



**MINUTES OF THE LEON VALLEY
BOARD OF ADJUSTMENT
December 21, 2015**

I. ROLL CALL

The meeting convened at 7:10 p.m., and Members Lupe Carpio, Vivian Pankey, Liz Maloy and Pat Martinez were present; and Member Barbara Dean was absent. Also present at the meeting was City Manager Kelly Kuenstler and Community Development Director Elizabeth Carol, acting as recording secretary.

II. NOMINATION AND ELECTIONS OF OFFICERS

Board Member Lupe Carpio made a motion to nominate Member Liz Maloy as the Chair, which was seconded by Vivian Pankey, and the nomination was approved. Then Vivian Pankey made a nomination to nominate Member Lupe Carpio as Vice Chair, which was seconded by Pat Martinez, and approved. Vice Chair Carpio made a motion to nominate Vivian Pankey as Second Vice Chair, which was seconded by member Pat Martinez and subsequently approved.

**III. BOARD OF ADJUSTMENT CASE NO. BOA 2015-1541
(David and Susan Smith, applicant and property owner)**

A variance to the Leon Valley Code of Ordinances, Chapter 14, "Zoning," Section 14.02.306 to allow a single family home at 7477 Linkwood.

- A. Subsection (c.2), rear yard, specifically to grant a variance to encroach twelve feet (12') into the required thirty foot (30') Rear Yard Setback on lot 35.

Chair Maloy opened the public hearing at 7:15 p.m. After being sworn in, Ms. Carol presented the case information and stated that BOA Case #2015-1541 (A), was requested by Mr. Mrs. David Smith, applicant and property owner, for a variance to L.V.C.C, Chapter 14, "Zoning," Section 14.02.306 (c.2), "rear yard" setback requirements, specifically to grant a variance to encroach twelve feet (12') into the required thirty feet (30') Rear Yard Setback to construct a single family home, at 7477 Linkwood, being Lot 35, Block E, CB 4446A, Linkwood Amending Plat Subdivision. Staff then provided a historical overview of the setback variances that had previously been considered by the Board in the surrounding area.

Staff also stated that 21 letters were mailed to property owners within 200 feet and that, as of the meeting, no letters were received in favor, one (1) letter received in opposition, and one was returned as undeliverable.

After being sworn in, applicant and property owner David Smith addressed the Board and noted that the variance was needed because he is retired and that the house needs to be designed with ADA features to allow for a tropical outdoor space that avoids the northwest portion of the lot. He goes on to indicate that in 1956 Allied Development filed the deed restrictions for Linkwood and that those restrictions are unchanged to date.

Chair Maloy, inquired if any of the board members had any questions, and there were none and she noted that she had several. She wanted to know if the roof would be prefabricated roof trusses or stick built and if that would mean a higher roof pitch. Mrs. Smith (retired architect) responded that it would be stick built, but that it would not necessarily alter the pitch of the roof

Mr. Smith then went on to note that the setbacks in Linkwood have always been 5", which was concurred by the Chair, who then noted that City Code would also apply.

Board Member Pankey, noted that a letter provided by Ms. Noela Benavidez to the Board expressed concern about the lack of sunlight on adjacent properties, and Mr. Smith responded that the property owner did not live adjacent to lot 35. The adjacent property owner is north of lot 34.

Mr. Jim Bailey expressed concern that if Mr. Smith receives a variance, on behalf of lot 35, then other property owners will want the same consideration. He went on to note that he has lived there for 18 years and that flooding has been an issue, especially given the approximately five foot drop between Linkwood and Linkview. In addition, it was noted that they have added trenches to divert the water and with the added encroachment, would mean that the water problem would increase. Mr. Bailey also expressed concern that the proposed house will be too close to my backyard, blocking the sun and reducing the breeze.

The Chair noted that less than five percent of the property owners within Linkwood have requested a variance.

Mr. Smith inquired as to the size of Mr. Bailey's rear setback line. Mr. Bailey responded that it was greater than thirty feet, but the house was built by the previous property owner. Bailey then went on to note that he would prefer to move the house towards the front, as it would be wasted space.

Ms. Gloria Garcia noted that her home is downhill from the applicant's property and that they have existing drainage concerns from that direction. She went on to note that when her home was being constructed she was notified that the design was in violation of the setback lines and that she had to redesign her home in accordance with the setbacks.

Ms. Margaret Gately indicated that she concurred with Ms. Garcia's concerns regarding Mr. Smith's variance request.

Ms. Lori Calvillo noted that she came to the meeting to get a better understanding of the proposal, and was not in favor or opposed to the variance.

Mr. Jesse Carrizales, indicated that he lives next door to lot 35 and that he is opposed to the variance as indicated in the letter he provided to the Board.

Mr. Smith requested the opportunity to speak again and he noted that the streets function as the storm drainage, and that everything would run in the street. He also noted that the rain would not increase because of the size of the house.

Chair Maloy noted that yes drainage does run in street; however these property owners are abutting your lot and the street would not divert the water. The size of the proposed setback would reduce the amount of water could be absorbed by the soil.

Mr. Smith then went on to note that the water would run in the same direction that it currently flows.

Chair Maloy replied that the water is currently being absorbed by ground, would be diverted due to impervious cover.

Mrs. Smith noted that there are ordinances that prevent you from directing water to another property owner, and that French Drains could be used to address these concerns.

The discussion continued between the applicants and the board regarding the elevation of the street in relationship to the house, backyard and alleyway. Board Member Pankey noted that there is a drainage problem in the area, which would get worse, once a structure was added.

Ms. Smith replied that everyone was stating that they did not want a house at that location. Member Pankey and Chair Maloy noted that the opposition was tied to the setback line, not the house itself.

When asked if they would be agreeable to building a smaller house. Mr. Smith replied that the design meets their needs and their lifestyle.

Chair Maloy closed the public hearing and opened the floor for the Board to discuss.

Board member Pankey noted that the dialog was excellent and was pleased to see so many neighbors participating in the process; however she was concerned about the drainage being forced into the neighbor's backyard.

Member Carpio, noted that the drainage problem would negatively impact the property owners to the rear.

Chair Maloy then goes on to note that the BOA is like a court case and that in order to get a variance; the burden of proof is on the applicant to demonstrate:

- That there are special circumstances;
- Strict enforcement would deprive property owner of the privileges;
- Conditions were not self-imposed;
- Does not grant a special privilege; and
- That no reasonable use can be made of the property without the variance.

Board Member Martinez noted that her house is on a slope and that you cannot direct the water towards another property owner.

The Chair noted that if there were no other questions, would someone make a motion. Member Pankey made a motion for denial of the variance request, which was seconded by Member Carpio. The motion passed unanimously. The Chair then noted that the applicant may want to redesign their home in keeping with the existing setback lines.

Ms. Carol presented the applicant's request for a variance to the Leon Valley Code of Ordinances, Chapter 14, "Zoning," Section 14.02.306, subsection (b.2), frontage, specifically to grant a five (5') foot variance to the minimum frontage requirements of seventy (70') feet along the public Right of Way on lot 34. The Chair opened the floor for "B" and the Board had questions related to the need to replat, if it would be considered by City Council and Maloy noted that the future owner of lot 34 would have enough room to build a house on the lot.

The Chair then noted that there were no additional concerns and requested a motion. Member Vankey made a motion to approve the variance, which was seconded by Member Carpio. The motion passed unanimously.

Chair Maloy thanked the applicant and the neighbors for attending and being involved in the community, particularly given the holiday.

VI. OTHER BUSINESS

None.

VII. ADJOURN

There being no further request for discussion, Vice Chair Lupe Carpio moved to adjourn the meeting. 2nd Vice Chair Vivian Pankey seconded the motion and the motion carried unanimously by voice vote.

TIME: 8:05 p.m.



 STAFF



 CHAIR