

**City of Richardson
Zoning Board of Adjustment
Agenda Packet
May 21, 2014**

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AGENDA
CITY OF RICHARDSON – ZONING BOARD OF ADJUSTMENT
WEDNESDAY, MAY 21, 2014
6:30 P.M.
CIVIC CENTER/COUNCIL CHAMBERS
411 W. ARAPAHO ROAD

BRIEFING SESSION: 6:00 P.M. Prior to the business meeting, the Zoning Board of Adjustment will meet with staff in the **Large Conference Room** located on the 2nd floor, Room 206 to receive a briefing on:

A. Discussion of Regular Agenda Items

1. **APPROVAL OF MINUTES OF REGULAR MEETING OF APRIL 16, 2014.**
2. **PUBLIC HEARING ON ZBA FILE SE 14-02 CONTINUED FROM APRIL 16, 2014 ZBA MEETING**, a request by Brian Campion, for approval of the following special exception to the City of Richardson Code of Ordinances:

Chapter 6, Article IV, Sec. 6-205(b), to allow corrugated steel, in conjunction with wood as an approved fencing material.

The property is located at 1317 Chippewa Drive.
3. **PUBLIC HEARING ON ZBA FILE V 14-07**, a request by Courtney Johnston, for approval of the following variance to the City of Richardson Comprehensive Zoning Ordinance:

Article IV, Sec. 4(f)(1), for a 4.5-foot variance to the 20-foot side yard setback for a corner lot adjacent to a side street.

The property is located at 1 Vicksburg Lane.
4. **RECESS**
5. **ADJOURN**

Accommodations requests for persons with disabilities should be made at least 48 hours prior to the meeting by contacting Susan Mattison, ADA Coordinator, via phone at 972-744-0908, via email at ADACoordinator@cor.gov, or by appointment at 1621 E. Lookout Drive, Richardson, Texas 75082.

I hereby certify that the above agenda was posted on the bulletin board at City Hall on or before 5:30 p.m., Friday, May 9, 2014.

Cindy Wilson, Administrative Secretary

Agenda

Item 1

**Approval of the minutes of the April 16, 2014
Zoning Board of Adjustment Meeting**

**MINUTES
ZONING BOARD OF ADJUSTMENT
CITY OF RICHARDSON, TEXAS
APRIL 16, 2014**

The Zoning Board of Adjustment met in session at 6:30 p.m. on Wednesday, April 16, 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
John Veatch, Member
Brian Shuey, Member
Shamsul Arefin, Alternate
Jason Lemons, Alternate

MEMBERS ABSENT:

CITY STAFF PRESENT: Chris Shacklett, Senior Planner
Mohamed Bireima, Planning Technician
Jennifer Patrick, Building Inspector
Cindy Wilson, Administrative Secretary

Mike Walker, Chairman, introduced Chris Shacklett, Senior Planner; Mohamed Bireima, Planning Technician; Jennifer Patrick, Building Inspector; and Cindy Wilson, Administrative Secretary, explaining that the City staff serves in an advisory capacity and does not influence any decisions the Board might make. Walker summarized the function, rules, and appeal procedure of the Zoning Board of Adjustment. Walker noted that all members are present and at least 4 of 5 must vote in favor for a request to be approved.

MINUTES:

The Zoning Board of Adjustment minutes of the March 19, 2014 meeting were approved as presented on a motion by Menke; second by Shuey and a vote of 5-0.

PUBLIC HEARING ON ZBA FILE V 14-06, a request by Gary V. Nedzinski, for approval of the following variances to the City of Richardson Comprehensive Zoning Ordinance: 1. Article IV-B, Sec. 4(g), for a 23-foot variance to the 25-foot rear yard setback for an existing garage; 2. Article IV-B, Sec. 4(g), for a 9-foot variance to the 25-foot rear yard setback for an attached patio cover at the property located at 2803 Tam O'Shanter Lane.

Shacklett stated the current owner purchased the home in 2013 and now desires to construct an attached patio cover on the rear (west side) of the home. Shacklett continued that the

applicant was informed by staff that no addition could be constructed since the existing attached garage encroaches twenty-three (23) feet in the required 25-foot rear yard setback along the west property line (adjacent to Canyon Creek Country Club). Shacklett noted the existing garage was originally constructed as a carport, and it appears it was later converted without a permit into a garage (between 2010 and 2012). Shacklett explained that although an attached carport is allowed to be located within three (3) feet of a rear property line, an attached garage is not.

Shacklett advised that in addition to the request for the existing garage encroachment, the applicant is requesting a variance to construct an attached patio cover that encroaches nine (9) feet into the 25-foot rear yard setback as shown on the attached site plan. Shacklett stated if the patio were detached, the patio cover would only be required to meet the 3-foot rear yard setback for accessory structures. Shacklett added the applicant stated that he wanted to tie the patio cover into the existing home to prevent future drainage/leakage issues.

Shacklett expressed that the applicant has stated that without a variance to the existing garage encroachment, it would not be possible for him to construct any additions to the home. Shacklett explained the applicant desires the patio cover to provide a shaded area overlooking the golf course that provides protection from the western exposure to the sun. Shacklett mentioned the applicant has indicated the location of the patio cover is limited by an existing tree in the rear yard and in addition, the topography of the lot, which slopes down toward Lookout Drive, creates a hardship as to where the patio cover can be located.

Shacklett clarified that the patio cover would be allowed in the proposed location, if it were detached. Shacklett noted the applicant feels the granting of the rear yard setback variance justifies limiting possible drainage issues that could occur from having a detached patio cover.

Shacklett stated regarding:

Variance Request #1: It is staff's opinion that a hardship exists because no addition or expansion can be permitted even if it conforms to the regulations in the Comprehensive Zoning Ordinance. Shacklett explained that without the variance to the existing garage, the structure will remain as non-conforming until such time that the encroachment into the rear setback is removed, or the structure is demolished.

Variance Request #2: Based on the information provided by the applicant, it appears a property hardship does not exist.

Lemons asked if there was any correspondence from neighbors regarding this case.

Shacklett responded that there had been no correspondence either in favor or opposition.

Shacklett confirmed Pratt's question regarding the notification of the Canyon Creek Country Club by stating that the Country Club was notified.

Gary V. Nedzinski, 2803 Tam O'Shanter Lane, Richardson, Texas came forward to present his case. Nedzinski stated that he is adding a patio and the slab is already in place, having been poured for some time. Nedzinski explained that he contracted with a gentleman that belongs to Canyon Creek Country Club. Nedzinski noted that he was not aware of the garage situation. Nedzinski expressed his concern that twice he has been to the title company and each time he was told there were no liens; no variances; nothing out of the ordinary. Nedzinski added that the title company suggested he might want to let the City know there is nothing in writing in the county records regarding the garage at his property and everything was good. Nedzinski said the placement of the patio gets sun directly from the West. Nedzinski stated he has experienced some skin cancer and needs shade. Nedzinski expressed his enjoyment of the outdoors, his idea that this project will add to the attractiveness of the neighborhood and his need for health precautions.

Menke asked the applicant what type of material made up the back wall of the garage.

Nedzinski responded that it is a solid, stained wall.

Chairman Walker redirected questions to the variance at hand.

Shuey asked Nedzinski is he considered the alternative of detaching the patio cover from the home. Shuey added that he understood that the patio could be developed without tying it into the house.

Nedzinski said moving the patio cover out from the home six (6) inches to a foot would cause problems when there was rain; ice; snow that would come into the home.

Arefin asked the applicant if he had considered making the patio part of the bedroom in future.

Nedzinski explained the patio will be open with a roof on top as well as having a stone bench; built in barbeque pit and eventually a built in stone refrigerator. Nedzinski added that the patio would never be enclosed.

Shacklett stated that to enclose the patio at any time would require another variance.

Nedzinski had questions regarding his property line.

Chairman Walker redirected questions to the business at hand and opened the public hearing.

Jay Dalehite, 315 Meadowlark, Richardson, Texas came forward to speak in favor of the request. Dalehite identified himself as a member of the Board of Directors of the Canyon Creek HOA as well as a friend of the applicant and one of the Canyon Creek residents. Dalehite asked how the garage was approved.

Shacklett responded that sometime between 2010 and 2013 when the garage was built, no permit was ever requested from the City and the garage was never inspected, leaving it an illegal structure. Shacklett continued that the applicant is welcome to get a new survey which is a legal document prepared and signed by a surveyor showing the rear property line. Shacklett added any dispute between the applicant and the Country Club is based on the survey of the plat of the original subdivision.

Dalehite confirmed that his questions had been answered and that he supports the applicant's request and would like to see it granted.

Shuey stated that it appears that the carport/garage conversion was done previous to the applicant's ownership. Shuey added that the patio could be built detached from the house and he supported that idea.

Menke made comments related to the back wall. Menke stated there are two parts to this request: 1. the garage and 2. the patio. Menke noted this is an inherited problem. Menke added that the patio cover looks good and he has no problem with this design.

Chairman Walker agreed with Menke's remarks and requested a motion.

Veatch made a motion to grant item number V 14-06 regarding the garage as presented, limited to those specifics the applicant presented in the case. Veatch also moved that a motion to grant item number V 14-06 regarding the attached patio cover as presented, limited to those specifics the applicant presented in his case. The motion, including both aspects (garage and attached patio cover), was seconded by Pratt and approved 5-0.

PUBLIC HEARING ON ZBA FILE SE 14-02, a request by Brian Campion, for approval of the following special exception to the City of Richardson Code of Ordinances: 1) Chapter 6, Article IV, Sec. 6-205(b), to allow corrugated steel, in conjunction with wood as an approved fencing material for the property located at 1317 Chippewa Drive.

Shacklett stated the applicant is requesting a special exception to the Fence Ordinance (Chapter 6 of the Richardson Code of Ordinances) to allow corrugated steel as a fencing material along the south property line and a portion of the east property line.

Shacklett explained the Fence Ordinance provides a list of permitted materials, including wood, masonry, chain link, and wrought iron, and a list of prohibited materials, including barbed wire, razor ribbon, sheet metal, and corrugated steel. Shacklett added that the applicant is requesting a special exception to allow the prohibited material to be used as a fencing material in the fashion as shown in his application and limited to the location shown on the site plan.

Shacklett reported the previous fence along the south property line and a portion of the east property line had been in a state of disrepair; therefore, the applicant reconstructed the fence in 2013 using a combination of galvanized steel and cedar. Shacklett added that the applicant did not apply for a permit stating he was not aware a fence permit was required for fences not visible from the street.

Shacklett pointed out the applicant chose to use the corrugated steel for the following reasons:

- More cost effective and durable compared to a standard wood fence.
- Requires less maintenance than a wood fence.
- Aesthetically pleasing and more desirable than a chain link fence or vinyl fencing, which are allowable materials.

Shacklett noted the applicant has also stated other cities allow corrugated steel as an approved fencing material and he feels the durability and low maintenance requirements for corrugated steel make it a desirable fence material.

Shacklett stated that the applicant is here to answer any questions and he may also have a document to present to the Board showing neighborhood support that he has gathered for the fence he has constructed.

Brian Campion, 1317 Chippewa Drive, Richardson, Texas came forward to present his case. Campion noted that Shacklett had done a good job of presenting the situation. Campion explained he had received several letters over the last ten (10) years he has lived at this address. Campion added that his fence was in poor condition. Campion stated the City allowed him to modify the fence by pushing it back up and adding dirt behind each post until it reached the point of being unfixable. Campion indicated he had time and resources to replace the fence over a Thanksgiving break. Campion added that he was misinformed years ago by someone saying because the fence is being replaced in the original spot; because it is not visible from the street; a fence permit is not required. Campion indicated he had seen a similar fence in the City of Dallas and following their lead from an environmental, cost, maintenance and aesthetics standpoint he built his fence in just two (2) days. Campion stated he was notified within a week that the fence was not approved and came in the following week and got a fence permit as part of the process as he was made aware of the requirement for a variance request. Campion explained that the corrugated steel is a galvanized material and the fact that the material is used vertically rather than horizontally extends the life of the fence greatly. Campion identified this as a totally different process for building a fence. Campion appreciates the aesthetics and the longevity of this fence. Comparison of the cost of a corrugated steel fence with that of a wood fence showed \$0.60 to \$1.00 for construction. Campion presented a petition to the Board polling neighbors regarding their like/dislike of the fence.

Menke asked about the applicant's application where he stated that several cities allow this type fence.

Campion responded that the City of Dallas allows this type fence.

Menke questioned the applicant if he had seen the regulations that allow the fence because a fence existence does not prove that it is allowed or in compliance. Menke continued by asking about the applicant's statement regarding the City of Carrollton's acceptance.

Campion mentioned there is some tolerance and some cities have prohibitive materials. Campion stated that a fence permit from the City of Carrollton has an option to check for galvanized metal as part of a residential fence code.

Arefin expressed that he has seen galvanized steel fences in Dallas for industrial buildings but he has not seen anything for residential. Arefin stated a child playing baseball in the backyard might hit the fence and it could make a huge noise and easily dent it.

Chairman Walker asked the applicant to inform the Board of his occupation.

Campion stated he is a contractor.

Chairman Walker asked what kind of contracting he does.

Campion responded that he does residential remodeling.

Chairman Walker stated it is difficult for the Board to understand that the applicant does not understand that fence material is not allowed in the City of Richardson, especially with extensive research of surrounding cities. Chairman Walker pointed out that the Board does not set precedence or approve new materials. Chairman Walker noted that the fence looks good to him and he likes the durability.

Campion stated that he does not do work in Richardson.

Chairman Walker asked Campion if he knew as a builder that he would not begin a remodel without determining what permits he needed.

Campion answered that he did. Campion continued that he had only seen this type of fence done in Dallas.

Chairman Walker asked the applicant if he had never seen this type fence in Richardson then wouldn't he want to check whether it was approved in Richardson, rather than building it first.

Campion stated yes.

Lemons asked how difficult it is to replace a panel in the fence.

Campion responded there are weather resistant, hex nut screws; it is not very difficult and can be accomplished in minutes.

Pratt stated his concern from an aesthetics perspective that one panel on the left that does not match the rest of the fence. Pratt continued by asking the applicant if he would be willing to redo that panel to match all the others.

Campion explained that he would not have a problem doing that. Campion added his yard slopes to the alley and for the walking side gate to function. Campion continued that there is more cedar on the inside of the fence than the outside.

Pratt added since this is a prohibited material in the City of Richardson, there are no standards for how to measure or when to require repairs/maintenance or replacement on the fence. Pratt asked Campion if he had any ideas regarding a reasonable standard for this type fence.

Campion stated he did not. Campion added there is an element to be played by indentation. Campion continued that because the use of wood is so minimal he did not see that failing. Campion noted that he also did not see rust as an issue. Campion stated he could see a request to change out panels due to indentation as reasonable.

Shacklett directed comment to Pratt that it would be difficult to craft those standards. If the Board determines to approve the request; the motion should contain wording such as; “. . .the fence must be in substantial conformance as presented at this meeting.”

Veatch commented that he felt the applicant's look at regulations in other cities happened after the fact.

Campion responded that he did look at other requirements after the fact.

Veatch added the fence looks OK and he finds nothing objectionable about the fence staying.

Luis Cowley, 1319 Chippewa Drive, Richardson, Texas came forward to speak in favor of the request. Cowley explained that as next door neighbor to the applicant he thinks the fence is a different style and although his preference is a wood fence, his neighbor's fence is OK and it looks good; sturdy.

Shuey asked if Cowley's fence shares a common line with Campion's fence, was Cowley aware that the fence violated code or did he have any concerns as the fence was being built

Cowley stated he had no concerns; that he never thought about it. Cowley added he was under the same impression as Campion concerning replacing a fence.

Shuey asked if both property owners who share a common property line have to submit permits when replacing a fence on.

Patrick responded that the requirement is dependent on who was doing the work; if other portions of the fence work were being done. Patrick added in this case if Lot 10 was to come in and want to erect a fence down that property line they could do it or Campion could do it. Patrick emphasized it is a common property line, so both owners have the right to make the request.

Michael Baker, 1225 Chippewa Drive, Richardson, Texas came forward to speak in favor of the request. Baker stated that compared to other fences in the alley, Campion's fence looks great. Baker added that he has been close to the fence and it is well-built and built to stay.

With no more comments in favor or in opposition, Chairman Walker closed the public hearing.

Pratt noted that the aesthetic of this fence is not his preference; however, it is OK and seems to be appreciated by a number of those in the neighborhood. Pratt added he would like to see the applicant finish the overall fence by making the last panel match all the others. Pratt emphasized that if the Board decides to approve the request it is important to include some of Shacklett's comments regarding the provision of standards to measure when this fence is failing; when the material needs maintenance because it is not a part of the code.

Shuey stated he does not see the fence as unattractive, however he does see how this fence application could go wrong and he takes issue with that. Shuey added he does not see how this could be viewed as a hardship and he could not support it.

Veatch explained his thought that if the Board is concerned about durability and maintenance he felt this fence should be held to the same standards to which all other fences are held. Veatch added that he likes the aesthetics of the fence.

Menke shared his concern that if this material is approved for this fence, what stops someone in the future from deciding to have the fence rails on the inside for security purposes leaving only straight sheet metal and no wood visible on the back fence.

Shacklett supported the idea that once a material listed as prohibited is allowed, questions arise. Shacklett added that this case could be limited to the specifics presented here as well as adding conditions mentioned by Pratt.

Veatch brought to the attention of the Board that this special exception case is only about this one request and nothing more. Veatch added the importance here is to confine efforts to looking specifically at this instance only.

Lemons stated his concern comes from the fact this is a prohibited material that was probably included on that list for a reason.

Pratt made a motion to grant item number V 14-06 regarding the garage as presented, limited to those specifics the applicant presented as his case; that it shall remain substantially as presented regarding the wood and metal aesthetic, as well as the condition that the fence and gate panel be modified to match that aesthetic. Veatch seconded the motion. The motion failed with Shuey and Menke in opposition.

Shacklett reminded Chairman Walker that a supermajority vote is required to grant the request. If a motion does not pass this evening; the request will be deemed denied. Shacklett listed alternatives as follows: 1. further discussion; 2. additional information required of the applicant; 3. ask the applicant to come back for the next meeting.

Lemons stated he would be interested in the limitations of the requirements in the cities of Dallas and Carrollton regarding the use of galvanized steel.

Shacklett offered information that in the City of Carrollton, corrugated metal panels as a prohibited material. Shacklett added that other cities – Frisco, Allen, McKinney, Plano – Frisco and Plano prohibit the use; Allen and McKinney have “Other building materials approved by Building Official, and this language does not appear in the prohibited section.” Richardson also has this language; however it appears in the permitted section. Shacklett explained some cities specifically prohibit the use of this material, while other cities are not addressing it.

Arefin stated this material was prohibited for a reason and it is important to understand why it was not allowed. Arefin added that depending on the reason he had no problem approving this request.

Menke acknowledged his agreement with the last two (2) speakers. Menke added the idea of approving a prohibited material that is the majority material used in the fence concerns him.

Shacklett offered that the last update to the building materials list was in 2000 and prior to that the list was updated in 1966. Shacklett stated if this information helps with decisions tonight, we could obtain a copy of the Ordinance No. 3285 and that will address what changed in 2000. Shacklett added that if there was no change in 2000 that corrugated steel has been a prohibited material since 1966 and if this is the case, there is little to no information regarding the material. Shacklett added that if the information in Ordinance 3285 could help with a decision tonight, it would be easy to call a brief recess and provide the Board with a copy of the ordinance.

Chairman Walker stated to the Board several things could be done at this time: 1. take a break and get more information from Shacklett; 2. continue the case to the next meeting; 3. have another vote to approve/deny the request.

Veatch had a question regarding a continuance and what the Board should expect to be presented the next meeting that has not been presented in this meeting. Veatch added that the fact Campion brought out that the corrugated steel is galvanized is a very important point.

Chairman Walker addressed the Board, asking what additional information is needed to help form a decision.

Chairman Walker asked the applicant to return to the podium.

Campion stated there has probably been a drastic reduction in chain link fences over the past few years because from aesthetics and maintenance standpoints, they rust out. Campion added that there has also been a rise in appreciation of the aesthetics of corrugated steel that can be found in numerous restaurants.

Chairman Walker called for a five (5) minutes recess at 7:46PM.

At 7:51PM Chairman Walker called the meeting to order.

Shacklett reported that the ordinance that changed Sec. 6-205, Permitted, Prohibited Materials part of the code appeared to be a comprehensive re-write of all or a portion of the fence ordinance. A review of the 2000 update of the Permitted, Prohibited Fence Materials did not give a history within the ordinance. However, corrugated steel, sheet metal are listed as prohibited materials. The material could have been added then or it could have been in place previously.

Shacklett reminded Chairman Walker that a supermajority vote (4 out of 5 votes) is required to grant the request.

Discussion ensued concerning By Laws and voting.

Pratt expressed his view that it is important to him that this case is not precedent setting and it is specific to this property in this area where the neighbors see the material as appropriate.

Veatch expressed that if the Board does not want to specifically deny this special exception, then a vote can be taken regarding a continuance.

Shacklett confirmed for Chairman Walker that it would be in the applicant's best interest not to withdraw his request because that would result in a six (6) month waiting period before he could appear before the Board again.

Chairman Walker explained that one reason the Board is here is to protect the integrity of neighborhoods. Chairman Walker expressed appreciation for the good deliberation taking place between members. He added that after new information and discussion he suggests a motion.

Shuey stated he has no problem with galvanized steel for industrial purposes, but not for residential use. Shuey noted that he would like more information on why this material was deemed a prohibited material.

Lemons agreed with Shuey. Lemons also pointed out that the many developments mentioned earlier are all commercial developments, not residential.

Shuey moved to continue case SE 14-02 to the 5/21/14 ZBA Meeting. The motion was seconded by Pratt.

Members of the Board asked for more information regarding the rationale of other municipalities regarding the use of corrugated steel, information from Building Inspection to determine the use in residential projects, information on whether corrugated steel was added to the list of prohibited materials in 2000 or if it has been on the prohibited list since 1966.

The motion was approved 5-0.

There being no further business, the meeting was adjourned at 8:13 p.m.

Mike Walker, Chairman
Zoning Board of Adjustment

Agenda Item 2

**SE 14-02:
1317 Chippewa Drive**

Agenda

Item 3

V 14-07:
1 Vicksburg Lane