

City of Windcrest



AGENDA BOARD OF ADJUSTMENT MEETING JUNE 5, 2024

CITY COUNCIL CHAMBERS @ 8601 MIDCROWN

6:00 P.M.

NOTICE IS HEREBY GIVEN THAT A CITY OF WINDCREST BOARD OF ADJUSTMENT MEETING WILL BE HELD AT WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS ON THE 5TH DAY OF JUNE 2024, STARTING AT 6:00 P.M. DURING THE MEETING THE FOLLOWING SUBJECTS WILL BE CONSIDERED AND THE BOARD MAY TAKE ACTION ON ANY OF THE LISTED SUBJECTS.

THE BOARD OF ADJUSTMENT RESERVES THE OPTION TO RECESS THE MEETING DURING THE EVENING OF JUNE 5, 2024, AND TO RECONVENE THE MEETING ON THE FOLLOWING DAY, JUNE 6 2024, AT 9:00 A.M. AT THE WINDCREST CITY HALL, 8601 MIDCROWN, WINDCREST, TEXAS.

NOTICE OF ASSISTANCE AT THE PUBLIC MEETING

The City of Windcrest Council Chambers are wheelchair accessible, and accessible parking spaces are available. In compliance with Americans with Disabilities Act, the City of Windcrest will provide reasonable accommodations for persons attending the meeting. To better serve you, requests should be received 48 hours prior to the meeting. Please contact the City Secretary's Office, at 210-655-0022 ext. 2150 or Fax 210-655-8776, or 711 Texas Relay.

I. Call to Order

II. Roll Call

III. Vote to Excuse Absent Board Members

IV. Pledge of Allegiance

V. Citizens to be Heard

- Citizens may address the Board of Adjustment on topics not on the agenda for no more than three (3) minutes.
- In addition to the foregoing, citizens shall also have the opportunity to address the Board of Adjustment during consideration of posted agenda items for no more than six (6) minutes.
- A City Official may make a statement of specific factual information in response to an inquiry made by a member of the public, or a recitation of existing policy in response to an inquiry made by a member of the public.

VI. Presentations by Applicants

- a) Applicant of 8807 Spanish Moss may present their request to the Board of Adjustment regarding a request for a variance from the City of Windcrest Code of Ordinances Sec. 103-58(b)(12)(c), to construct an accessory building forward of the rear-most portion of the main structure.

- b) Applicant of 8807 Spanish Moss may present their appeal regarding permit denial for construction of accessory building.

VII. Public Hearings

Opening of Public Hearings

- a) Public Hearing to receive comments from the public regarding an appeal regarding permit denial for construction of accessory building at 8807 Spanish Moss, Windcrest, Texas 78239, assigned Bexar County Appraisal District Property ID No. 343927.
- b) Public Hearing to receive comments from the public regarding a request for a variance from the City of Windcrest Code of Ordinances Sec. 103-58(b)(12)(c), to construct an accessory building forward of the rear-most portion of the main structure, at 8807 Spanish Moss, Windcrest, Texas 78239, assigned Bexar County Appraisal District Property ID No. 343927.

Close of Public Hearings

VIII. Items for Discussion/Action

- a) The Board of Adjustment will review, discuss, and may take action on an appeal of permit denial for construction of accessory building at 8807 Spanish Moss, Windcrest, Texas 78239, assigned Bexar County Appraisal District Property ID No. 343927.
- b) The Board of Adjustment will review, discuss, and may take action on a request for a variance from the City of Windcrest Code of Ordinances Sec. 103-58(b)(12)(c), to construct an accessory building forward of the rear-most portion of the main structure, at 8807 Spanish Moss, more particularly described as BCAD Property #343927.

IX. General Announcements & Future Agenda Items Requested

Per Ordinance No. 618, repealing Ordinance No. 593; Section 9: Every agenda shall include an item entry granting a member the opportunity to propose an item for consideration of future agendas for Regular or Special Meetings. Any member may request the inclusion of such items at any meeting.

X. Adjournment

AGENDA NOTICES:

DECORUM REQUIRED:

Any disruptive behavior, including shouting or derogatory statements or comments may be ruled out of order by the Presiding Officer. Continuation of this type of behavior could result in a request by the Presiding Officer that the individual leave the meeting, and if refused, an order of removal.

ACTION BY COUNCIL AUTHORIZED:

The Board of Adjustment may vote and/or act upon any item within this Agenda. The Board reserves the right to retire into executive session concerning any of the items listed on this Agenda, pursuant to and in accordance with Texas Government Code § 551.072 (Deliberations about Real Property); § 551.073 (Deliberations about Gifts & Donations); § 551.076 (Deliberations about Security Devices); §551.087 (Economic Development); and, § 551.071 to seek the advice of its attorney about pending or contemplated litigation, settlement offer or on a matter in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas conflict with the Open Meetings Act and may invoke this right where the City Attorney, the Mayor or a majority of the Governing Body deems an executive session is necessary to allow privileged consultation between the City Attorney and the governing body, if considered necessary and legally justified under the Open Meetings Act. The attorney may appear in person or appear in executive session by conference call in accordance with applicable state law.

EXECUTIVE SESSIONS APPROVED BY CITY ATTORNEY:

This agenda has been reviewed and approved by the City's legal counsel and the presence of any subject in any Executive Session portion of the agenda constitutes a written interpretation of Texas Government Code Chapter 551 by legal counsel for the body and constitutes an opinion by the attorney that the items discussed therein may be legally discussed in the closed portion of the meeting considering available opinions of a court of record and opinions of the Texas Attorney General known to the attorney. This provision has been added to this agenda with the intent to meet all elements necessary to satisfy Texas Government Code Chapter 551.144(c) and the meeting is conducted by all participants in reliance on this opinion.

ATTENDANCE BY OTHER ELECTED OR APPOINTED OFFICIALS:

It is anticipated that members of the City Council, or other city board, commissions and/or committees may attend the meeting in numbers that may constitute a quorum of the other city boards, commissions and/or committees. Notice is hereby given that the meeting, to the extent required by law, is also noticed as a meeting of the other boards, commissions and/or committees of the City, whose members may be in attendance. The members of the boards, commissions and/or committees may participate in discussions on the same items listed on the agenda, which occur at the meeting, but no action will be taken by such in attendance unless such item and action is specifically provided for on an agenda for that board, commission, or committee subject to the Texas Open Meetings Act.

I, the undersigned authority, do hereby certify that the above Notice of Meeting of the Board of Adjustment of the City of Windcrest is a true and correct copy of said Notice and was posted on the bulletin board at City Hall of said City in a convenient place to the public and said Notice was posted more than seventy-two (72) hours prior to the meeting on June 5, 2024.

By: *Dusty Dehoyos*
Dusty Dehoyos, Assistant City Secretary



WINDCREST

TEXAS

Universal Development Application

MAY 14 '24 10:17

(Please use separate application for each submittal)

- | | | |
|---|---|--|
| ☐ Land Use Amendment | ☐ Land Study | ☐ Replat |
| ☐ Thoroughfare Amendment | ☐ Final Plat | ☐ Amending Plat |
| ☐ Zoning Change (choose one) | ☐ Preliminary Plat | ☐ Minor Plat |
| ☐ Straight Zoning | ☐ Specific Use Permit | ☐ Vacating Plat |
| ☐ PUD (Planned Unit Development) | ☐ Conditional Use Permit | ☐ Site Plan |
| ☒ Variance | ☐ Exception | ☐ Tree Removal Permit |

Project Name: **See the attached "Request for Variance"**

Total Acres: _____ Survey Name: _____ Abstract No.: _____

Project Location (address): **8807 Spanish Moss, Windcrest, Texas 78239**

Current Zoning: _____	Current Use: _____	# of Lots/Units: _____	For Commercial/Industrial: _____
Proposed Zoning: _____	Proposed Use: _____	Please Circle One: SF MF COMM IND OTHER	Total Proposed Sq. Ft. _____

Applicant Information:

Property Owner Name: **Charles Zamora & Julie Zamora**

Address: **8807 Spanish Moss** City: **Windcrest** St/Zip: **TX-78239**

Phone: _____ Fax: _____ E-Mail: _____

Applicant (if different than Owner): _____

Address: _____ City: _____ St/Zip: _____

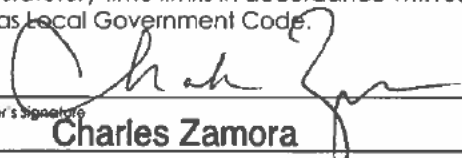
Phone: _____ Fax: _____ E-Mail: _____

Representative: _____

Address: _____ City: _____ St/Zip: _____

Phone: _____ Fax: _____ E-Mail: _____

Authorization: By signing this application, you hereby grant Staff access to your property to perform work related to your application. Also, you waive the statutory time limits in accordance with Section 211, 212 and 245 of the Texas Local Government Code.

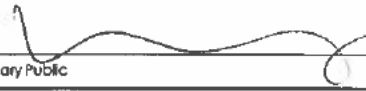


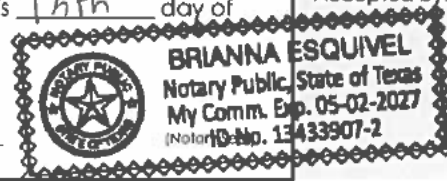
Owner's Signature: **Charles Zamora**

Typed/Printed Name: _____

Known to me to be the person whose name is subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration expressed and in the capacity herein stated. Given under my hand and seal on this 13th day of

May, 2024


Notary Public



City of Windcrest Use Only

Project No.: _____

Total Fees: _____

Payment Method: _____

Submittal Date: _____

Accepted by: _____

MAY 14 '24 10:17

BEFORE THE
WINDCREST BOARD OF ADJUSTMENT

Re:	CHARLES ZAMORA	:	PERMIT NO. 24-3032
	JULIE A. ZAMORA	:	
	8807 Spanish Moss	:	
	Windcrest, Texas 78239	:	

REQUEST FOR VARIANCE

Now come Charles Zamora & Julie A. Zamora (the "Zamoras"), the owners of the real property located at 8807 Spanish Moss, Windcrest, Texas 78239, pursuant to Section 113-73(2) and (3) of the Ordinances of the City of Windcrest (the "City") and hereby respectfully request the Board of Adjustment grant a variance to permit the construction and placement of an "accessory building" (i.e. a shed) on the North-facing side yard of said property. A Memorandum in Support is attached hereto.

Respectfully submitted,



CHARLES ZAMORA (Texas Bar 00795978)
8807 Spanish Moss
Windcrest, Texas 78239
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

MEMORANDUM IN SUPPORT

The Zamoras, by and through "Tuff Shed," submitted an application to the City of Windcrest on or about April 25, 2024, for the construction and placement of an 8' wide x 10' long x 8'10" tall shed (the "Shed") on their property located at 8807 Spanish Moss, Windcrest, Texas 78239 (the "Property"). Tuff Shed provided a survey indicating the location of the Shed on said property (Exhibit 1). By letter dated May 7, 2024, the City denied the application (Exhibit 2), setting forth three (3) reasons:

Tuff Shed cannot exceed 9' in height.

Tuff shed [sic] must be minimum 10' from main house. Surveys provided are not consistent and distance is not shown.

Tuff shed [sic] cannot be in front of the rear building line of house. Must be in backyard (not permitted inside yard).

Historical Background
Appeal of Denial of Application for Permit

Contemporaneously filed with the instant request for a variance, the Zamoras have submitted a *Notice of Appeal* from the City's denial of a building permit. The Zamoras maintain the City has erred in its strict application of Chapter 103 of the Windcrest City Code of Ordinances (the "Code"). Specifically, the City's application of Section 103-58 unfairly deprives the Zamoras of a reasonable use of their property as the cited Code provision denies them the opportunity to have a shed at any location whatsoever on their property. The City is relying upon Section 103-58, which governs "accessory building[s]," including sheds, and states that an accessory building:

Shall not be sited or constructed forward of the rear-most portion of the main structure ***

[S]hall be set-back not less than 10 feet from the main dwelling and not less than three feet from all lot lines and shall not occupy any portion of easements if placed on permanent foundation. ***

The term "grade level" is defined as the highest point of elevation of the finished surface of the ground, paving, or sidewalk between the main structure and the property line. ***

A. Shed height.

The City's denial of the requested permit based on the height of the Shed is misplaced. The measurements of the Shed are set forth in Exhibit 3, "Shed Dimensions." The maximum height of the Shed is 8' 10", which is clearly below the maximum height of 9 feet. Moreover, the topography of the land at 8807 Spanish Moss shows that the proposed location of the Shed is not even the highest point of the property. The highest point of the property is at the Northeast corner of the lot. The land slopes in a downward direction from Northeast (high point) to South/Southwest (low point). Even assuming the Shed was being placed at the highest point of the property's grade level, the shed itself is still nevertheless lower than 9 feet.

B. Distance from Main House.

The survey (Exhibit 1) shows the proposed location of the Shed is 5' from the North (side) fence. The distance of the Shed from the house is 14'. Therefore, the distance is more than the minimum distance required by Section 103-58(12)(d).

C. Must be in Back Yard.

The City Code provides that an accessory building cannot be placed forward of the rear-most portion of the house, that the building must be 10' from the house, that it must be 3' from the back fence, and that it must not occupy any portion of an easement. Section 103-58(12)(c)-(d). According to the survey (Exhibit 1), the rear-most portion of the house is less than 10' from the back fence. Specifically, the survey shows the rear-most portion of the house is 9.8' from the back fence. In

addition, a 10' telephone easement runs along the entire length of the back fence, thereby conclusively prohibiting placement of the Shed in any location in the back yard.

Fortunately, the drafters of the City's building code were cognizant of the concept that certain property owners would be foreclosed from a full enjoyment and use of their land if a Draconian application of the building code were to be applied and enforced without regard to the unique characteristics of lot dimensions, house placement, and land topography.

Request for Variance

Section 113-73(2) provides:

*** The board of adjustment may approve a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. *** No variance shall be granted unless the board finds:

- a. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land; and;
- b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
- c. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
- d. That the granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this chapter.

The City denied the Zamoras' request for a permit for the Shed based upon a strict application of Section 103-58(12), which serves to deny the placement of the Shed in any area of the Zamoras' back yard. As mentioned, the rear-most portion of the house is less than 10 feet from the back fence and a 10' utility easement exists along the entire length of the back fence.

The Zamoras submit a variance is appropriate and meets every element of Section 113-73(2)(a)-(d). The house and swimming pool at 8807 Spanish Moss consume most of the lot, and only

small remaining portions of useable land remain, with the largest useable space on the North-facing side yard. Indeed, there is less than 10' between the rear-most part of the house and the back fence, with the swimming pool and surrounding concrete pool deck consuming most of the rest of the back yard, together with trees and plants. The only clear area at the perimeter of the house that is useable for the Shed is the North-facing side yard. This results in a very special circumstance and/or condition of the land (yard) such that strict application of Section 103-58(12) results in a deprivation of the Zamoras' reasonable use of their land.

The granting of a variance to allow building and placing the Shed at the proposed location is necessary to preserve the Zamoras' ability to use their land and to enjoy a substantial property right, i.e. the usage of their land. Moreover, granting a variance does not result in any detrimental consequence to the public health, safety, or welfare, nor will it be injurious to any other property owner in the area. Finally, allowing the Shed at the proposed location on the Zamoras' property will not effectively prevent the orderly subdivision of land in this area. Obviously, the land is already developed, and homes have long been built in this established area, as they have existed at least since 1974.

Moreover, the Zamoras submit a variance to allow the Shed is supported by Section 113-73(3). This code provision provides:

*** The board may authorize a variance where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property of record at the time of the adoption of this chapter or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of a provision of this chapter would result in peculiar and exceptional practical difficulties and particular hardship upon the owner of property and amount to a practical confiscation of property as distinguished from a mere inconvenience to the owner, provided the variation can be granted without substantial detriment to the public good and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this chapter.

The Zamoras submit application of Section 113-73(3) is appropriate to permit the Shed to be constructed and placed upon their property at the proposed location of the side yard, 14' to the north of the house, 5' south of the side fence, and 10' from the back fence (See Exhibit 1). The survey clearly shows that the house occupies a significant portion of the land and is situated in an off-center orientation. The rear-most portion of the house is less than 10' from the back fence, thereby rendering no opportunity whatsoever for the placement of any structure behind the house due to this narrowness.

Moreover, the down-sloping grade of the property in a direction from the Northeast part of the lot (the high point) to the Southwest part of the lot (the low point) is not topographically feasible for the placement of a shed, as it would be too close to the swimming pool, and it would obstruct the backyard view of the neighbor in the Southwest corner of the street. Moreover, the Zamoras would need to remove three (3) trees.

Strict application of Section 103-58(12) would cause the Zamoras a significant and unwarranted confiscation of the use of their property, to their detriment, due to the fact the Shed cannot be placed in the entirety of their back yard.

Placement of the Shed on the proposed site set forth on the permit application (Exhibit 1) is the only feasible alternative on the entire grounds of the property. Section 103-58(12) prohibits placement in the back yard; there is insufficient space on the South side of the house; and the North side of the house is the only area large enough to support the Shed. Prohibiting the Zamoras from building the Shed at the proposed location would result in a practical confiscation of their property (denying them the opportunity to use their property) and is not a mere "inconvenience."

Allowing a variance to place the Shed at their proposed location (Exhibit 1) is consistent with the general purpose and intent of the comprehensive building plan of the City, as established by the regulations and provisions of the building code. Specifically, per Section 113-3, the rules are

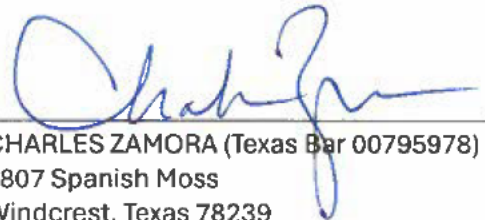
intended to "provide for the orderly, safe and healthful development of the areas within the city and to promote the health, safety, morals and general welfare of the community; and to prescribe an orderly process for future planning." The proposed site of the Shed on the Zamoras' property does not contravene this underlying principle.

Finally, the property owners of 8811 Spanish Moss, Windcrest, Texas 78239, reside at the home adjacent to the Zamoras, along the side fence at issue and have provided a signed statement that they have no objection to the Zamoras placing the Shed at the proposed site. See Exhibit 4.

CONCLUSION

For the foregoing reasons, the Zamoras respectfully submit they have established a lawful basis for a variance, a denial of which would cause a substantial confiscation and a detrimental loss of enjoyment of their property. Accordingly, the Zamoras request the Board of Adjustment approve their request for a variance and allow them to proceed with the building and placement of the Shed at the proposed location of the North-facing side yard of their property, per Exhibit 1.

Respectfully submitted,



CHARLES ZAMORA (Texas Bar 00795978)

8807 Spanish Moss

Windcrest, Texas 78239

Telephone [REDACTED]

Facsimile: [REDACTED]

Email: [REDACTED]



Date: Tuesday, May 7, 2024

Tom Saurey
Tuff Shed Inc.
1777 S. Harrison St., Suite 600
Denver CO 80210
licenses@tuffshed.com

Permit Number 24-3032
Job Address: 8807 Spanish Moss, Windcrest 78239



Dear Tom Saurey,

Staff has completed its review of plans for the that is to be located at 8807 Spanish Moss, Windcrest 78239. Comments from this review follow.

Residential Plan Review

The following comments have been provided by BB Inspections Reviewer. Should you have any questions or require additional information regarding any of these comments, please contact BB Inspections Reviewer by telephone at or by email at bbihost.mgo@gmail.com.

Tuff Shed cannot exceed 9' in height. See *grade level* definition.

Tuff shed must be minimum 10' from main house. Surveys provided are not consistent and distance is not shown.

Tuff shed cannot be in front of the rear building line of house. Must be in backyard (not permitted in side yard).

City of Windcrest codes below:

Sec. 103-58. - Permits.

(12)Accessory buildings as defined herein above (see chapter 113 for additional accessory building requirements) and used as a tool, greenhouse, playhouse, storage shed or similar use, located in an R-1 zoned district, and erected, sited, constructed, reconstructed, or enlarged must comply with the following requirements:a.No sewer connections shall be installed. Electrical, water or gas connections may be made with appropriate permits.b.No more than two buildings, one being a greenhouse, may be erected if other than 90 percent masonry buildings.c.Buildings shall not be sited or constructed forward of the rear-most portion of the main structure.d.All accessory buildings shall be set-back not less than ten feet from the main dwelling and not less than three feet from all lot lines and shall not occupy any portion of easements if placed on permanent foundation. If portable the three-foot setback applies. Masonry buildings shall not be less than ten feet from all lot lines and shall not occupy any portion of easements.e.Excluding masonry buildings, buildings will not exceed 144 square feet of interior space nor nine feet in height (above grade level). The term "grade level" is defined as the highest point of elevation of the finished surface of the ground, paving, or sidewalk between the main structure and the property line.f.Buildings will be of a color which matches or is in harmony with the existing main structure. Masonry buildings will be in harmony in design, color and materials with the existing main structure.

5/7/2024 10:40:25 AM

MAY 14 '24 10:18

24-3032
Page 2

Please revise the project plans to address the comments noted above. Following revision, please upload one full set of the revised drawings in PDF format. To access your project online, please go to www.mygovernmentonline.org and use the online portal to upload your drawings in PDF format.

Should you have questions regarding specific comments, please contact the staff member referenced under the section in which the comment occurs. Should you have questions or require additional information regarding the plan review process itself, please feel free to contact me directly. I can be reached by telephone at (210) 655-0022, or by e-mail at ssrey@windcrest-tx.gov.

Thank you,

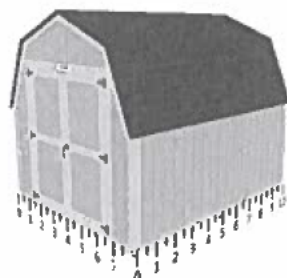
Shannon Strey

City of Windcrest
8601 Midcrown Street
Windcrest, TX 78239
(210) 655-0022

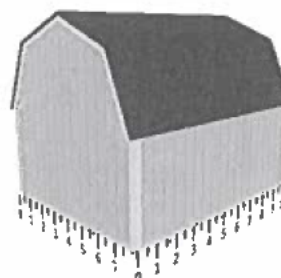


Charles Zamora
8807 Spanish Moss
Windcrest TX 78239
Q8782397-8760283

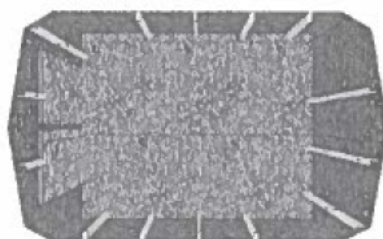
Shed Dimensions for KTB400 8'ft X 10'ft X 8'ft 10" in



Wall D



Wall A



Wall C

Wall B

Base Details/Permit Details

Building Size & Style

KTB-400 - 8' wide by 10' long

Door

KTB400 5' Double Door

Paint Selection

Base: No Paint, Trim: No Paint

Roof Selection

Golden Cedar 3 Tab

Drip Edge

Brown

Is a permit required for this job?

Yes

Who is pulling the permit?

Tuff Shed

Optional Details

Floor and Foundation

4 Ea Shed Anchor into Dirt - Auger or
MR88

Jobsite/Installer Details

Do you plan to insulate this building after
Tuff Shed installs it?

No

Is there a power outlet within 100 feet of
installation location?

Yes

The building location must be level to
properly install the building. How level
is the install location?

Within 4" of level

Will there be 24" of unobstructed
workspace around the perimeter of all
four walls?

Yes

Can the installers park their pickup truck &
trailer within approximately 200' of
your installation site?

Yes

Substrate Shed will be installed on?

Grass

Customer Signature: _____

DocuSigned by:

Charles Zamora

2163EF66BEF041B...

Date: 4/5/2024

EXHIBIT

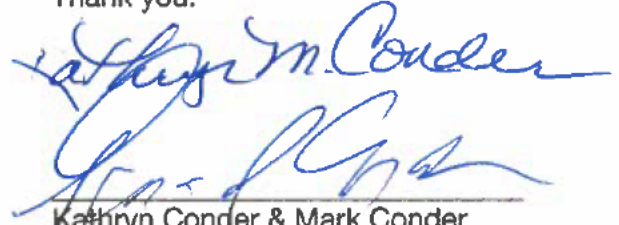
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To the Windcrest Board of Adjustment:

I am the owner of 8811 Spanish Moss, Windcrest, Texas 78239, along with my husband, Mark Conder. I am aware my neighbors, Charles and Julie Zamora, have applied for a permit with the City of Windcrest to place an 8' x 10' shed on their property, along the side of their house that is adjacent to my side fence (the South side of my property line).

Please accept this letter as my statement that I have no objection to the Zamoras placing their shed on the side of their house.

Thank you.



Kathryn Conder & Mark Conder
8811 Spanish Moss
Windcrest, Texas 78239

5-13-2023

Date



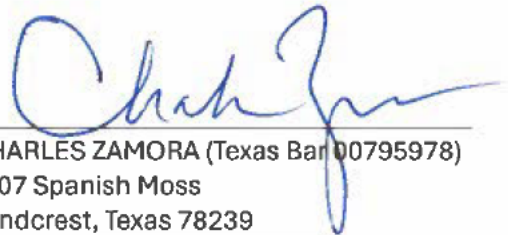
BEFORE THE
WINDCREST BOARD OF ADJUSTMENT

Re:	CHARLES ZAMORA	:	PERMIT NO. 24-3032
	JULIE A. ZAMORA	:	
	8807 Spanish Moss	:	
	Windcrest, Texas 78239	:	

NOTICE OF APPEAL

Now come Charles Zamora & Julie A. Zamora (the "Zamoras"), the owners of the real property located at 8807 Spanish Moss, Windcrest, Texas 78239, pursuant to Section 113-72(1) of the Ordinances of the City of Windcrest (the "City") and hereby appeal the decision of the City dated May 7, 2024, denying the request "Tuff Shed" filed on or about April 25, 2024, seeking a permit for the construction of an "accessory building" (*i.e.* a shed) at said property. For the reasons set forth in the attached Memorandum in Support, the City's denial of a permit is contrary to law and constitutes an abuse of discretion.

Respectfully submitted,



CHARLES ZAMORA (Texas Bar 00795978)
8807 Spanish Moss
Windcrest, Texas 78239
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

MEMORANDUM IN SUPPORT

The Zamoras, by and through "Tuff Shed," submitted an application to the City of Windcrest on or about April 25, 2024, for the construction and placement of an 8' wide x 10' long x 8'10" tall shed (the "Shed") on their property located at 8807 Spanish Moss, Windcrest, Texas 78239 (the "Property"). Tuff Shed provided a survey indicating the location of the Shed on said property (Exhibit 1). By letter dated May 7, 2024, the City denied the application (Exhibit 2), setting forth three (3) reasons:

Tuff Shed cannot exceed 9' in height.

Tuff shed [sic] must be minimum 10' from main house. Surveys provided are not consistent and distance is not shown.

Tuff shed [sic] cannot be in front of the rear building line of house. Must be in backyard (not permitted inside yard).

Appeal of Denial of Application for Permit

Chapter 103 of the Windcrest City Code of Ordinances (the "Code") governs building regulations and sets forth the requirements for approval of the construction and placement of sheds. In part, relevant to the issues of the instance case, Section 103-58 provides that an "accessory building," which includes storage sheds:

Shall not be sited or constructed forward of the rear-most portion of the main structure ***

[S]hall be set-back not less than 10 feet from the main dwelling and not less than three feet from all lot lines and shall not occupy any portion of easements if placed on permanent foundation. ***

The term "grade level" is defined as the highest point of elevation of the finished surface of the ground, paving, or sidewalk between the main structure and the property line. ***

A. Shed height.

The City's denial of the requested permit based on the height of the Shed is misplaced. The measurements of the Shed are set forth in Exhibit 3, "Shed Dimensions." The maximum height of the Shed is 8' 10", which is clearly below the maximum height of 9 feet. Moreover, the topography of the land at 8807 Spanish Moss shows that the proposed location of the Shed is not even the highest point of the property. The highest point of the property is at the Northeast corner of the lot. The land slopes in a downward direction from Northeast (high point) to South/Southwest (low point). Even assuming the Shed was being placed at the highest point of the property's grade level, the shed itself is still nevertheless lower than 9 feet.

B. Distance from Main House.

The survey (Exhibit 1) shows the proposed location of the Shed is 5' from the North (side) fence. The distance of the Shed from the house is 14'. Therefore, the distance is more than the minimum distance required by Section 103-58(12)(d).

C. Must be in Back Yard.

The City Code provides that an accessory building cannot be placed forward of the rear-most portion of the house, that the building must be 10' from the house, that it must be 3' from the back fence, and that it must not occupy any portion of an easement. Section 103-58(12)(c)-(d). According to the survey (Exhibit 1), the rear-most portion of the house is less than 10' from the back fence. Specifically, the survey shows the rear-most portion of the house is 9.8' from the back fence. In addition, a 10' telephone easement runs along the entire length of the back fence, thereby conclusively prohibiting placement of the Shed in any location in the back yard.

Fortunately, the drafters of the City's building code were cognizant of the concept that certain property owners would be foreclosed from a full enjoyment and use of their land if a Draconian application of the building code were to be applied and enforced without regard to the unique characteristics of lot dimensions, house placement, and land topography.

Request for Variance

In addition to the instant *Notice of Appeal*, the Zamoras have filed a request for variance pursuant to Section 113-73(2) and (3). To the extent the *Notice of Appeal* and the *Request for Variance* relate to the same issue, i.e. the Zamoras' request for a permit to build and place a Shed at the location set forth in Exhibit 1, the Zamoras are respectfully reiterating the arguments in support of a variance. Section 113-73(2) provides:

*** The board of adjustment may approve a variance from these regulations when, in its opinion, undue hardship will result from requiring strict compliance. *** No variance shall be granted unless the board finds:

- a. That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land; and;
- b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
- c. That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property in the area; and
- d. That the granting of the variance will not have the effect of preventing the orderly subdivision of other land in the area in accordance with the provisions of this chapter.

The City denied the Zamoras' request for a permit for the Shed based upon a strict application of Section 103-58(12), which serves to deny the placement of the Shed in any area of the Zamoras'

back yard. As mentioned, the rear-most portion of the house is less than 10 feet from the back fence and a 10' utility easement exists along the entire length of the back fence.

The Zamoras submit a variance is appropriate and meets every element of Section 113-73(2)(a)-(d). The house and swimming pool at 8807 Spanish Moss consume most of the lot, and only small remaining portions of useable land remain. Indeed, there is less than 10' between the rear-most part of the house and the back fence, with the swimming pool and surrounding concrete pool deck consuming most of the rest of the back yard, together with trees and plants. The only clear area at the perimeter of the house that is useable for the Shed is the North-facing side yard. This results in a very special circumstance and/or condition of the land (yard) such that strict application of Section 103-58(12) results in a deprivation of the Zamoras' reasonable use of their land.

The granting of a variance to allow building and placing the Shed at the proposed location is necessary to preserve the Zamoras' ability to use their land and to enjoy a substantial property right, *i.e.* the usage of their land. Moreover, granting a variance does not result in any detrimental consequence to the public health, safety, or welfare, nor will it be injurious to any other property owner in the area. Finally, allowing the Shed at the proposed location on the Zamoras' property will not effectively prevent the orderly subdivision of land in this area. Obviously, the land is already developed, and homes have long been built in this established area, as they have existed at least since 1974.

Moreover, the Zamoras submit a variance to allow the Shed is supported by Section 113-73(3). This code provision provides:

*** The board may authorize a variance where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property of record at the time of the adoption of this chapter or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of a provision of this chapter would result in peculiar and exceptional practical difficulties and particular hardship upon the owner of property and amount to a practical confiscation of

property as distinguished from a mere inconvenience to the owner, provided the variation can be granted without substantial detriment to the public good and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this chapter.

The Zamoras submit application of Section 113-73(3) is appropriate to permit the Shed to be constructed and placed upon their property at the proposed location of the side yard, 14' to the north of the house, 5' south of the side fence, and 10' from the back fence (See Exhibit 1). The survey clearly shows that the house occupies a significant portion of the land and is situated in an off-center orientation. The rear-most portion of the house is less than 10' from the back fence, thereby rendering no opportunity whatsoever for the placement of any structure behind the house due to this narrowness.

Moreover, the down-sloping grade of the property in a direction from the Northeast part of the lot (the high point) to the Southwest part of the lot (the low point) is not topographically feasible for the placement of a shed, as it would be too close to the swimming pool, and it would obstruct the backyard view of the neighbor in the Southwest corner of the street. Moreover, the Zamoras would need to remove three (3) trees.

Strict application of Section 103-58(12) would cause the Zamoras a significant and unwarranted confiscation of the use of their property, to their detriment, due to the fact the Shed cannot be placed in the entirety of their back yard.

Placement of the Shed on the proposed site set forth on the permit application (Exhibit 1) is the only feasible alternative on the entire grounds of the property. Section 103-58(12) prohibits placement in the back yard; there is insufficient space on the South side of the house; and the North side of the house is the only area large enough to support the Shed. Prohibiting the Zamoras from building the Shed at the proposed location would result in a practical confiscation of their property (denying them the opportunity to use their property) and is not a mere "inconvenience."

Allowing a variance to place the Shed at their proposed location (Exhibit 1) is consistent with the general purpose and intent of the comprehensive building plan of the City, as established by the regulations and provisions of the building code. Specifically, per Section 113-3, the rules are intended to "provide for the orderly, safe and healthful development of the areas within the city and to promote the health, safety, morals and general welfare of the community; and to prescribe an orderly process for future planning." The proposed site of the Shed on the Zamoras' property does not contravene this underlying principle.

Finally, the property owners of 8811 Spanish Moss, Windcrest, Texas 78239, reside at the home adjacent to the Zamoras, along the side fence at issue and have provided a signed statement that they have no objection to the Zamoras placing the Shed at the proposed site. See Exhibit 4.

CONCLUSION

For the foregoing reasons, the Zamoras respectfully submit the City's strict application of the Code to deny the requested building permit is contrary to the intent and purpose of the Code and is, therefore, an abuse of discretion. Moreover, the Zamoras submit they have established a lawful basis for a variance, a denial of which would cause a substantial confiscation and a detrimental loss of enjoyment of their property. Accordingly, the Zamoras request the Board of Adjustment grant their appeal and allow them to proceed with the building and placement of the Shed at the proposed location of the North-facing side yard of their property, per Exhibit 1.

Respectfully submitted,



CHARLES ZAMORA (Texas Bar 00795978)
8807 Spanish Moss
Windcrest, Texas 78239
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]

A yellow rectangular label with a black border. The word "EXHIBIT" is printed in bold black capital letters at the top. Below it, the number "1" is handwritten in black ink. On the left side, the word "tabbies" is printed vertically in black lowercase letters.



Date: Tuesday, May 7, 2024

Tom Saurey
Tuff Shed Inc.
1777 S. Harrison St., Suite 600
Denver CO 80210
licenses@tuffshed.com

Permit Number 24-3032
Job Address: 8807 Spanish Moss, Windcrest 78239



Dear Tom Saurey,

Staff has completed its review of plans for the that is to be located at 8807 Spanish Moss, Windcrest 78239. Comments from this review follow.

Residential Plan Review

The following comments have been provided by BB Inspections Reviewer. Should you have any questions or require additional information regarding any of these comments, please contact BB Inspections Reviewer by telephone at or by email at bbihost.mgo@gmail.com.

Tuff Shed cannot exceed 9' in height. See *grade level* definition.

Tuff shed must be minimum 10' from main house. Surveys provided are not consistent and distance is not shown.

Tuff shed cannot be in front of the rear building line of house. Must be in backyard (not permitted in side yard).

City of Windcrest codes below:

Sec. 103-58. - Permits.

(12)Accessory buildings as defined herein above (see chapter 113 for additional accessory building requirements) and used as a tool, greenhouse, playhouse, storage shed or similar use, located in an R-1 zoned district, and erected, sited, constructed, reconstructed, or enlarged must comply with the following requirements:a.No sewer connections shall be installed. Electrical, water or gas connections may be made with appropriate permits.b.No more than two buildings, one being a greenhouse, may be erected if other than 90 percent masonry buildings.c.Buildings shall not be sited or constructed forward of the rear-most portion of the main structure.d.All accessory buildings shall be set-back not less than ten feet from the main dwelling and not less than three feet from all lot lines and shall not occupy any portion of easements if placed on permanent foundation. If portable the three-foot setback applies. Masonry buildings shall not be less than ten feet from all lot lines and shall not occupy any portion of easements.e.Excluding masonry buildings, buildings will not exceed 144 square feet of interior space nor nine feet in height (above grade level). The term "grade level" is defined as the highest point of elevation of the finished surface of the ground, paving, or sidewalk between the main structure and the property line.f.Buildings will be of a color which matches or is in harmony with the existing main structure. Masonry buildings will be in harmony in design, color and materials with the existing main structure.

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24-3032

Page 2

Please revise the project plans to address the comments noted above. Following revision, please upload one full set of the revised drawings in PDF format. To access your project online, please go to www.mygovernmentonline.org and use the online portal to upload your drawings in PDF format.

Should you have questions regarding specific comments, please contact the staff member referenced under the section in which the comment occurs. Should you have questions or require additional information regarding the plan review process itself, please feel free to contact me directly. I can be reached by telephone at (210) 655-0022, or by e-mail at ssrey@windcrest-tx.gov.

Thank you,

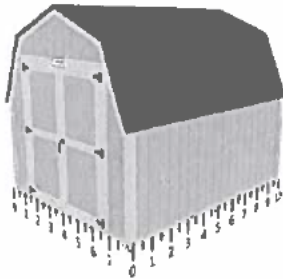
Shannon Strey

City of Windcrest
8601 Midcrown Street
Windcrest, TX 78239
(210) 655-0022

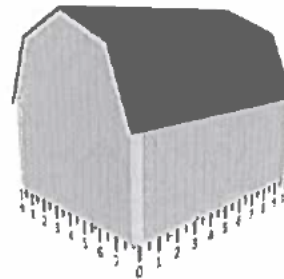


Charles Zamora
8807 Spanish Moss
Windcrest TX 78239
Q8782397-8760283

Shed Dimensions for KTB400 8'ft X 10'ft X 8'ft 10" in

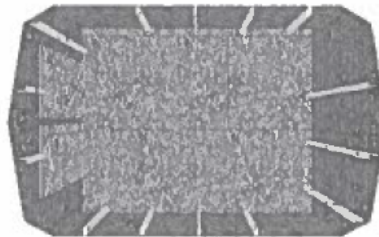


Wall D



Wall C

Wall A



Wall B

Base Details/Permit Details

Building Size & Style

KTB-400 - 8' wide by 10' long

Door

KTB400 5' Double Door

Paint Selection

Base: No Paint, Trim: No Paint

Roof Selection

Golden Cedar 3 Tab

Drip Edge

Brown

Is a permit required for this job?

Yes

Who is pulling the permit?

Tuff Shed

Optional Details

Floor and Foundation

4 Ea Shed Anchor into Dirt - Auger or
MR88

Jobsite/Installer Details

Do you plan to insulate this building after
Tuff Shed installs it?

No

Is there a power outlet within 100 feet of
installation location?

Yes

The building location must be level to
properly install the building. How level
is the install location?

Within 4" of level

Will there be 24" of unobstructed
workspace around the perimeter of all
four walls?

Yes

Can the installers park their pickup truck &
trailer within approximately 200' of
your installation site?

Yes

Substrate Shed will be installed on?

Grass

Customer Signature: _____ Date: 4/5/2024

DocuSigned by:

Charles Zamora

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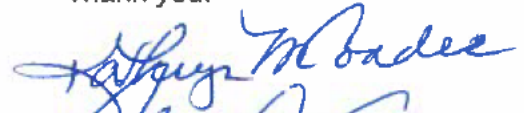


To the Windcrest Board of Adjustment:

I am the owner of 8811 Spanish Moss, Windcrest, Texas 78239, along with my husband, Mark Conder. I am aware my neighbors, Charles and Julie Zamora, have applied for a permit with the City of Windcrest to place an 8' x 10' shed on their property, along the side of their house that is adjacent to my side fence (the South side of my property line).

Please accept this letter as my statement that I have no objection to the Zamoras placing their shed on the side of their house.

Thank you.




Kathryn Conder & Mark Conder
8811 Spanish Moss
Windcrest, Texas 78239

5-13-2023
Date

