

**MINUTES
CITY OF ELGIN BOARD OF ADJUSTMENT
REGULAR MEETING
THURSDAY, JANUARY 09, 2025**

- I. CALL TO ORDER-ROLL CALL:** The Chair called the meeting to order at 6:30 P.M. at the Library Annex (Civic Center) located at 404 N. Main St., Elgin, TX, U.S.A.

BOARD PRESENT: Chair Regan Dumbeck, Vice-Chair Darren Mogonye, Stephen Kylberg, Stephen Finley, Suzannah DesRoches (Senior Alternate), and S. H. McShan.

BOARD ABSENT: None

STAFF PRESENT: Beau Perry, Development Services Director; Melissa Lipiec, Planing Technician; William McIlvain, Administrative Assistant; Orlando Rodriguez, Code Compliance Supervisor; Charlie Navejas, Permit Technician; Alyssa Loveday of WGA, Assistant Project Manager.

STAFF ABSENT: None

- II. PUBLIC COMMENT FOR NON-AGENDA RELATED ITEMS:** No members of the public were present to speak on this item.

III. CONSENT AGENDAS

1. December 12, 2024 Minutes.

Stephen Finley moved that the Board approve the consent agenda. Stephen Kylberg seconded the motion. The motion passed unanimously with a vote of five (5) for and zero (0) against.

IV. NEW BUSINESS

1. Project # 202400085: A zoning variance from Section 46-265 (1) in order to decrease the minimum depth of the front yard from 25 feet to approximately 15 feet to allow for the persistence of an already-constructed car port and a variance from Section 46-265 (6) in order to increase the percentage of allotted impervious coverage which can be covered by accessory buildings from 10% to 24% to allow for a total of 2,200 square feet of already-constructed accessory buildings in the "R-2" – Single-Family and Duplex Dwelling District at 608 Old McDade Rd (Parcel number 10901, A20 CHRISTIAN, THOMAS, ACRES 0.4710, as located in Bastrop Co.).

- A. Staff Presentation – Director Beau Perry presented the two variances being applied for, one to allow for the reduction of setbacks and the other to allow for a greater allocation of impervious coverage to accessory buildings, which the Board can make a motion on together or independently. He presented an area coverage estimate that showed the dimensions and impervious coverages of the residence and accessory structures. He also presented the Notice of Violation issued to the Applicant for the unpermitted construction of the car port in the setback. Chair Regan Dumbeck requested clarification about the order of construction of these structures, and Director Perry communicated that the only original structure known was the residence and that only in the review of the site following application for the permit for the car port was the larger 1,700 square foot structure and its violation of impervious coverage discovered by Staff.

Vice Chair Darren Mogonye requested clarification of the code surrounding impervious coverage, and Director Perry clarified that the code allows 45% of the lot area to be covered by impervious coverage but then only 10% of that 45%, or 4.5% of the total lot area, may be occupied by accessory buildings. The newly discovered and unpermitted 1,700 square foot structure thus exceeded that 10% of allotted impervious coverage by accessory buildings, even though it did not exceed overall impervious coverage allowed on the property. This ordinance is in place to prevent accessory buildings from eclipsing the primary residence in a residential district.

IV. NEW BUSINESS (Cont.)

Chair Regan Dumbeck revisited the question of the order of construction, and asked whether any required reversion would be made to bring the structure back to the limit of any pre-existing concrete pad. Melissa Lipiec established that there had been a previous structure in that space but the degree of its expansion was unknown, and Director Perry confirmed that regardless of the dimensions of the pre-existing structure the violation of impervious coverage takes all current property into account and so any variance granted by the Board would factor all buildings into account, not just new construction.

- B. Applicant Presentation – The Applicant Jorge Hurtado was present to speak, and City Code Compliance Supervisor Orlando Rodriguez served as translator to the Board. The Applicant explained that the dimensions of the previous concrete pad that had been expanded into the 1,700 square foot structure were 20 feet by 30 feet, which he then expanded with a 40 foot by 25 foot slab at some time in April or May 2025 without a permit. Vice Chair Darren Mogonye asked for an explanation about the lack of permit for that expansion. The Applicant explained that he had checked for the City permitting process regarding car ports and he had found that one was not required, so he had constructed it without one. Chair Regan Dumbeck asked for clarification that the addition of the 40 x 25 ft slab was intended to be a car port separate from the newer 20 x 25 ft car port at the front of the property, which the Applicant confirmed. Chair Regan Dumbeck remarked that photographs of the current structure show chairs, kitchen equipment, a hot tub, and other utilities unexpected for a carport. The Applicant claimed that the original 20 x 30 ft slab had been used for kitchen utility, and that the hot tub was temporary. Chair Regan Dumbeck remarked that the hot tub did not look temporary, and Vice Chair Darren Mogonye asked if the space was used for parties and get togethers, which the Applicant confirmed.

Chair Regan Dumbeck asked Director Perry if pouring a concrete slab requires a permit, and Director Perry confirmed that all flatwork does. Chair Regan Dumbeck asked the Applicant where he had read that building on the slab did not require a permit, and the Applicant admitted that he had not done research on that matter. Chair Regan Dumbeck asked for clarification on where the Applicant had read that pouring a concrete slab did not require a permit, and the Applicant claimed that he had not found that information and had poured it without thinking. Vice Chair Darren Mogonye asserted that this admission was contrary to the previous claim that the Applicant had found City code allowing pouring of concrete without permit. The Applicant explained that he meant that he had found City code allowing the construction of the car port in the front of the property, but had not researched the permitting process of pouring concrete or constructing the 1,700 square foot structure that was intended also to serve as a car port. Vice Chair Darren Mogonye reiterated that Staff had confirmed that permitting is required for all pouring of concrete. The Applicant expressed his willingness to correct the situation. Chair Regan Dumbeck explained that the intention of the Board is to figure out what the correction would entail, and Director Beau Perry communicated that the decision of the Board is absolute. Melissa Lipiec added that if the Board requires the removal of the structure(s) then the Applicant must either do so or appeal the determination in district court.

Vice Chair Darren Mogonye wanted additional clarification as to the 20 x 25 car port in the front setback. Melissa Lipiec and Director Beau Perry outlined the series of events leading to these variance applications: a neighbor had issued a complaint about a car port built in violation of setback code, and that the City's Code Compliance department's investigation revealed that the car port had been built outside the required permitting process. The Applicant was issued a Notice of Violation for the car port, and the Applicant had been instructed to apply for a permit. In the permitting process the site plan of the property revealed another larger unpermitted structure which exceeded the Applicant's allowed impervious coverage to be occupied by accessory buildings, thus requiring a second variance application. The Applicant confirmed that the 20 x 25 car port had been constructed in March of 2023.

IV. NEW BUSINESS (Cont.)

The Applicant remarked that he has seen numerous car ports constructed within the City and believed that he would be allowed to do similar, and Chair Regan Dumbeck asserted that every decision made by the Board of Adjustment about similar car ports is made on an individual basis and that the circumstances of each situation uniquely influences the Board's decision. Suzannah DesRoches added that some structures within the City predate the code and are thus grandfathered in, and Chair Regan Dumbeck agreed but clarified that does not provide a precedent for new construction.

- C. Open Public Hearing – The public hearing was opened at 7:01 P.M. Jacob Carter was present to speak, representing himself and a neighborhood community group of roughly half a dozen. He expressed a desire to disallow the variance of the front setback due to visibility concerns in the neighborhood. He also disputed the claim by the Applicant that any portion of the 1,700 square foot structure was longstanding, claiming that the 20 x 30 foot slab is newly poured. He also expressed a concern about the impervious coverage and that the low-lying surrounding area is made vulnerable by a reduction of available impervious coverage. Chair Regan Dumbeck asked for clarification on how long Jacob Carter has lived in the area and how new Jacob Carter believes the new concrete to be, as Chair Regan Dumbeck had reviewed Google Earth to find evidence of existing concrete in 2018 or 2019. Director Beau Perry reiterated that the 20 x 30 foot slab would have been within the property's impervious coverage allotment, so regardless of the date of the initial slab's pouring it is the more recent expansion which is what caused the violation.

Melissa Lipiec also presented two emails received by Staff from neighbors opposing the granting of the requested variances. Stephen Finley asked whether Jacob Carter was speaking on behalf of either of the people who had submitted these emails, which Jacob Carter confirmed. Stephen Finley inquired as to whether the neighborhood community that Jacob Carter is representing had also complained about noise and gatherings from the property. Jacob Carter confirmed that they had but did not believe it was germane to the present discussion, which Stephen Finley agreed with but wanted to ensure that the voices were acknowledged.

Chair Regan Dumbeck read the two submitted emails aloud. The first email, sent by Marilyn Jones, requests that both variance applications be denied on the grounds that their granting would negatively impact the value of her property and the integrity of the community development goals of the City of Elgin. The second email, sent by Ramon Dominguez, expressed frustration with loud parties and noise from the Applicant's property facilitated by the constructed structures and claims that he had to replace his windows to block the noise.

Chair Regan Dumbeck opened the floor to any other members of the public who would like to speak. The Applicant's son José Hurtado stood to speak, alongside his father the Applicant Jorge Hurtado and mother Erika Hurtado. José Hurtado wanted to express that the placement of the car port was to preserve the position of an altar to the Virgin de Guadalupe that was pre-existing on the property, and that the car port is necessary to protect the vans used for the family's business. José Hurtado corroborated the Applicant's claim that the 20 x 30 foot slab had been pre-existing since 2016, while the expansion of the 1,700 square foot structure was only two years ago as the trailers for which it was built as a car port did not fit under the previous construction. He insisted that it was not used primarily as a gathering space, but that an outdoor kitchen space for family use is very common for the neighborhood. He remarked that the neighbors have come to them in the past asking that noise levels be respected, and that the family has made an effort to respect the wishes of the neighbors.

IV. NEW BUSINESS (Cont.)

The Applicant's wife Erika Hurtado also spoke on the history of the family having lived in that space for 12 years and that the neighborhood was not nice to begin with, and so everything that the family does has been to improve the cosmetic quality of the property and neighborhood. She also remarked that no one from the City had ever told them that they were in violation despite having driven past and seeing the structures. She also claimed that Ramon Dominguez was exaggerating in claiming that he needed new windows on account of the noise and expressed that if that had been true then the Hurtado family would have been willing to pay for any window damage themselves, but disapproved of the accusation which she believes to be unfounded. Suzannah DesRoches clarified that she believed that Ramon Dominguez's comment about replacing the windows was not due to damage done by the sound but to fortify the household against the noise. Erika Hurtado insisted that the family has been on the property for 12 years and does not believe that they have done anything that should require the gravity of this meeting. Stephen Finley echoed the previous discussion point that the issue of noise complaints is not the purview of the Board of Adjustment.

José Hurtado reiterated that the Applicant is willing to pay all appropriate fines and make all required modifications to bring the property into compliance, and insisted that this construction was in service of the business. The 1,700 square foot structure had been used partially as a storage space, which is why the hot tub was visible there but was not intended to be a permanent fixture. Vice Chair Darren Mogonye acknowledged the sentiment but also noted that the photographs provided in the presentation illustrate that the space has had multiple uses. Chair Regan Dumbeck also remarked that he drove past the property and observed the trucks used for business were not under the car port. José Hurtado presented a photograph of the current status of the car port to the Board.

- D. Close Public Hearing – The public hearing was closed at 7:25 P.M.
- E. Discussion – Chair Regan Dumbeck reminded the Board that the two variance applications can be approached together or separately. Stephen Kylberg wanted to clarify whether the issue of impervious coverage was that the lot as a whole had exceeded its allowance or if only the accessory buildings on the lot had. Director Beau Perry confirmed that only the accessory buildings had exceeded their allowance but that the lot as a whole was well under its impervious coverage allowance, and reiterated the rationale that no accessory building is meant to overshadow the main structure of a residential district. Chair Regan Dumbeck drew attention to the portion of the property that Jacob Carter had mentioned regarding lowland drainage. Melissa Lipiec reminded the Board that the Applicant is still required to pull the permit for the car port even if the variance is granted, and added that the property requires a paved impervious driveway which also would not exceed the lot's total allowed impervious coverage but which does not affect the 10% impervious coverage allowance for accessory buildings. Suzannah DesRoches asked there was a drainage difference between a car port versus a concrete slab with no structure, and Director Perry confirmed that from an impervious coverage perspective there is not. Chair Regan Dumbeck asked if attaching the car port to the house would change the situation, and Director Perry explained that it would call for a different and more stringent review process but would remove that portion of the impervious coverage from the current overflow.

At 7:40 P.M. Chair Regan Dumbeck called for a five minute recess. The discussion resumed one minute early at 7:44 P.M.

Vice Chair Darren Mogonye expressed a concern about the car port blocking visibility by being so far in the setback, and voiced frustration that if the car port was constructed in 2023 that it had not been noticed as a zoning violation by City Staff until the following year. He appreciated that both structures were open and thus unlikely to be used for purposes contrary to the residential zoning.

IV. NEW BUSINESS (Cont.)

Director Perry summarized the proposed motion as an approval for the increase to allotted impervious coverage and disapproval of the variance to the setback. Stephen Finley agreed that he believed the property had space to move the car port out of the setback. Suzannah DesRoches proposed allowing a variance of twenty-three (23) feet so that it was not forced to overlap the existing altar but is as far from the property line as otherwise possible, which was met with approval from the board. Chair Regan Dumbeck also confirmed that stipulations can be placed on the variance, including requirements that the structures not be used for any purpose other than car ports. Vice Chair Darren Mogonye remained critical of the pouring of the concrete slabs without having pulled appropriate permits. Chair Regan Dumbeck was critical of the request for a variance of 10 feet for the setback when there is a space of at least 8 feet that the car port can occupy. He was additionally critical of the presentation of the situation and the inconsistencies in the story of the construction of the larger space that contained kitchen equipment and the hot tub. Director Beau Perry reminded the Board that they have the right to restrict the usage of the structure or the enclosure of the structure as stipulations in the granting of the variance. He also reminded the Board that wherever the car port is moved to the Applicant will have to create an impervious driveway to the car port, which may influence the Board's decision regarding moving the car port.

Stephen Kylberg, Stephen Finley, and Suzannah DesRoches all expressed support in limiting the growth of the structures but did not support policing its use, voicing support for the rights of the property owner. Suzannah DesRoches also suggested allowing additional walls as long as the structures were not fully enclosed, to aid in the neighbors' complaints about noise. The Board inquired to the Applicant if there was an issue with moving the car port closer to the altar. When the proposal of moving the car port eight feet such that there was only one foot of space from the altar was explained, the Applicant expressed a willingness to work with that stipulation.

- F. Consideration – Vice Chair Darren Mogonye moved that the Board deny the variance request to allow for the front setback to be changed to 15 feet. S. H. McShan seconded the motion. Chair Regan Dumbeck and Director Beau Perry clarified that the immediately previous discussion had been to approve the setback variance with stipulations, and invited amendment to the proposed motion. Vice Chair Darren Mogonye and S. H. McShan confirmed that they understood the previous discussion but maintained the motion being made. Vice Chair Darren Mogonye and S. H. McShan voted in favor of the motion; Stephen Kylberg, Stephen Finley, and Chair Regan Dumbeck voted to deny the motion. Suzannah DesRoches was not required to vote for the motion. The motion failed with a vote of two (2) votes for and three (3) votes against, and returned to discussion.

Stephen Kylberg moved to modify the proposal and grant a variance for a setback depth of 23 feet. Stephen Finley seconded the motion. Stephen Kylberg, Stephen Finley, and Chair Regan Dumbeck voted in favor of the motion; Vice Chair Darren Mogonye and S. H. McShan voted to deny the motion. Suzannah DesRoches was not required to vote for the motion. The motion passed with a vote of three (3) votes for and two (2) votes against.

Vice Chair Darren Mogonye echoed the previous sentiments in support of property owner rights, and did not want to restrict the Applicant from being able to put valuables into the structure if necessary. Vice Chair Darren Mogonye moved that the Board grant the requested variance to increase the allowed impervious coverage by accessory structures from 10% to 24% to allow the already erected structures to remain, with the stipulation that the structures not be enclosed by more than three walls. Stephen Finley seconded the motion. Stephen Kylberg, Vice Chair Darren Mogonye, Stephen Finley, and S. H. McShan voted in favor of the motion; Chair Regan Dumbeck voted to deny the motion. Suzannah DesRoches was not required to vote for the motion. The motion passed with a vote of four (4) for and one (1) against.

IV. NEW BUSINESS (Cont.)

2. Project #202400090: A zoning variance from Section 46-637 (1) - "Off-street parking lots in residential districts" in order to allow for the construction of a six-foot tall black vinyl coated chain link fence in lieu of an opaque ornamental fence, wall, or dense evergreen hedge owned by the Elgin High School at 14000 County Line Road on a parcel of land known by the Travis County Central Appraisal District as Parcel No. 358741.
 - A. Staff Presentation – Director Beau Perry presented the project as part of the Elgin Independent School District’s renovation of the high school, that the original construction plan required a masonry wall adjacent to the parking lot and then had permitted a black vinyl-coated chain-link fence for a span of the property line. The Applicant is requesting to substitute the masonry wall with a continuation of the chain link fence, adhering to state safety guidelines.
 - B. Open Public Hearing – Chair Regan Dumbeck accidentally opened the public hearing at 8:15 P.M., before the Applicant Presentation.
 - C. Close Public Hearing – The public hearing was closed at 8:15 P.M.
 - D. Applicant Presentation – Chair Regan Dumbeck apologized for forgetting the Applicant Presentation. The Applicant Rainey Lann was present to speak on behalf of the Elgin ISD. The Applicant reiterated Director Perry’s presentation and drew attention to a diagram of the narrow mesh of the chain link fence which is defined as “anti-scalable” for safety purposes.
 - E. Discussion – The Board asked for a few more details as to the spacing of the fence, and was impressed at how secure the proposal was. Suzannah DesRoches wanted to clarify that the specific requirement for fencing was due to the adjacent residential district, which Director Perry confirmed and added that it is more generally required for commercial uses adjoining residential such as gas stations. Vice Chair Darren Mogonye asked to confirm a lack of neighbor response from the required mailed notices, and Melissa Lipiec confirmed that although many of the notices returned unable to be delivered none of those that had been received were responded to.
 - F. Consideration – Vice Chair Darren Mogonye moved to grant the requested variance as presented. S. H. McShan seconded the motion. Suzannah DesRoches was not required to vote for the motion. The motion passed unanimously with a vote of five (5) for and zero (0) against.

V. ANNOUNCEMENTS

1. Melissa Lipiec reminded the Board that David Lanford moved out of town and thus resigned from the Board of Adjustment, and so encouraged the Board to reach out for contacts that could fill the position of Junior Alternate.

VI. ADJOURNMENT

The meeting was adjourned at 8:21 P.M.



Regan Dumbeck, Chair

ATTEST: Melissa Lipiec
Melissa Lipiec, Secretary

On a motion by DARREN MOGONYE, seconded by STEPHEN KYLBERG the foregoing instrument was passed and approved on this 13 day of MARCH, 2024.