Adjustment Meeting
105 S. Cockrell Hill Road, Ovilla, Texas 75154
March 18, 2019

Pursuant to the provisions of Chapter 551 VTCA Government Code, notice is hereby given of a Regular Meeting of the Board of Adjustment to be held on Monday, March 18, 2019 at 7:00 P.M. at 105 S. Cockrell Hill Road, Ovilla, Texas, 75154 for the purpose of considering the listed item(s). The Board of Adjustment of the City of Ovilla, Texas, reserves the right to meet in a closed session pursuant to authorization by Texas Government Code, Sections 551.071 (consultation with attorney), 551.072 (deliberations about real property), 551.073 (deliberations about gifts and donations).

Call to Order

♦ Pledge of Allegiance

Consent Items

♦ Minutes of the January 22, 2019 BOA Meeting

The following item(s) may be acted upon in one motion. No separate discussion or action is necessary unless requested by a Board Member, in which event those items will be pulled from the consent agenda for individual consideration.

Individual Consideration

ITEM 1. **BOA201819.04 - Public Hearing and Discussion** of an appeal to the Ovilla Code of Ordinances, Chapter 14, Section 35.3 FENCES IN RESIDENTIAL DISTRICTS filed by Juan Garcia for a residential special exception to construct a fence on or beyond the building line which is not allowed per Ordinance, on his property at 625 Meadow Lark Dr.

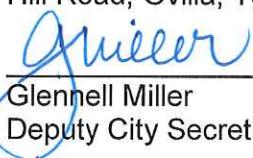
DISCUSSION/ACTION – Consideration of requested Special Exception filed by Juan Garcia.

ITEM 2. **DISCUSSION** – Review the required criteria for variances and special exceptions.

ITEM 3. **DISCUSSION/ACTION – Consideration of any item(s) pulled from the Consent Agenda above for individual consideration and action.**

Adjournment

This is to certify that a copy of the Notice of the Ovilla Board of Adjustment Meeting scheduled for **March 18, 2019 @ 7:00 P.M.**, was posted on the bulletin board at City Hall, 105 S. Cockrell Hill Road, Ovilla, Texas, on this 15th day of March 2019, prior to 6:00 p.m.

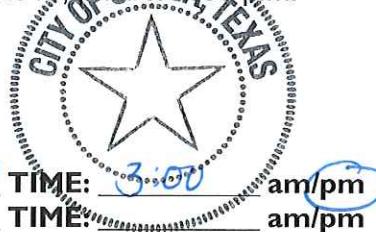


Glennell Miller
Deputy City Secretary

DATE OF POSTING: _____
DATE TAKEN DOWN: _____

MARCH 15, 2019 **TIME: 3:00** **am/pm**
TIME: _____ **am/pm**

IF YOU OR YOUR REPRESENTATIVE HAS A DISABILITY THAT REQUIRES SPECIAL ARRANGEMENTS AND YOU PLAN TO ATTEND THIS PUBLIC MEETING, PLEASE CONTACT THE CITY SECRETARY AT 972-617-7262 WITHIN 24 HOURS OF THE MEETING. REASONABLE ACCOMMODATIONS WILL BE MADE TO MEET YOUR NEEDS AT THE MEETING. PLEASE SILENCE ALL CELL PHONES, AND OTHER ELECTRONIC EQUIPMENT WHILE THE ZONING BOARD OF ADJUSTMENT MEETING IS IN SESSION



CITY OF OVILLA MINUTES
Tuesday, January 22, 2019
Board of Adjustment Meeting

Chair Carol Richtsmeier called a Regular Meeting of the Ovilla Board of Adjustment to order at 7:02 p.m. with the following BOA members present, thus constituting a quorum:

Carol Richtsmeier	Board Member
Ozzie Molina	Board Member
Stephanie Heimbuch	Board Member
Barbara Betik	Board Member
Mark Clark	Board Member (Alt.)

City Manager John Dean & Code Enforcement Officer Mike Dooly were present.
At this time Chair Richtsmeier asked PL3, Barbara Betik to call roll of present members, thus declaring a quorum.
Alt. Member Halyard- King and Vice Chair Richard Ware were noted absent.

The Pledge of Allegiance was led at this time. Chair Richtsmeier outlined the evening's agenda and briefed those present on board procedures.

COMMENTS, PRESENTATIONS, REPORTS AND/OR APPOINTMENTS

Alternate Board Member Mark Clark was sworn in as Board of Adjustment Member Place 7 prior to meeting:

CONSENT ITEMS

Minutes of the November 19, 2018 BOA Meeting

PL4 Heimbuch made the motion that the BOA approve the consent items as presented.
PL2 Molina seconded the motion.

VOTE: The motion carried 4-0

PUBLIC HEARING

ITEM 1. **BOA201819.03 - Public Hearing and Discussion** of an appeal to the Ovilla Code of Ordinances, Chapter 14, Section 30.5 **CONSTRUCTION MATERIAL**, filed by Charles Wickersham for a residential variance to construct a METAL accessory building on less than the 2 Acres of land that is allowed per Ordinance, on his property at 307 Cockrell Hill Rd.

Chair Richtsmeier read aloud the captioned request and opened the Public Hearing at 7:04 p.m.
(Testimony that followed was under proper oath; City Representative)

Code Enforcement Officer Mike Dooly shared with the Board a brief explanation of the applicant's request. The building will be meet all the requirements of code as far as the materials and how it is placed on the lot. He explained that there are two other buildings on the lot that will be removed if the variance is granted and the building is built.

(Testimony that followed was under proper oath; Applicant)

CITY OF OVILLA MINUTES
Tuesday, January 22, 2019
Board of Adjustment Meeting

The applicant reiterated how the building will be placed on the property, and the other buildings will be removed once complete. He stated that the new building will have concrete slab as the foundation.

(Chair Richtsmeier asked that those speaking in support of the request to please step to the podium:)

None

(Chair Richtsmeier asked that those speaking in opposition of the request to please step to the podium:)

None

(Rebuttal or Final Comments:)

None

Property owner Jimmie Wade – 606 Creek View Circle – could not attend meeting but left word with City Secretary's office that she is in opposition of the building.

The Public Hearing was closed at 7:12 p.m.

INDIVIDUAL CONSIDERATION

DISCUSSION/ACTION – Consideration of requested Variance filed by Charles Wickersham.

PL3 Betik read aloud the Findings-of-Fact. After much discussion, the Board reviewed the criterion and completed the Findings-of-Fact form resulting in a **positive** outcome.

PL4 Heimbuch moved that the BOA APPROVE the request for Charles Wickersham for a variance to construct a metal building on less than the required 2 Acres as requested in BOA 201819.03.

PL2 Molina seconded the motion.

Record vote was called:

Record Vote:

RICHTSMEIER	<u>AYE</u>
MOLINA	<u>AYE</u>
HEIMBUCH	<u>AYE</u>
BETIK	<u>AYE</u>

VOTE: The motion to APPROVE carried 4-0.

ITEM 2. Consideration of any item(s) pulled from the Consent Agenda above for individual consideration and action.

None

Zoning Board of Adjustments Requests for Future Items

None

CITY OF O'VILLA MINUTES
Tuesday, January 22, 2019
Board of Adjustment Meeting

Adjournment There being no further business, Chair Richtsmeier adjourned the meeting at 7:21 p.m.

Chair Carol Richtsmeier

ATTEST:

Glennell Miller, Board Secretary

Attachment(s): *Findings-of-Fact (1)*

Approved on March 18, 2019

**City of OVILLA Board of Adjustment
Findings of Fact for VARIANCE**

Applicant: CHARLES WICKERSHAM
Address: 307 COCKRELL HILL RD.

Case Number: 201819.03

Upon giving public notice and conducting a public hearing on this **VARIANCE** request in accordance with Chapter 14 Section 30.5 **CONSTRUCTION MATERIALS** of the Ovilla Code of Ordinances, the Board of Adjustment adopts these specific, written findings as follows:

	YES	NO
1. That special circumstances or conditions exist which are peculiar to the property, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.	✓	
2. That literal interpretation of the Ordinance will deprive the applicant of rights commonly enjoyed by other properties in the same district under the Ordinance.	✓	
3. That the special conditions and circumstances do not result from the action of the applicant.	✓	
4. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and	✓	
5. The BOA shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.	✓	

BOA Members present, and upon a record vote of:

	FOR	AGAINST	ABSTAIN
Member Carol Richtsmeier	AYE		
Member Richard Ware	ABSENT		
Member Barbara Betik	AYE		
Member Ozzie Molina	AYE		
Member Stephanie Heimbuch	AYE		
Alt. Member Mike Clark	N/A		
Alt. Member Patricia Halyard-King	N/A		

TOTALS: **4 FOR**
0 AGAINST
0 ABSTAIN

The variance is hereby: ✓ granted denied

Presiding Officer of BOA

Date

City or Board Secretary

Date

Ovilla Zoning Board of Adjustment

AGENDA ITEM REPORT

Item: 1

DISCUSSION & ACTION
Meeting Date: March 18, 2019

Attachments:

1. Permit Application
2. Special Exception Application with attachments
3. Findings of Fact

Agenda Item / Topic:

ITEM I. **BOA201819.04 - Public Hearing and Discussion** of an appeal to the Ovilla Code of Ordinances, Chapter 14, Section 35.3 FENCES IN RESIDENTIAL DISTRICTS filed by Juan Garcia for a residential special exception to construct a fence on or beyond the building line which is not allowed per Ordinance, on his property at 625 Meadow Lark Dr.

Discussion / Justification:

APPLICANT: Juan Garcia

LOCATION: 625 Meadow Lark Dr.

ZONING: R22 Residential

Applicant's Proposal: Applicant requests to construct a fence that is on or beyond the property line.

Discussion: The Ovilla Code of Ordinances, Chapter 14, Section 35.3, FENCES IN RESIDENTIAL DISTRICTS, states:

D. Support and Rails:

1. fences may be constructed to the property line upon approval of a special exception by the Zoning Board of Adjustment. Fencing located on or behind the building line shall not exceed eight feet (8') in height.

BOARD DISCUSSION: The Board is allowed to grant a Special Exception under certain circumstances & after review of the *Findings of Fact* form.

NOTICES: One public notice listed in the Ellis County Press; 10 certified letters mailed. There have been no responses.

Sample Motion(s):

"I MAKE A MOTION THAT THE BOA GRANTS & APPROVES/DENIES THE SPECIAL EXCEPTION TO JUAN GARCIA TO CONSTRUCT A FENCE ON OR BEYOND THE BUILDING LINE ON THEIR PROPERTY AT 625 MEADOW LARK DR. AS PRESENTED IN BOA201819.04."

City of Ovilla

Phone: (972) 617-7262

Fax: (972) 515-3221

105 S. Cockrell Hill Rd.

Ovilla, Texas 75154

Residential Building Permit Application

Building Permit Number:	Valuation: <u>2,500</u>		
Zoning:	Valuation w/land: _____		
Project Address:	Lot: _____ Subdivision: _____		
Project Description:	<input type="checkbox"/> NEW SFR <input type="checkbox"/> PLUMBING/ELECTRICAL <input type="checkbox"/> SWIMMING POOL	<input type="checkbox"/> SFR REMODEL/ADDITION <input type="checkbox"/> FLATWORK <input type="checkbox"/> ACCESSORY BUILDING	<input type="checkbox"/> SPECIFY OTHER: <input checked="" type="checkbox"/> SPRINKLER <input checked="" type="checkbox"/> FENCE
Proposed Use:	<u>Kids Doll House / Storage</u> <u>Fence</u>		
Description of Work:	Area Square Feet: _____ Living: _____ Garage: _____ Covered Porch: _____ Total: <u>11,150 - 1st</u> Number of stories: <u>1</u>		

Homeowner's name:	<u>JUAN Y JESERICA GARCIA</u>		
Address:	<u>1025 Meadowlark Dr</u>		
Phone Number:	<u>466 769-0216</u>	Home Number <u>100</u>	Mobile Number: <u>972-338-0036</u>

General Contractor	Contact Person	Phone Number	Contractor License Number
<u>JUAN Garcia</u>	<u>me</u>	<u>972-338-0036</u>	—
Mechanical Contractor	Contact Person	Phone Number	Contractor License Number
—	—	—	—
Electrical Contractor	Contact Person	Phone Number	Contractor License Number
—	—	—	—
Plumber/Irrigator	Contact Person	Phone Number	Contractor License Number
—	—	—	—

I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified or not. The granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

**NOTE ** While your project may be approved and permitted by the City, you should check your deed restrictions and HOA requirements before applying for a permit. Obtaining a permit from the City does not ensure your right to commence a project. The City does not reference or enforce HOA restrictions and/or requirements.

Signature of Applicant: JR

Date: 7-5-18

OFFICE USE ONLY:

Approved by:	Date approved:
City Manager:	Date approved:

Plan Review Fee: _____
 Building Permit Fee: _____
 Park Impact Fee: _____
 Capital Recovery Fee: _____
 Fire Meter: _____
 Water Meter Cost: _____
 Water Impact: _____
 Sewer Connection Fee: _____
 Sewer Impact: _____

Receipt # _____
Poles and Rails on
inside w/ smooth
side facing out.

Total Fees: _____
Issued Date: _____
Expires: <u>180 Days</u>
Issued By: _____
COPY

BV Project # _____



Residential Building Permit Application

City of Ovilla

105 S. Cockrell Hill Rd., Ovilla, TX 75154
Phone: (972) 617-7262 | Fax: (972) 515-3221

Building Permit #	2019-0034	Valuation:	\$2,500.00
Zoning:		Valuation w/ Land:	\$0.00
Project Address:	625 MEADOW LARK DR	Subdivision:	
Lot:	Block: 2	Fence	Yes
Project Description:			
New SFR	Flatwork		
Plumbing/Electrical	Accessory Building		
Swimming Pool	Sprinkler		
SFR Remodel/Addition			
Other	Specify Other:		
Proposed Use:	FENCE		
Description of Work:	FENCE		
Area Square Feet:			
Living:	Garage:	Covered Porch:	
Total: 0.00			
# of Stories:			

Homeowner Details

Name: JUAN AND JESENIA GARCIA
Address: 625 MEADOW LARK, OVILLA, TX 75154
Phone # (972) 338-0036 Email:

Applicant Details

Applicant Type: Owner
Name: JUAN & JESENIA GARCIA
Address: ,
Phone # (972) 338-0036 Email:

COPY

General Contractor Details

License #

Name:

Phone # Email:

Mechanical Contractor Details

License #

Name:

Phone # Email:

Electrical Contractor Details

License #

Name:

Phone # Email:

Plumber/Irrigator Details:

License #

Name:

Phone # Email:

Applicant's Signature

Office Use Only:

Approved By :		Date approved:	
City Manager:		Date Approved:	

Plan Review Fee: \$0.00

Total Fees: \$25.00

Building Permit Fee: \$25.00

Issued Date:

Park Impact Fee: \$0.00

Expiry Date:

Capital Recovery Fee: \$0.00

Issued By:

Fire Meter: \$0.00

BV Project #

Water Meter Cost: \$0.00

Water Impact: \$0.00

Sewer Connection Fee: \$0.00

Sewer Impact: \$0.00

COPY



Building Permit

City of Ovilla

P.O. BOX 5047, Ovilla, TX 75154
Phone: (972) 617-7262 | Fax: (972) 515-3221

Permit No. 2019-0034

Location: 625 MEADOW LARK DR

Description: FENCE

Owner: JUAN AND JESENIA GARCIA

Date Issued:

Building Inspector: _____

This Permit To Be Posted In Conspicuous Place On Site

COPY

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

TEXAS GENERAL WARRANTY DEED

Date: **October 18, 2016**

Grantor: **SHELIA MCCANN, formerly known as SHELIA CAUTHEN, individually and as heir at law of the estate of JIMMY JACK CAUTHEN, JR., deceased; and JASON EDWARD MCCANN**

Grantor's Mailing Address (including county):

**625 Meadowlark
Ovilla, Ellis County, Texas 75154**

Grantee: **RMS ENTERPRISES, LTD, a Texas limited partnership**

Grantee's Mailing Address (including county):

**P.O. Box 505
Red Oak, Ellis County, Texas 75154**

Consideration: **Ten and No/100 (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.**

Property (including any improvements):

All that certain lot, tract, or parcel of land being LOT 9, BLOCK 2 of WESTMORELAND ACRES PHASE II, an addition to the City of Ovilla, Ellis County, Texas, according to the Plat thereof recorded in Cabinet B, Slide 29, of the Plat Records of Ellis County, Texas.

Reservations from Conveyance:

NONE

Exceptions to Conveyance and Warranty

1. **Building Line(s) and Easement(s) as shown on plat of said addition recorded in Cabinet B, Slide 29, Plat Records, Ellis County, Texas.**
2. **Oil, Gas and Mineral Lease to R. H. Goodwin recorded in Volume 518, Page 488, Deed Records, Ellis County, Texas.**
3. **Right of Way Easement to Hollingworth Custom Homes recorded in Volume 686, Page 1054, Deed Records, Ellis County, Texas.**
4. **Liens described as part of the Consideration and any other liens described in this deed as being either assumed or subject to which title is taken; validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions,**

reservations, covenants, conditions, oil and gas leases, mineral interest, and water interests outstanding in persons other than Grantor, and other instruments, other than conveyances of the surface fee estate, that affect the Property; validly existing rights of adjoining owners in any walls and fences situated on a common boundary; any discrepancies, conflicts, or shortages in area or boundary lines; any encroachments or overlapping of improvements; zoning laws, regulations and ordinances of municipal and other governmental authorities, if any; and taxes for 2017, which Grantee assumes and agrees to pay, and subsequent assessment for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and hold it to Grantee, and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.

When the context requires, singular nouns and pronouns include the plural.

GRANTOR:



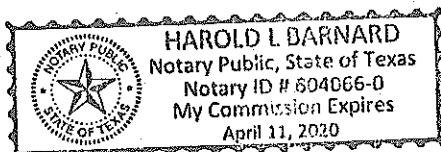
SHELIA MCCANN, formerly known as
SHELIA CAUTHEN, individually and as heir at
law of the estate of JIMMY JACK CAUTHEN,
JR., deceased

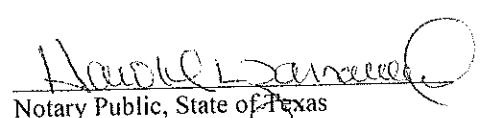

JASON EDWARD MCCANN

ACKNOWLEDGMENTS

STATE OF TEXAS
COUNTY OF ELLIS

This instrument was acknowledged before me on the 18 day of October 2016, by
SHELIA MCCANN, formerly known as SHELIA CAUTHEN, individually and as heir at law of the estate of
JIMMY JACK CAUTHEN, JR., deceased.



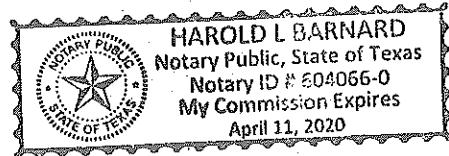

Notary Public, State of Texas

Notary's commission expires:

[Acknowledgments continue on following page.]

STATE OF TEXAS
COUNTY OF ELLIS

This instrument was acknowledged before me on the 18 day of October
2016, by **JASON EDWARD MCCANN**.

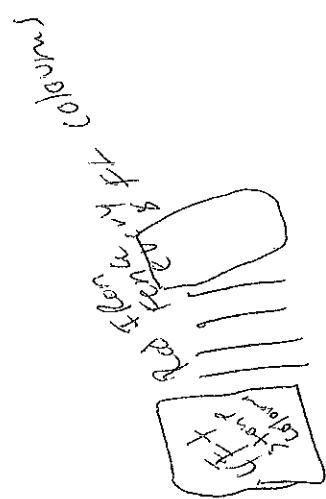
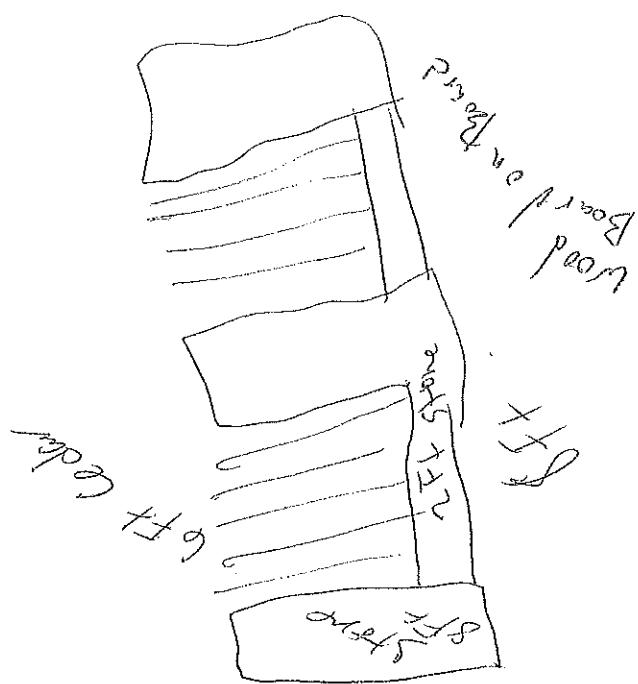


Harold L. Barnard
Notary Public, State of Texas

Notary's commission expires:

AFTER RECORDING RETURN TO:
RMS ENTERPRISES, LTD
P.O. Box 505
Red Oak, Texas 75154

PREPARED IN THE LAW OFFICE OF:
James R. Pitts, Attorney at Law
P. O. Box 561
Waxahachie, Texas 75168



COPY

FENCE Permit Checklist.txt

FENCE PERMIT REQUEST

DATE - 2-7-19

NAME - Garcia, Juan

ADDRESS - 625 Meadow Lark

FENCE PERMIT REQUIREMENTS

FORM FILLED OUT-SIGNED Y...N

PLOT PLAN W STAMP Y...N

PICKETS FACING OUT NOTED Y...N

HEIGHT 8 FT Max Y...N

UTILITY EASEMENTS NOTED Y...N

RIGHT OF WAY Y...N

BUILDING LINE NOTED Y...N IN Front

CROSS SECTION IMAGE Y...N

BREAK AWAY PANEL ACCESS Y...N

FENCE MATERIAL - WOOD, METAL, ... OTHER - STONE

Board of Adjustment Variance Required Y...N

APPROVED

DENIED

REASON

Chapter 14

DATE

SIGNED

35.3 Fence

2-7-19

M.Dow

C. Setback - No screening elements in front of building line.

D. Fences constructed to building line w/ special exception by Zoning Board of Adjustment.

CHAPTER 14

ZONING

35.3 FENCES IN RESIDENTIAL DISTRICTS

C. Setbacks. No screening element or fence shall be erected, placed or planted beyond the front or side building line of any permitted building in a residential district, either on a corner lot or interior lot.

D. Support and Rails.

1. Fences may be constructed to the property line upon approval of a special exception by the Zoning Board of Adjustment. Fencing located on or behind the building line shall not exceed eight feet (8') in height.

Zoning Board of Adjustment

Special Exception Required

Juan Garcia

625 Meadowlark

Ovilla ,Texas

Special Exception required for fence construction in front of building line, up to property line, as property is located on a corner lot.

35.3 FENCES IN RESIDENTIAL DISTRICTS

A. Maximum Height. Screening elements and fences shall be restricted to a maximum height of eight feet (8'), measured from the adjacent grade line, except as otherwise permitted in this section. Fences may be permitted to be constructed to a height exceeding eight feet (8') by special exception as approved by the Zoning Board of Adjustment.

B. Trash Storage Areas. Garbage, refuse and trash collection and storage areas in any multifamily development, mobile home development or other nonresidential use permitted in a residential district shall be fully enclosed on three sides by a dense screening element to adequately screen such area from view of the surrounding area.

C. Setbacks. No screening element or fence shall be erected, placed or planted beyond the front or side building line of any permitted building in a residential district, either on a corner lot or interior lot.

D. Support and Rails.

1. Fences may be constructed to the property line upon approval of a special exception by the Zoning Board of Adjustment. Fencing located on or behind the building line shall not exceed eight feet (8') in height.

2. Panel fences shall be constructed such that the support rails are located on the inside of the lot and the panel is located on the outside of the lot, so as to present a "smooth side out" appearance to the fence.

(Ordinance 2010.015 adopted 8/9/10)

INSTRUCTIONS FOR COMPLETING THE REQUEST FOR A **SPECIAL EXCEPTION**



TO THE OVILLA BOARD OF ADJUSTMENT

ORDINANCE 2010.023

This instruction page is provided for your information and aid in filling out this **SPECIAL EXCEPTION** request. It is not to be considered legal advice. City employees are not permitted to give legal advice in this matter.

Evidence of each of the following three conditions must be found to exist by the Board of Adjustment in order for a **SPECIAL EXCEPTION** request to be granted. They are:

1. That the use is specifically permitted under the ordinance and the requirements for such use are met; and
2. That the locations of proposed activities and improvements are clearly defined on the site plan filed by the applicant; and
3. That the **SPECIAL EXCEPTION** will be wholly compatible with the used and permitted development of adjacent properties.

Condition 1 requires that if the special exception is granted, it may not be against the public interest. "Public Interest" for **SPECIAL EXCEPTIONS** is defined as the well-being of the general public, with specific attention on those members of the public that could be directly affected by the proposed special exception.

Condition 2 requires that the enforcement of a zoning regulation causes an "unnecessary hardship." The hardship must be caused by the property itself, for reasons such as narrowness, shallowness, shape, topography or other physical conditions related to the property. The hardship must not be caused by the applicant, cannot be personal in nature, cannot be financial only, and must relate to the very property for which the **SPECIAL EXCEPTION** is sought.

Condition 3 requires that if the Board of Adjustment grants the **SPECIAL EXCEPTION** as requested, it will not grant a privilege in conflict with other provisions of the ordinance.

The burden of showing these three conditions is on the applicant/owner. You will be expected at the Board of Adjustment hearing to submit evidence providing the conditions stated exist. Evidence can be presented by testimony and/or through documentation. (All photos, documents, etc submitted will become part of the permanent file of the City of Ovilla.)

All three conditions are required to be met in order for the board of adjustments to grant your special exception. Failure to state how your **SPECIAL EXCEPTION** request meets these conditions in your application will result in its return without being submitted to the Board of Adjustment.

DATE: 2.7.19
Case No. BOA 201819.04

REQUEST FOR A SPECIAL EXCEPTION

To the
OVILLA BOARD OF ADJUSTMENT

CITY OF OVILLA

§

COUNTY OF ELLIS

STATE OF TEXAS

§

TO THE HONORABLE BOARD OF ADJUSTMENT

Property description (Attach field notes if necessary):

Lot No. 9

Property Address 625 Meadowlark

Block No.

OVILLA TX 75154

Property Zoned R E

OWNER OF PROPERTY Juan Y Josefa Garcia

APPLICANT Juan Garcia

SPECIAL EXCEPTION Fence construction



Case No. BOA 201819.04

The Applicant/Owner, Susan Grapic, of Elko County, requests that the Ovilla Board of Adjustment grant the following SPECIAL EXCEPTION to Article _____, Chapter _____, Section _____ of the Ovilla Zoning Ordinance. Please state in detail what type of SPECIAL EXCEPTION you are seeking, attach additional sheets if necessary.

I am asking to construct the fence to the property line

Has a previous appeal been filed on this property?

YES NO

If YES, when was the previous appeal filed? _____



CONDITIONS NECESSARY FOR GRANTING A SPECIAL EXCEPTION

Please state in detail how the conditions necessary for the granting of a **SPECIAL EXCEPTION** have been met in this case. Attach additional sheets if necessary.

CONDITION 1: Requires that the use is specifically permitted under the ordinance and the requirements for such use are met; and

Yes

CONDITION 2: Requires that the locations of proposed activities and improvements are clearly defined on the site plan filed by the applicant; and

Yes

CONDITION 3: Requires that the **SPECIAL EXCEPTION** will be wholly compatible with the used and permitted development of adjacent properties.

Yes

*All three conditions are required to be met in order for the Board of Adjustment to grant your **SPECIAL EXCEPTION**. Failure to state how your **SPECIAL EXCEPTION** request meets these conditions in your application will result in its return without being submitted to the Board of Adjustment.*



I have completed the following requirements:

- 1. Paid the filing fee of \$200.00 (checks made payable to "City of Ovilla")
- 2. Submitted a scaled plot plan
- 3. Completed all sections of the application

I authorize _____ of _____
(Applicant's agent) (Address)

_____, to represent me in this **SPECIAL EXCEPTION** request before the Board of
Adjustment.
(Telephone)

Respectfully submitted:

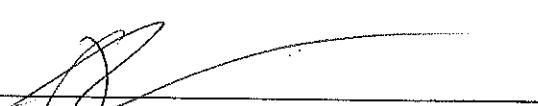
Applicant/Owner Name Ivan Garcia

Mailing Address 625 Meadowlark

Telephone (Hm) 972-338-0036

Telephone (Wk) same

Email Ivan Garcia construction 1981@gmail.com


Applicant's signature

2-7-19
Date

NO APPLICATION MAY BE ACCEPTED BY MAIL, MESSENGER, OR FAX.

APPLICATIONS CAN ONLY BE ACCEPTED IN PERSON

OFFICE USE ONLY

DATE RECEIVED: 2-7-2019 HEARING DATE: 3-18-2019

APPROVED: _____ DENIED: _____

BOA CHAIRMAN SIGNATURE: _____



**City of OVILLA Board of Adjustment
Findings of Fact for *SPECIAL EXCEPTION***

Applicant: Juan Garcia
Address: 625 Meadowlark

Case Number: BOA201819.04

Upon giving public notice and conducting a public hearing on this **SPECIAL EXCEPTION** request in accordance with Chapter 14, Section 35.3 Fences in Residential Districts of the Zoning Ordinance, the Board of Adjustment adopts these specific, written findings as follows:

	YES	NO
1. That the use is specifically permitted under the ordinance and the requirements for such use are met; and		
2. That the location of proposed activities and improvements are clearly defined on the site plan filed by the applicant(s); and		
3. That the exception, if granted, will be wholly compatible with the use and permitted development of adjacent properties.		

BOA Members present, and upon a record vote of:

FOR AGAINST ABSTAIN

Chair Carol Richtsmeier			
Vice Chair Richard Ware			
Member Stephanie Heimbuch			
Member Barbara Betik			
Member Ozzie Molina			
Alt. Member Patricia Halyard-King			
Alt. Member Mark Clark			

TOTALS:

FOR
AGAINST
ABSTAIN

The special exception is hereby:

granted _____ denied _____

Presiding Officer of BOA

DATE

Attest:

City or Board Secretary

DATE

Ovilla Zoning Board of Adjustment

AGENDA ITEM REPORT

Item: 2

DISCUSSION

Meeting Date: March 18, 2019

Attachments:

- I. Excerpts from Texas Local Government Code and Statutes

Agenda Item / Topic:

ITEM 2. - DISCUSSION – Review the required criteria for variances and special exceptions.

Discussion / Justification:

The Zoning Board of Adjustment requested information to review/discuss regarding statutes and Local Government Codes that pertain to Variances and Special Exceptions for the City of Ovilla.

Sample Motion(s):

Discussion only..



City of OVILLA Board of Adjustment Findings of Fact for VARIANCE

Applicant: _____ **Case Number:** _____
Address: _____

Upon giving public notice and conducting a public hearing on this **VARIANCE** request in accordance with Chapter 14 Section _____ of the Ovilla Code of Ordinances, the Board of Adjustment adopts these specific, written findings as follows:

	YES	NO
1. That special circumstances or conditions exist which are peculiar to the property, structure or building involved and which are not applicable to other lands, structures, or buildings in the same district.	✓	
2. That literal interpretation of the Ordinance will deprive the applicant of rights commonly enjoyed by other properties in the same district under the Ordinance.	✓	
3. That the special conditions and circumstances do not result from the action of the applicant.	✓	
4. The Board of Adjustment shall further make a finding that the reasons set forth in the application justify the granting of the variance, and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure; and	✓	
5. The BOA shall further make a finding that the granting of the variance will be in harmony with the general purpose and intent of this ordinance and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.	✓	

BOA Members present, and upon a record vote of:

	FOR	AGAINST	ABSTAIN

TOTALS:

— **FOR**
— **AGAINST**
— **ABSTAIN**

The variance is hereby: _____ granted _____ denied

Presiding Officer of BOA

Date

City or Board Secretary



**City of OVILLA Board of Adjustment
Findings of Fact for *SPECIAL EXCEPTION***

Applicant:
Address:

Case Number:

Upon giving public notice and conducting a public hearing on this **SPECIAL EXCEPTION** request in accordance with Chapter 14, Section of the Zoning Ordinance, the Board of Adjustment adopts these specific, written findings as follows:

	YES	NO
1. That the use is specifically permitted under the ordinance and the requirements for such use are met; and		
2. That the location of proposed activities and improvements are clearly defined on the site plan filed by the applicant(s); and		
3. That the exception, if granted, will be wholly compatible with the use and permitted development of adjacent properties.		

BOA Members present, and upon a record vote of:

FOR AGAINST ABSTAIN

TOTALS:

—
—
—

FOR
AGAINST
ABSTAIN

The special exception is hereby:

— granted

denied

Presiding Officer of BOA

DATE

Attest:

City or Board Secretary

DATE

Sec. 211.008. BOARD OF ADJUSTMENT. (a) The governing body of a municipality may provide for the appointment of a board of adjustment. In the regulations adopted under this subchapter, the governing body may authorize the board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, to make special exceptions to the terms of the zoning ordinance that are consistent with the general purpose and intent of the ordinance and in accordance with any applicable rules contained in the ordinance.

(b) A board of adjustment must consist of at least five members to be appointed for terms of two years. The governing body must provide the procedure for appointment. The governing body may authorize each member of the governing body, including the mayor, to appoint one member to the board. The appointing authority may remove a board member for cause, as found by the appointing authority, on a written charge after a public hearing. A vacancy on the board shall be filled for the unexpired term.

(c) The governing body, by charter or ordinance, may provide for the appointment of alternate board members to serve in the absence of one or more regular members when requested to do so by the mayor or city manager. An alternate member serves for the same period as a regular member and is subject to removal in the same manner as a regular member. A vacancy among the alternate members is filled in the same manner as a vacancy among the regular members.

(d) Each case before the board of adjustment must be heard by at least 75 percent of the members.

(e) The board by majority vote shall adopt rules in accordance with any ordinance adopted under this subchapter. Meetings of the board are held at the call of the presiding officer and at other times as determined by the board. The presiding officer or acting presiding officer may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

(f) The board shall keep minutes of its proceedings that indicate the vote of each member on each question or the fact that a member is absent or fails to vote. The board shall keep records of its examinations and other official actions. The minutes and records shall be filed immediately in the board's office and are public records.

(g) The governing body of a Type A general-law municipality by ordinance may grant the members of the governing body the authority to act as a board of adjustment under this chapter.

Sec. 211.009. AUTHORITY OF BOARD. (a) The board of adjustment may:

(1) hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this subchapter or an ordinance adopted under this subchapter;

(2) hear and decide special exceptions to the terms of a zoning ordinance when the ordinance requires the board to do so;

(3) authorize in specific cases a variance from the terms of a zoning ordinance if the variance is not contrary to the public interest and, due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship, and so that the spirit of the ordinance is observed and substantial justice is done; and

(4) hear and decide other matters authorized by an ordinance adopted under this subchapter.

(b) In exercising its authority under Subsection (a)(1), the board may reverse or affirm, in whole or in part, or 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, and for that purpose the board has the same authority as the administrative official.

(c) The concurring vote of 75 percent of the members of the board is necessary to:

(1) reverse an order, requirement, decision, or determination of an administrative official;

(2) decide in favor of an applicant on a matter on which the board is required to pass under a zoning ordinance; or

(3) authorize a variation from the terms of a zoning ordinance.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1993, 73rd Leg., ch. 126, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 724, Sec. 2, eff. Aug. 28, 1995.

Sec. 211.010. APPEAL TO BOARD. (a) Except as provided by Subsection (e), any of the following persons may appeal to the board of adjustment a decision made by an administrative official:

(1) a person aggrieved by the decision; or

(2) any officer, department, board, or bureau of the municipality affected by the decision.

(b) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed within a reasonable time as determined by the rules of the board. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(c) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by the board or a court of

record on application, after notice to the official, if due cause is shown.

(d) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal within a reasonable time.

(e) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1997, 75th Leg., ch. 363, Sec. 2, eff. Sept. 1, 1997.

Sec. 211.011. JUDICIAL REVIEW OF BOARD DECISION. (a) Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

- (1) a person aggrieved by a decision of the board;
- (2) a taxpayer; or
- (3) an officer, department, board, or bureau of the municipality.

(b) The petition must be presented within 10 days after the date the decision is filed in the board's office.

(c) On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

(d) The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

(e) If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

(f) The court may reverse or affirm, in whole or in part, or modify the decision that is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

(g) The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 363, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 646, Sec. 1, eff. Aug. 30, 1999.

Sec. 211.012. ENFORCEMENT; PENALTY; REMEDIES. (a) The governing body of a municipality may adopt ordinances to enforce this subchapter or any ordinance or regulation adopted under this subchapter.

(b) A person commits an offense if the person violates this subchapter or an ordinance or regulation adopted under this

subchapter. An offense under this subsection is a misdemeanor, punishable by fine, imprisonment, or both, as provided by the governing body. The governing body may also provide civil penalties for a violation.

(c) If a building or other structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained or if a building, other structure, or land is used in violation of this subchapter or an ordinance or regulation adopted under this subchapter, the appropriate municipal authority, in addition to other remedies, may institute appropriate action to:

(1) prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use;

(2) restrain, correct, or abate the violation;

(3) prevent the occupancy of the building, structure, or land; or

(4) prevent any illegal act, conduct, business, or use on or about the premises.

Sec. 211.013. CONFLICT WITH OTHER LAWS; EXCEPTIONS. (a) If a zoning regulation adopted under this subchapter requires a greater width or size of a yard, court, or other open space, requires a lower building height or fewer number of stories for a building, requires a greater percentage of lot to be left unoccupied, or otherwise imposes higher standards than those required under another statute or local ordinance or regulation, the regulation adopted under this subchapter controls. If the other statute or local ordinance or regulation imposes higher standards, that statute, ordinance, or regulation controls.

(b) This subchapter does not authorize the governing body of a municipality to require the removal or destruction of property that exists at the time the governing body implements this subchapter and that is actually and necessarily used in a public service business.

(c) This subchapter does not apply to a building, other structure, or land under the control, administration, or jurisdiction of a state or federal agency.

(d) This subchapter applies to a privately owned building or other structure and privately owned land when leased to a state agency.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.

Amended by Acts 1999, 76th Leg., ch. 476, Sec. 1, eff. June 18, 1999.

Conditions required for variance. No variance shall be granted without first having given public notice and having held a public hearing on the written variance request in accordance with section 23-2.2.6(b) of this chapter and unless the zoning board of adjustments finds:

(1)

That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter 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 this chapter.

Such findings of the zoning board of adjustments, together with the specific facts upon which such findings are based, shall be incorporated into the official minutes of the zoning board of adjustments meeting at which such variance is granted. Variances may be granted only when in harmony with the general purpose and intent of this ordinance so that the public health, safety and welfare may be secured and that substantial justice may be done.

(c)

Findings of undue hardship. In order to grant a variance from these zoning regulations, the board of adjustment must make written findings that an undue hardship exists, using the following criteria:

(1)

That literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

(2)

That the situation causing the hardship or difficulty is neither self-imposed nor generally affecting all or most properties in the same zoning district;

(3)

That the relief sought will not injure the permitted use of adjacent conforming property; and

(4)

That the granting of a variance will be in harmony with the spirit and purpose of these regulations.

(d)

[Condition.] A variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person a privilege in developing a parcel of land not permitted by this chapter to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship on another parcel of land.

(e)

[Burden of proof.] The applicant bears the burden of proof in establishing the facts justifying a variance.

(f)

Criteria to be used for special exceptions for nonconforming uses and structures. Upon written request of the property owner, the ZBA may grant special exceptions to the provisions of this chapter when such use or development is specifically authorized under paragraph (g) of this section. In reaching its decision the ZBA shall determine:

(1)

That the requested exception will establish only those uses permitted under the ordinance, that the location of the proposed activities and improvements are clearly defined on the site plan filed by the applicant; and

(2)

That the exception will be wholly compatible with the use and permitted development of adjacent property as legally filed and/or developed, or that the exception has such requirements that the ZBA finds necessary to protect and maintain the current stability or future lawful development of adjacent property; and

(3)

That these requirements may include, but are not limited to, conditions specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of the zoning ordinance.

(g)

Authorized special exceptions.

(1)

Expansion of a nonconforming use within an existing structure a maximum of ten (10) percent; provided that, in the case of a nonconforming residential use, such expansion does not increase the number of dwelling units to more than the number existing when the use first became nonconforming; or

(2)

Expansion of the gross floor area of a nonconforming structure a maximum of ten (10) percent.

(3)

Change from one (1) nonconforming use to another, reconstruction of a nonconforming structure that has been destroyed more than sixty (60) percent of its value, or resumption of a nonconforming use previously abandoned, only upon finding that the failure to grant the special exception deprives the property owner of substantially all use or economic value of the land.

(4)

Inadvertent encroachment of building over minimum yard requirements.

(5)

Building heights subject to restrictions as may be determined by the ZBA.

(6)

Alternate pavement surface, provided there are conditions showing the intent to conform to the pavement surface standards or for special conditions such as historic conformance for the purpose of authenticity in the Old Town District.

(7)

Garage requirements or placement, on property ten (10) acres or larger, if the primary structures' adjacency to other uses will not impact vehicle storage on or near right-of-way.

Ovilla Zoning Board of Adjustment

AGENDA ITEM REPORT

Item: 3

DISCUSSION & ACTION Meeting Date: March 18, 2019

Attachments:

None

Agenda Item / Topic:

ITEM 3. DISCUSSION/ACTION – Consideration of any item(s) pulled from the Consent Agenda above for individual consideration and action.

Discussion / Justification:

N/A

Sample Motion(s):

N/A