

CITY OF HORSESHOE BAY
BOARD OF ADJUSTMENT
NOTICE OF PUBLIC MEETING

October 27, 2020

Notice is hereby given to all interested members of the public that the Horseshoe Bay Board of Adjustment will hold a Public Meeting beginning at 3:00 p.m., on Tuesday, October 27, 2020 in the Police Training Room at the Police Station at #1 Community Drive, Horseshoe Bay, Llano County, Texas.

This meeting will be closed to in-person attendance by the public. A temporary suspension of certain aspects of the Open Meetings Act to allow cities to hold public meetings via telephone has been granted by Governor Abbott. These actions are being taken to mitigate the spread of COVID-19 by avoiding meetings that bring people into a group setting and are in accordance with Section 418.016 of the Texas Government Code. Members of the public may participate via zoom. To join our Zoom Meeting go to <https://us02web.zoom.us/j/82593242301?pwd=VDFQYXpSd1JxckVVdHg3QUFCShhJQT09>

Meeting ID: 825 9324 2301
+1 346 248 7799 US (Houston)
Passcode: 055055
One tap mobile
+13462487799,,82593242301#,,,,,0#,,055055# US (Houston)

The agenda for the Public Meeting is to discuss and/or act on the following:

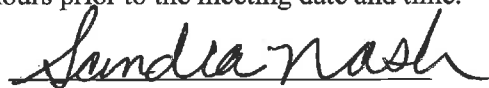
1. Call the Meeting to Order and Establish a Quorum
2. Approval of the Minutes of the September 22, 2020 Regular Meeting
3. Public Hearing, discuss, consider and take action on BOA Case No. 2020-05, a request by Darin and La Tonna Yates for a Variance to Section 14.02.411(f)(2) of the Zoning Ordinance for approval of a house to exceed the maximum permitted square footage of 9,500 square feet by 4,444 square feet on Lot No. LE 23A of Lago Escondido Plat No. 4.23, also known as 1505 Apache Tears in Horseshoe Bay, Texas
4. Adjournment



Eric W. Winter, Development Services Dir.

The Board of Adjustment may go into closed session, if necessary and appropriate, pursuant to the applicable section of the Texas Open Meetings Act, Texas Government Code, Chapter 551, Subchapter D, on any matter that may come before the Board that is listed on the Agenda and for which a closed session is authorized.

I certify that the above notice of meeting was posted at City of Horseshoe Bay City Hall and website www.horseshoe-bay-tx.gov, at least 72 hours prior to the meeting date and time.


Sandra Nash, Assistant Planner

CITY OF HORSESHOE BAY
BOARD OF ADJUSTMENT
MINUTES OF REGULAR MEETING

September 22, 2020

The Board of Adjustment of the City of Horseshoe Bay held a Regular Meeting in the Police Training Room at the Police Station at #1 Community Drive, Horseshoe Bay, Llano County, Texas, on September 22, 2020, in accordance with the duly posted notice of said meeting.

The posted agenda for this meeting is made a part of these minutes by attachment and the minutes are herewith recorded in the order the agenda items were considered, with the agenda subject and item number shown preceding the applicable paragraph.

1. Call the meeting to order and establish a quorum

The meeting was called to order at 3:00 p.m. by Chairman Jim Babcock with a quorum of all Board members present as follows:

Present:

Chairman Jim Babcock

Vice Chairman Dale Amstutz

Board Member Frank Gracely

Board Member John Minyard

Board Member Bill Knox

Also present were Mayor Cynthia Clinesmith and David Mitchell. Don Sherman was in attendance via Zoom.

2. Pledge to the Flags

The room did not have a flag so there was no Pledge to the Flags.

3. Approval of Meeting Minutes of the June 22, 2020 Regular Meeting

A motion to approve the minutes as written was made by John Minyard and seconded by Dale Amstutz. The motion was approved unanimously (5-0).

4. Public Hearing, discuss, consider and take action on BOA Case No. 2020-04, a request by La Bonita Loop 209 LLC., for approval of a Variance to Section 14.02.402(b)(15)(B) Residential Accessory Structures and Section 14.02.411 (b)(1) Minimum Setbacks to allow for a 9 foot 5 inch Variance for stairs and walkway to encroach into the 10-foot side yard setback for Lot 209 of Plat No. 2.1 also known as 109 La Bonita in Horseshoe Bay, Texas

Chairman Babcock opened the Public Hearing at 3:02 PM. David Mitchell stated that the lot has about a 30-foot drop in 40 feet. This house is built over the lake with a landing area and boat dock. David said he had to excavate the hillside to construct the dock level of the home. He apologized for not taking care of this item before now. He said he did not understand he needed a Variance. Escondido Architectural Control Committee told

him he may need a Variance for the fountain encroachment. The stairs and walkway do not have a roof. He talked with Eric Winter about the Variance and he understood he could build the stairs and walkways up to the side property line. He did not realize he needed a Variance. He said you cannot see it on the plans because there are no elevations on the plans showing where the retaining walls are. He did not think the setback requirements applied. He needs the stairs to encroach into the setback to allow maintenance people to access the pool and dock without going into the house. The house is sold. The walkway and stairs are not visible to people from the street and may only be visible to people across Pecan Creek and the people next door. David Mitchell said Eric Winter told him he is not in compliance. Eric Winter showed a copy of the approved site plan with the stairway crossed out in red with a note saying a Variance is required prior to building the stairs. The site plan was signed by David Mitchell. David Mitchell then built the stairs without a Variance or a permit. David Mitchell said he understood that he could build without a Variance. Dale Amstutz asked David Mitchell if he signed the site plan. David Mitchell said yes. Dale Amstutz asked if this is the first house he built in Horseshoe Bay. David Mitchell replied no. Dale Amstutz asked if he knows about the setbacks. David Mitchell said that he understood setbacks. David Mitchell said he thought the red area crossed out on the site plan is not about the stairs because the stairs are not covered. He felt Eric Winter agreed he did not need a Variance to go 1 foot into the setback. Frank Gracely asked about only being 1 foot into the setback because the plans show 9.5 feet into the setback. Eric Winter stated that these stairs are part of a structure and required a permit and a Variance. David Mitchell said he thought the encroachment into the setback is allowed. Chairman Babcock said he has known David Mitchell for over 25 years. Chairman Babcock asked how many homes David Mitchell has built in Escondido. David Mitchell said he has built over 12 homes in Escondido. Chairman Babcock said he is disappointed in David Mitchell. Chairman Babcock felt the stairs are not in the way of anything in Escondido and it did not make sense to tear it down. He did not see any real problem with the stairs.

Eric Winter said the City has had other issues with David Mitchell's construction activities. At another location David Mitchell let someone move into a house prior to issuance of a Certificate of Occupancy and he has 9 citations for violations of City Codes. The Contractor Registration Ordinance will allow the City to revoke a contractor's registration if they have more than 3 violations in one year. Chairman Babcock asked Eric Winter who we are using for inspectors. Eric Winter said the City has two inspectors on staff, a code compliance officer, and a code enforcement officer. They do inspections for Certificates of Occupancy and cleanliness of sites. ATS Engineers in Austin is our building inspector. Chairman Babcock said he was concerned about this process and he preferred that the City have an inspector on staff. He felt someone should have inspected the site before the concrete was poured. David Mitchell said the ATS inspectors do not inspect the foundation, so contractors have an engineer come out to do the inspection for the concrete pre-pour. Eric Winter responded that ATS does not do this inspection because of the liability of pre-pour inspections. Eric Winter explained how the process with ATS works and their availability to do inspections the next day. Mayor Clinesmith said the builders tell her they appreciate ATS and that it is a good system for them. She feels good about using ATS. Mayor Clinesmith said that David Mitchell's name has come

across her desk several times recently including for \$7,000.00 damage to City property. David said he paid for the damaged property. Mayor Clinesmith said not before he first tried to get the City to pay for the damage. David Mitchell said the Certificate of Occupancy issues are for a 90-year-old woman moving into a different house prior to him obtaining the Certificate of Occupancy. Dale Amstutz asked if an inspection was required for the stairs to be built. Eric Winter said because of the elevation an inspection was required. David Mitchell said it was a misunderstanding. He did not realize he could not go into the setback. He felt the issue is that the stairs are above 18 inches not that they are in the setback. David Mitchell said no one could look at the plans and know the stairs would be above 18 inches. He did not realize the elevation. The red line on the site plan is for the fountain area and there is not a roof over it.

Mayor Clinesmith said the Variance would likely have been approved if he had gotten it in advance. Chairman Babcock said if he came prior to construction the Variance would have likely been approved. He felt to tear it out is a waste of time and money. David Mitchell said the fountain extends into the setback. David Mitchell thought Eric Winter said it was ok to go ahead. No one can know from the plans the difference above the natural soil because it is not shown on the plans. John Minyard asked if Escondido Architectural Control Committee approved this Variance. David Mitchell replied yes. Dale Amstutz asked how tall is the wall. David Mitchell said it is about 2 feet to 14 feet. Frank Gracely said this will set a huge precedent and the fact that he did not figure this out ahead of time shows a disregard for the Ordinances. Chairman Babcock instructed the Board that it is within their discretion to approve the Variance. Chairman Babcock does not see a problem with the Variance. He asked how Mr. Grimm, the owner next door, feels about it. David Mitchell said Mr. Grimm does not have a problem with the stairway.

A motion to approve the Variance was made by Bill Knox and seconded by John Minyard. The motion failed (3-1-1) with 3 votes in favor, 1 vote no and 1 vote abstaining. Chairman Babcock explained the Variance did not pass because the Board needs 4 votes to approve a Variance. Any decision of the Board can be appealed to District Court.

David Mitchell said he did not understand the rules and that the stairs are safe. David Mitchell thought everybody was happy with the stairs. He does not see any problem with it. Frank Gracely said it gives every opportunity to all builders in the community to violate the rules. He cannot believe David Mitchell has been in business this long and does not know the rules. David Mitchell said the stairs were on the original plans that were approved. Chairman Babcock said the City is alleging the stairs are not part of the approved plans and asked if the red area on the plans pertain to the stairs. David Mitchell said the red area that is crossed out pertains to the fountain area and because of the natural grade of the lot the stairs are ok. Chairman Babcock said if he first came for a Variance the Board would have probably approved it. To tear the stairs down would be a waste of money. If David Mitchell appeals this to the District Court the City would have to spend money for a City attorney. Mayor Clinesmith said she understands the precedent issues and that David Mitchell should have known the rules.

A motion to reconsider the previous action and approve the Variance was made by Bill Knox and seconded by John Minyard. The motion was approved (4-0-1) with Frank Gracely abstaining.

5. Adjournment

A motion to adjourn was made by Vice Chairman Amstutz and seconded by Frank Gracely. The motion was approved unanimously (5-0). Chairman Jim Babcock adjourned the meeting at 3:41p.m.

Approved this 27th day of October, 2020.

City of Horseshoe Bay, Texas

Jim Babcock, Chairman

ATTEST:

Eric W. Winter, Development Services Director



CITY OF HORSESHOE BAY

To: Board of Adjustment
Thru: Stan R. Farmer, City Manager
From: Sandra Nash, Assistant Planner
Re: Public Hearing, discuss, consider and take action on BOA Case No. 2020-05, a request by Darin and La Tonna Yates for a Variance to Section 14.02.411(f)(2) of the Zoning Ordinance for approval of a house to exceed the maximum permitted square footage of 9,500 square feet by 4,444 square feet on Lot No. LE 23A of Lago Escondido Plat No. 4.23, also known as 1505 Apache Tears in Horseshoe Bay, Texas

The applicant is requesting a Variance to build a house larger than 9500 square feet in Lago Estates, Zone 9 Escondido. The proposed residence will be 13,944 square feet. This is 4,444 square feet larger than what is permitted in Section 14.02.411(f)(2) of the Zoning Ordinance which requires all dwelling units to have a floor area of not less than 4,000 square feet and not more than 9500 square feet. The residence is proposed for Lot LE 23A in Lago Estates, a waterfront lot of 1.65 acres.

The Board of Adjustment can only grant a Variance after holding a public hearing on the request and finding that:

1. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this article would deprive the applicant of the reasonable use of the land. The applicant states that: "The owners applied for a replat to combine Lots LE 23 and LE 24 of Lago Estates in order to have the proposed house built." Staff has reviewed the plat and site plan and has determined this to be the case.
2. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant. The applicant states that: "The building design committee of Lago Escondido had reviewed the house plans and had no issue with the size of the structure, only an issue with the roof. The need for a Variance for the size came from the City Development Services Department during permitting." Staff has no additional comments.
3. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. The applicant states that: "The size of the structure will not affect the public health, safety, welfare or be injurious to other property in the area." Staff has visited the property and has no issue with this.

4. That the granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this article. The applicant states that: “The Variance will not affect the orderly use of other land in the area. In fact, this surveyor has been informed by the contractor of this house that the home at 1512 Apache Tears was granted a Variance for an overage in size for the house resting on one lot.” Staff has reviewed the house plans for the home at 1512 Apache Tears. The house is 8100 square feet and did not need a Variance because it is under the 9500 square foot maximum.

5. That the granting of the variance constitutes a minimal departure from this article. The applicant states that: “The Variance is minimal in view of the fact that if the two lots had not been combined, then there could be a total of 19,000 square feet of structure in the same area the owners of Lot LE 23A are proposing to build a 13,944 square foot house ” Staff has no issue with this.

6. That the subject circumstances or conditions are not self-imposed, are not based solely on economic gain or loss, and do not generally affect most properties in the vicinity of the property. The applicant states that: “The owners of Lot LE 23A were not aware of the maximum size requirement during the design process and only an issue with the roof surfaced during the design review process with Lago Escondido. The size of the structure will not adversely affect the surrounding properties. ” Staff has no issue with this.

The Lago Escondido POA supports this Variance request. Based on the above analysis, staff recommends approval of the Variance.

Enclosures: Aerial Photo
Zoning Map
Site Plan
Variance Approval Form



1505 Apache Tears Aerial Photo

Lake LBJ

LAKEVIEW DR

DEERHAVEN

Site





APACHE TEARS

SUNNYPOINT DR

FLORENCE DR

LAGOON LOOP

Legend

-  1505 Apache Tears
-  Street
-  Horseshoe Bay City Limit
-  Parcel

The information contained within this resource is not survey grade and is not intended for legal use.





1505 Apache Tears Zoning

LAKEVIEW DR

DEERHAVEN

Lake LBJ

Site

APACHE TEARS

SUNNYPOINT DR

FLORENCE DR

LAGOON LOOP

Legend

- 1505 Apache Tears
- Street
- Horseshoe Bay City Limit
- Parcel

Zoning & SUB_ZONING

- A-1 Recreation
- LA Lake Area
- R-1-SF Single Family Residential
- R-1-EST Single Family Residential Estate

The information contained within this resource is not survey grade and is not intended for legal use.



Site Plan 1505 Apache Tears

LAKE LYNDON
B. JOHNSON

CALLED 45.18 ACRES
HB LAGO ESCONDIDO, LTD.
1381/478-O.P.R.L.C.

LOT 25
LAGO ESCONDIDO
PLAT NO. 4.1
16/76-P.R.L.C.

LOT 24
GARRETT

LOT 23
LAKE LYNDON
B. JOHNSON
GARRETT

APPROXIMATE FLOOD PLAIN LINE (BASED ON
OF FIRM MAP NO. 17043D
DATED 4/20/02
AND FIRM NO. 17043D
12-20-01)

DAN MASTERS
7971 PRONGHORN DRIVE
SPRING BRANCH, TEXAS 78070
806-438-1953

D. & L. YATES RESIDENCE
LOTS 23 & 24, LAGO ESCONDIDO, HORSESHOE BAY
1505 APACHE TEARS, HORSESHOE BAY, TEXAS
Builder - JEFF JACKSON CUSTOM HOMES

LOT 22
LAGO ESCONDIDO
PLAT NO. 4.1
16/76-P.R.L.C.

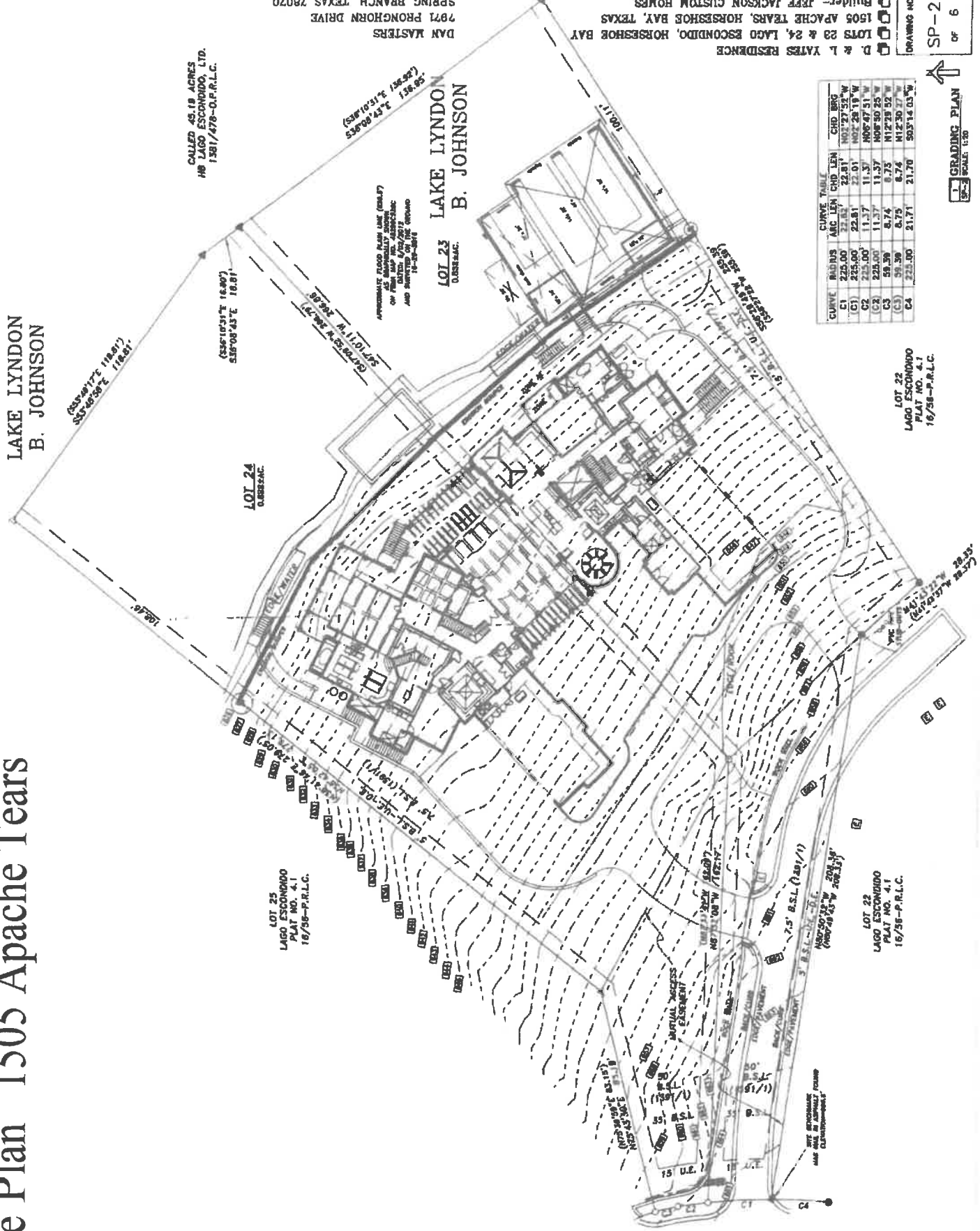
LOT 22
LAGO ESCONDIDO
PLAT NO. 4.1
16/76-P.R.L.C.

CURVE	RADIUS	ARC LEN	CHD LEN	CHD BRG
C1	225.00	22.81	22.81	N02°27'52" W
C2	225.00	22.81	22.81	N02°28'19" W
C3	225.00	11.37	11.37	N05°47'51" W
C4	225.00	8.37	11.37	N05°50'25" W
C5	59.39	6.74	6.74	N12°28'52" W
C6	225.00	21.71	21.70	S03°16'03" W

DRAWING NO.
SP-2
OF 6

GRADING PLAN
SCALE: 1"=20'

APACHE TEARS





City of Horseshoe Bay Board of Adjustment
Zoning Variance 2020-05

On the 27th of October, 2020, the foregoing application of Darin and La Tonna Yates for a Variance with regard to the property described in said application, known as Lot No. LE 23A of Lago Escondido Plat No. 4.23 and the requested Variance was heard and considered by the Board of Adjustment of Horseshoe Bay, Texas. Said application having been found to be in compliance with all other requirements of the City's Zoning Ordinance and a public hearing having been conducted, said application is hereby approved and the following findings are made and incorporated into the minutes of the meeting at which the Variance to Zoning Ordinance Sections 14.02.411(f)(2) to allow a house of 13,944 square feet, which is larger than the maximum 9500 square feet was granted:

1. There are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the City's Zoning Ordinance would deprive the applicant of the reasonable use of the land;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;
3. Granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;
4. Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of the Zoning Ordinance;
5. Granting of the variance constitutes a minimal departure from the Zoning Ordinance;
6. The subject circumstances or conditions are not self-imposed, based solely on economic gain or loss, or generally affect most properties in the vicinity of the property.

APPROVED on this, the 27th day of October, 2020 by a vote of the Board of Adjustment of the City of Horseshoe Bay, Texas.

CITY OF HORSESHOE BAY, TEXAS

Jim Babcock, Chairman

ATTEST:

Eric W. Winter, Development Services Director