



**Meeting Minutes**  
**Board of Adjustment**

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Tuesday, June 22, 2021

5:00 PM

Council Chamber

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*4:30 - 5:00 PM - Work Session for Agenda Review*

Chairman Moore opened the work session at 4:30 PM.

Jessica Rees, City Planner, presented case BOA 21-002 via PowerPoint. She explained the timeline from the initial discovery of the construction to present day. The structures were constructed without obtaining a building permit nor having inspections performed. Photos of before and after construction and an aerial view of the two-hundred foot (200') were displayed and explained. Mrs. Rees noted that the applicant provided fifteen (15) letters from surrounding neighbors. This case consists of two (2) requests regarding the maximum 50% rear lot structure coverage and the side and rear yard setbacks for the shed and pergola. For the first variance request, the applicant is allowed nine hundred fifty five and a half (955.5) square feet and it currently sits at one thousand two-hundred fifty (1,250) square feet, therefore, it is twenty-four percent (24%) over the allowable structure coverage. A calculation table was displayed and explained. For the second variance request, the current structures are continuous, therefore it needs to comply with the required five foot (5') side yard setback and the twelve foot six inch (12'6") rear setback. The structures were built without obtaining a permit. The current construction has no side/rear setbacks and look to be over the property lines. A detached structure is defined as having a six foot (6') distance from the main structure, therefore the existing conditions do not meet this classification. A recent Survey, site plan and construction photos were explained and displayed.

Board Member Jackson questioned if the height of the current fence is an issue. Mrs. Rees stated the completed work was not reviewed for a building permit. Mr. Jackson confirmed the provided plans state the fence is eight foot and six inches (8'6"). Mrs. Rees stated the rear fence and storage shed are also encroaching into the Right of Way about three to six inches (3"-6"). Variances cannot be granted for Right of Way encroachments as they are prohibited.

Rob Dillard, City Attorney, questioned if the storage shed were moved to the backyard, will that contribute to the allowable coverage calculation. Mrs. Rees confirmed anything exceeding thirty inches (30") is considered a structure and will count towards the coverage calculation.

Photos of the roof structure, pergola and storage shed were displayed.

Mr. Dillard questioned if the house next door is vacant. Mrs. Rees stated the

next door unit of the Single-Family Attached dwelling is occupied.

Board Member Lane questioned if the pergola was removed, the completed patio deck would not be an issue. Mrs. Rees confirmed.

Board Member Lane questioned the definition of the six feet (6') separation. Mrs. Rees replied it is from the closest part of the main and accessory structures. If the pergola was considered a detached structure, it would need to comply with the three foot (3') side and rear setbacks.

Board Member Snelling questioned if the gable roof and pergola roof are connected. Members confirmed they are connected and within a six foot (6') distance.

Board Member Lane expressed his concern of water run off from the pergola into the neighbor's property.

Carlos Fransen, Building Official, stated separation will be required due to fire safety and drainage codes.

Mrs. Rees stated the completed work would not have passed building plan review. Regardless if the applicant is granted or denied a variance, certain issues need to be modified to meet code.

Mrs. Rees explained that staff does not think a property hardship exists and recommends denial of this request. Staff also recommends a comply date be implemented within the Board's Order.

With no further questions, Chairman Moore closed the work session at 4:45 PM.

#### *Call to Order*

Chairman Moore called the meeting to order at 5:00 PM.

#### *Introduction of Board Members*

**Present:** 5 - Chairman Eddy Moore, John Jackson, Darrell Lane, Clay Snelling and Jeff Barnes

**Excused:** 4 - Bobby Womble, Eurico Francisco, Ann Shaw and Duncan Fulton

**Seated:** 1 - Dan McKeithen

#### *Staff in Attendance*

Jessica Rees, City Planner  
Carlos Fransen, Building Official  
Rob Dillard, City Attorney

*The Board of Adjustment of the City of University Park will conduct a public hearing in the Council Chamber. Consideration will be given to the following item(s):*

[BOA 21-002](#)

Property owners, Paul & Leslie Gleiser, requesting two variances for their backyard improvements regarding the maximum 50% rear lot structure coverage and the side and rear yard setbacks for the shed and pergola.

Board Member Jackson read case BOA 21-002. Chairman Moore opened the public hearing and swore-in those persons who wish to speak on the issue. Chairman Moore requested the applicant present their case.

Leslie Gleiser, applicant and owner of 3444 Asbury, has lived in University Park for over twenty-three (23) years and is active with servicing the City. She has contributed to help issues that the Asbury block faces. She stated the existing backyard is more than 50% paved due to the prior owner parking their RV in the backyard. She stated this affected contractor bids for potential backyard improvements, therefore her and her husband took it upon themselves to complete this project. She is willing to modify the current construction to meet code. She expressed the hard work and expense that has been put into this project. She stated nearby neighbors have no issue with the current construction.

Chairman Moore explained the three (3) decisions this quasi judicial body can rule on compared to the Planning and Zoning Commission and City Council. He explained the charge for BOA cases is to determine whether a property hardship exists, which is defined as a hardship with the physical nature of the property. Chairman Moore re-iterated that this Board has strict limitations on case decisions.

Board Member Jackson expressed the way to resolve this issue is to deny this request and have the current construction comply with the code. He stated working without a building permit is subject to a misdemeanor and fines, the outcome of this case needs to be handled with staff.

Chairman Moore explained that specific issues are communicated during plan review for a building permit. Chairman confirmed this project was constructed without a permit. Mrs. Gleiser confirmed.

Board Member Lane explained that this Board cannot judge based on the physical appearance of construction for cases. He expressed his concern regarding the water drainage to the neighbor on the West side and the importance of having a setback from the property line. He stated he has no issues with the patio deck.

Mrs. Gleiser asked if the installment of a gutter would suffice. Board Member Jackson stated gutters can overflow, therefore a side yard setback is required.

Mrs. Gleiser explained the current location of the pergola and deck will not be

useful if they are setback. Board Member Lane stated he is not authorized to design a code compliant plan, but due to the pergola and patio deck being connected, a setback is required. Mrs. Gleiser clarified they are not connected.

Board Member Snelling clarified the pergola and patio require at least 6' (six feet) separation. Mrs. Gleiser stated they are less than the required distance.

Board Member Snelling suggested reducing the size of the pergola and setting it back 3' (three feet) on the alley and side property line.

Board Member Lane stated if the pergola is six feet (6') or more from the covered patio, it is considered a detached structure, therefore it needs to meet different setback requirements.

Chairman Moore explained the term detached structure is defined in the Zoning Ordinance.

Mrs. Gleiser stated her ultimate goal is to configure the current construction to meet code.

Chairman Moore questioned the distance between the patio and the pergola. Mrs. Gleiser replied it is less than one foot (1') in distance.

Board Member Barnes clarified if the applicant understands a mistake was made upfront and for that reason, some members may be opposed. He expressed the importance of discussing proposed plans with city staff prior to any start of construction. Mrs. Gleiser confirmed she understands.

Chairman Moore clarified that this request is for variance regarding the coverage of the lot and side/rear setbacks. Mrs. Gleiser confirmed.

Chairman Moore stated although Board Member Snelling expressed his opinion regarding construction modifications, this Board has no background in architectural design. Chairman Moore requested city staff present this case.

Jessica Rees, City Planner, explained this situation was discovered by a City Code Enforcement Officer, in which a Notice of Violation was sent to the property owner. Next, a City Building Inspector and Building Official perform a site inspection confirming the work is not in compliance. Conversations were held via email between the owner and Carlos Fransen, City Building Official, regarding the items of construction that do not meet code and the documents needed for permitting. Mrs. Gleiser provided plans that did not meet code and Mr. Fransen explained the reasons why. Finally, Mrs. Gleiser applied for a variance. Mrs. Rees displayed the lot Survey and site plan, which included the new improvements. Mrs. Rees explained this project consists of building, fire and electrical work that was not permitted nor inspected. Pictures of the current improvements were displayed and items not in compliance were explained. No property hardship is identified with this parcel, therefore staff recommends to deny this request and bring the current construction into compliance within a timely manner.

Board Member Lane clarified there is no issue with the proposed deck. Mrs. Rees confirmed and stated the lot coverage meets the allowable lot coverage percentage.

Chairman Moore questioned when the fence work was done, if the storage structure was moved closer to the alley. Mrs. Gleiser stated the storage was constructed with the fence, however the existing fence was replaced only and no posts were removed. She also stated she is prepared to conform this to code.

Chairman Moore stated this Board has no authorization to take action regarding the storage structure in the Rights of Way, since this is prohibited. He also questioned if there is any work to be done that is not included with this request. Mrs. Gleiser stated she may plan on installing grass.

With no further questions to the applicant, Chairman Moore closed the public hearing at 5:33 PM.

Board Member Barnes stated he believes this request should be denied. Board Member Jackson agreed.

Chairman Moore requested a time frame be set in order to ensure this project becomes code compliant and the applicant re-submit to this Board if needed.

Rob Dillard, City Attorney, clarified that cases cannot roll over, unless a case is denied without prejudice. If so, the applicant can return with a different case request. Mr. Dillard stated another option the applicant has is for City Council to approve license agreement for encroachments into public Right of Way.

Chairman Moore clarified this option is a discussion matter, however City Council determines and has final authority on the encroachment areas.

Discussion was held regarding the decision to implement a time frame in the Order.

Chairman Moore and Board Member Jackson agreed that the applicant must re-submit a site plan for building permit review and inspections must be performed.

Board Member Jackson expressed his concern regarding emergency vehicles having issues accessing the alley way due to the Right of Way encroachments.

**A motion was made by Board Member Barnes, seconded by Board Member Lane, that this variance be denied without prejudice. A motion carried by unanimous decision.**

*ADJOURNMENT: With there being no further business before the Board, Chairman Moore adjourned the meeting at 5:44 PM.*

*Approved by:*

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*Chairman Eddy Moore*

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*Date*