

## BOARD OF ADJUSTMENT REGULAR MEETING

SEPTEMBER 30, 2020

The Board of Adjustment met in regular session in the McKinney City Hall Council Chambers, 222 N. Tennessee Street, McKinney, Texas, on Wednesday, September 30, 2020 at 6:00 p.m.

Board members Present: Louise Holubar, Chair, David Riche, Vice Chair, Larry Macy, Eric Roberts, Members and Randall Wilder Alternate.

Board members Absent: Larry Jagours, Member Jon N Prevost, Alternate (excused).

City staff Present: Rick Herzberger, Chief Building Official, Erika Roberts, Administrative Assistant, Mark Goldstucker, City Attorney and Alan Lathrom, City Attorney.

Louise Holubar, Chair called the meeting to order at 6:03 p.m. after determining a quorum was present.

**20-0839** Minutes of the Board of Adjustment meeting of August 26, 2020. Board members unanimously approved the motion by Board member Larry Macy, seconded by Board member Eric Roberts, to Approve 20-0839 Minutes of the Board of Adjustment meeting of August 26, 2020.

**BOA20-07** Consider/Discuss/Act on adopting Rules of Procedure for the Board of Adjustment as allowed by Paragraph (1) d. of Section 146-165 of the Code of Ordinances, City of Mckinney, Texas and Texas Local Government Code § 211.008 (e), and as approved by the City Council on September 15, 2020. The Chief Building Official provided his statement on behalf of the City regarding the Rules of Procedures.

Board members unanimously approved the motion by Board member Eric Roberts, seconded by Vice Chair David Riche to approve the Rules of Procedure as presented in this agenda item.

**BOA20-06** Conduct a Public Hearing to Consider/Discuss/Act on the Request by Applicant/Owner, Rudy Vasquez Jr., for the consideration of a 104 square feet variance to the zoning ordinance requirement of a maximum 500 square feet detached accessory structure to allow a 604 square feet detached garage located at 2408 Cayenne Drive, Lot 1 Block 2 of the El Dorado Estates, an addition to the City of McKinney, Texas. Board members unanimously approved the motion by Board member Eric Roberts, seconded by Board member Larry Macy to open the Public Hearing for this agenda item. Citizens, attorneys and City Staff who were to speak regarding this case were sworn in. Rick Herzberger, Chief Building Official read aloud the Recommended Board Action with the Item Summary and Background Information along with the Building Official Statement: The applicant/owner desires to increase the total size of the allowed 500 square feet size of the accessory building, detached garage to 604 square feet. The applicant will describe hardships or reasons for variance at the public hearing. Rudy Vasquez, 2408 Cayenne Drive, McKinney, Texas stated his reason for requesting the variance. Rudy Vasquez wants a place to park his show car and the size of his current garage is too small. Vice Chair David Riche asked if Mr. Vasquez currently has a two car garage. Mr. Vasquez stated yes. Vice Chair Riche asked if the two car garage could support the show car in it. Mr. Vasquez responded No, not as he described with the lift he wants to place in the garage. Vice Chair Riche asked if he could still place the show car in the garage without the lift to protect it from the elements. Two letters were received in favor of this variance request; no protest has been submitted. Board member Eric Roberts asked Mr. Vasquez if there is a difference in the height of the garage with the installation of the lift. Board member Larry Macy asked Mr. Vasquez if he only wanted the additional garage for the show car. Mr. Vasquez responded no, for his SUV as well. Chair Louise Holubar asked Mr. Vasquez if the new

garage would go higher than the normal garage to accommodate the lift.

Mr. Vasquez responded the inside may be a little higher on the inside, not the outside. Board members unanimously approved the motion by Vice Chair David Riche, seconded by Board member Larry Macy to close the public hearing for this agenda item

Board members unanimously approved the motion by Vice Chair David Riche, seconded by Board member Randall Wilder to deny the request for variance presented in this agenda item.

**BOA20-05** Consider/Discuss/Act on Determining an Amortization Period and Establishing a Compliance Date for the Nonconforming Concrete Batch Plant Use (Cowtown Redi-Mix) on the Property Located at 2015 South McDonald Street, McKinney, Texas. Board members unanimously approved the motion by Board member Larry Macy, seconded by Board member Eric Roberts, to open the Public Hearing for this agenda item. Citizens, attorneys and City Staff who were to speak regarding this case were sworn in. The Chief Building Official provided the item summary. Art Anderson, attorney representing Cowtown Redi-Mix, asked Mr. Herzberger if he was aware that representatives from the City told Mr. Anderson's client that the City wanted to buy Cowtown in 2018. Mr. Herzberger responded no. Mr. Anderson asked Mr. Herzberger if he was aware of the appraisal done in 2018. Mr. Herzberger responded no. Mr. Anderson asked Mr. Herzberger if he read Mr. Hakala's report. Mr. Herzberger answered yes and clarified he did not know the above questions at the time in question. Mr. Anderson asked Mr. Herzberger if he was aware the City hired JLL back in 2018. Mr. Herzberger answered if that is in Mr. Hakala's report, then yes he knew. Mr. Anderson asked Mr. Herzberger if he was aware of the City hiring the consulting firm Katz Marshall. Mr. Herzberger said he was not aware. Mr. Anderson asked Mr. Herzberger if he was aware of the new zoning on the property. Mr. Herzberger stated that he would have to look at

the zoning ordinance. Mr. Anderson asked Mr. Herzberger if the City has done an appraisal of Cowtown's property under the new zoning. Mr. Herzberger responded he was aware of it. Mr. Anderson asked Mr. Herzberger if the City has any knowledge of the value of the land decreasing as a result of this. Mr. Anderson asked Mr. Herzberger if he was aware of the City telling his client that it would take 2-3 developments cycles to find a buyer and user for the Cowtown property. Mr. Anderson asked Mr. Herzberger if he was aware of any potential users who can utilize the property in its current state. Mr. Anderson introduced exhibit 6 and 7 into the record. Mr. Anderson asked Mr. Herzberger to mark on a map where Cowtown could relocate to. Mr. Herzberger did not mark any locations on the map. Scott D. Hakala, author of the Valley Slope report, summarized the report for the board. Mr. Anderson cross examined Mr. Hakala. Mr. Anderson handed binders to the City Attorney, Chief Building Official and the board members. Chair Louise Holubar called for a 5-minute recess. Mr. Anderson summarized the documents provided in the binder. Mr. Anderson stated he believes the amortization period should be between 15 and 30 years. Board alternate Randall Wilder stated to Mr. Anderson that he is telling the board that Cowtown should stay in business for the next 15 to 39 years in the same location. Mr. Anderson requested additional time from the board. Chair Louise Holubar granted 5 additional minutes to Mr. Anderson. Mr. Anderson responded to member Wilder stating the property is legal and conforming and two years prior the City loved the project. Mr. Anderson stated process rights have been violated and the City is trying to bust the rights they agreed to. Mark Goldstucker, City Attorney, stated he does not have any cross examination. Sy Shahid, Executive Director of the Heard Museum, stated that the land of the museum is directly east to the batch plant and is a federal protected wetland and is habitat to over 300 species of birds that are being directly affected by dust and light pollution. Mr. Shahid stated that the location is specifically used for the birds migrating

from Canada to Mexico and he asked the board for consideration to move the batch plant. Linda Hooper, McKinney Greens HOA president, stated she is here on behalf of the HOA's 227 homeowners. Ms. Hooper clarified that the homeowners are in support of the amortization but are opposed to the 7-year time frame being proposed. Ms. Hooper mentioned the health and lung related issues members of the community have developed. She also mentioned the noise coming from the plant operating at early hours in the morning and the mess the dust creates around the neighborhood. Cliff Shaw, vice president of the McKinney Greens HOA, stated he has lived in the neighborhood for a few months and is familiar with the issues that have been happening over the past years. Mr. Shaw mentioned the issue of dust in the neighborhood, as well as the lung related issues his neighbor now has. Mark Goldstucker provided his closing statement and asked the board to set the compliance date to August 26, 2027 based on the report of Mr. Hakala. Mr. Goldstucker told the board the City disagrees with the factual and legal arguments Mr. Anderson made previously about the re-zoning, the legality and the notice and the City is of the position that all the notices, statutes and ordinances were complied with and the re-zoning was proper and the board's order was proper. Mr. Goldstucker asked the board with respect to the affidavits presented in the 15-39 years at most what is talked about is IRS depreciation time, which is not what the City is talking about here. Mr. Goldstucker asked that the court rely on Mr. Hakala's report when setting the compliance date. Mr. Anderson provided his closing statement and remarked these cases are tough because the board is acting like judges. Mr. Anderson stated that the notices were not properly delivered. Mr. Anderson told the board they should have their own council and their role is difficult because staff is giving the recommendation to the Board. He mentioned after the Martin Marietta case the staff were on video high fiving one another after the decision was made does not show there was an impartial consideration of the evidence from staff recommendation. Mr.

Anderson stated he has never seen a use that the City praised as a state-of-the-art facility terminated after 2 years. Mr. Anderson believes Cowtown should have the longest amount of time to re-coup these costs. Mr. Anderson stated that the City has certified that there is no lighting or noise violations on the site. Mr. Anderson mentioned the housing was built after 2003 when the area had already been zoned for industrial use. Mr. Anderson stated his concern with the short time frame as the City tried to buy the property in 2018 and he is concerned the City will try to steal the property from them if there is a short amortization period and he believes it is an abuse of government power. Mr. Anderson asked the board for the 15-39 years that is in the record as evidence. Mr. Goldstucker stated that the City is not looking to take Cowtown's property. The City is looking to find a date to have them stop using it as a concrete batch plant as they still own the property. Two email and two letters were received in favor of the amortization of this property and have been entered into the record; no protest has been submitted. Board members unanimously approved the motion by Board member Eric Roberts, seconded by Board member Larry Macy, to close the public hearing. The board members discussed the agenda item. Board members unanimously approved the motion by Board member Larry Macy, seconded by Board alternate Randall Wilder to approve a compliance date of August 26, 2027 for the Nonconforming Concrete Batch Plant Use (Cowtown Red-Mix) on the property located at 2015 South McDonald Street, McKinney, Texas.

Board members unanimously approved the motion by Vice Chair David Riche, seconded by Board member Eric Roberts, to Adjourn the meeting at 7:49 p.m.

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David Riche  
Board of Adjustment Vice Chair