

BOARD OF ADJUSTMENT

June 14, 2005

Minutes

Members Present: Rick Waldruff
Scott Hay
Morton Langholtz
Wayne Bradshaw
:
Jim Salisbury

Alternates Present: Tim Cook

Staff Present: Jeff Armstrong, Development Services Manager
Gloria Brownell, Planner I
Dan Santee, City Attorney
Rodney Fletcher, Permit Specialist
Larry Abrigg, AICP, Senior Planner
Jon James, AICP, Director
Terry Pribble, Professional Engineer
Justin Fortney, Planner I

Mr. Bradshaw, Chair, called the meeting to order at 8:30 AM and declared a quorum present.

The minutes of the May 10, 2005 meeting were unanimously approved.

Agenda Item BA-2005-23, Request for a 2' variance to the minimum finished floor elevation requirement in the 100-year floodplain at 2518 Greenbriar Drive.

Mr. Hay made a motion to remove this request from the table. Mr. Salisbury seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Ms. Brownell gave the staff report. The applicant wanted to construct a 14' x 16' skid mounted storage building on the northwest corner of his property. The majority of the lot lies in the floodway, with only the northwest corner extending into the 100-year floodplain. The northwest corner is the proposed location for the storage building. The property is located in flood hazard Zone A6, which has a required minimum finished floor elevation of 1752.7 feet above mean sea level (msl). The variance request would allow a finished floor elevation of 1750.7 feet msl. The applicant provided a Certificate of Elevation for the primary structure on the subject property that showed the finished floor to be 1749.8 feet msl. The applicant was given the option of attaching the addition to the primary structure in order to meet the City's requirements for development in the floodway, but preferred to have a detached structure in the 100-year floodplain instead. Terry Pribble, P.E., from the Engineering Department contacted a FEMA representative at the Board's request. The representative stated that the agency was not as concerned about individual cases of approved variances, but that several such approvals could constitute a trend that would be more worrisome for FEMA. Staff recommended denial due to

the lack of hardship and the possible effect on public welfare. Four comment forms were returned in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Mr. Jepson, applicant, spoke in favor of the request. Mr. Bradshaw asked him if he understood the Board's dilemma with the FEMA regulations and Mr. Jepson confirmed that he did.

Mr. Bradshaw closed the public hearing. Mr. Waldraff asked if he was allowed to place the shed in the floodway without a variance. Mr. Hay replied that he could if it was attached to the existing house. Mr. Waldraff stated that he did not think that this approval would constitute a trend and that the more sensible solution would be to have the shed outside of the floodway. Mr. Waldraff made a motion to approve the variance request based on the following findings:

Unique Conditions of the Property: The majority of the property lies in the floodway with only the northwest corner extending into the 100-year floodplain.

Hardship From Strict Interpretation: Without a variance, the applicant would be forced to place the proposed structure in the floodway. Placing it in the 100-year floodplain is a better alternative.

Effect on Public Health, Safety, and Welfare: There will be no direct effect.

Mr. Langholtz seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

Agenda Item BA-2005-33, Request for a Special Exception to locate a carport in the front yard setback at 1407 Glenhaven Drive.

Ms. Brownell presented the staff report. The applicant wanted to construct an open carport over an existing driveway that would be 6 feet from the front property line and 18 feet from the curb on Glenhaven Drive. There are several other front carports in the immediate area so the request meets the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. Five comment forms were returned in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Ray Young, agent, spoke in favor of the request. He stated that the carport would be used to protect the applicant's vehicles from the elements and provide a covered walkway.

Mr. Bradshaw closed the public hearing. Mr. Langholtz made a motion to approve the request based on the following findings:

Compatibility With Surrounding Land Uses: There are several other front carports in the immediate vicinity of the request.

Effect on Public Facilities: There are no negative effects on public facilities from an open carport in this location.

Relationship to the Intent of the Regulation: This request is in an area with several other front carports so it is consistent with the intent of the regulation.

Mr. Salisbury seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-34, Request for a Special Exception to locate a carport in the front yard setback at 1809 Walnut Street.

Ms. Brownell presented the staff report. The applicant wanted to construct an open carport over an existing driveway that would be 11 feet from the front property line and 26 feet from the curb on Walnut Street. There is one other front carport on a neighboring property and one exterior side carport across the street from the request. Staff felt that this met the criteria of compatibility due to the close proximity of the similar uses. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. Seven comment forms were returned in favor and none in opposition.

Mr. Bradshaw opened the public hearing. Gilbert Escobedo, applicant, spoke in favor of the request. He stated that his wife was ill with cancer and the carport would keep her out of the weather when getting into their vehicles.

Renee Rodriguez, agent, spoke in favor of the request. He described the building materials that would be used.

Mr. Bradshaw closed the public hearing. Mr. Hay made a motion to approve the request based on the following findings:

Compatibility With Surrounding Land Uses: There is one other front carport and one exterior side carport in the immediate vicinity of the request.

Effect on Public Facilities: There are no negative effects on public facilities from an open carport in this location.

Relationship to the Intent of the Regulation: This request is in an area with other carports so it is consistent with the intent of the regulation.

Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-35, Request for a Special Exception to locate a carport in the front yard setback at 1042 Buccaneer Drive.

Ms. Brownell presented the staff report. The applicant wanted to construct an open carport over an existing driveway that would be 14 feet from the front property line and 29 feet from the curb on Buccaneer Drive. There are several other front carports in the immediate area so the request meets the criteria of compatibility. Staff anticipated no negative effect on public facilities from this request. Staff recommended approval of the Special Exception. Two comment forms were returned in favor and none in opposition.

Mr. Bradshaw opened the public hearing. David Porter, agent, spoke in favor of the request. He stated that the carport would be used to protect the applicant's vehicles from the elements.

Mr. Bradshaw closed the public hearing. Mr. Hay made a motion to approve the request based on the following findings:

Compatibility With Surrounding Land Uses: There are several other front carports in the immediate vicinity of the request.

Effect on Public Facilities: There are no negative effects on public facilities from an open carport in this location.

Relationship to the Intent of the Regulation: This request is in an area with several other front carports so it is consistent with the intent of the regulation.

Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-36, Request for a 9' variance to the 25' exterior side setback requirement at 850 Victoria Street.

Ms. Brownell gave the staff report. The applicant wanted to construct a bedroom addition onto the south side of the existing triplex. The applicant lives in the front unit of the triplex and his sons live in the rear two units. The structure was originally built as a duplex and was later converted to a triplex of efficiency apartments without separate bedrooms. The applicant proposes to build the bedroom so the area they currently use for sleeping can be used as a dining room and family gathering place. The existing structure is nonconforming because it currently extends 3' into the 25' exterior side setback. The current structure is also nonconforming because it exceeds the maximum amount of units permitted on a parcel this size. Two of the units would have to be combined in order to come into compliance. Staff recommended denial of the request due to lack of a hardship. Three comment forms were returned in favor and none in opposition. Mr. Bradshaw asked why the applicants would want the addition if they were going to have to combine two of the units. Ms. Brownell stated that they would only be required to provide an interior door between two of the units. Mr. Santee asked if one of the kitchens would have to be removed. Ms. Brownell stated that the Building Inspection Department only required an interior entrance to connect the units. Mr. Armstrong referred to the Zoning

Ordinance and provided the definition for a dwelling unit as containing a separate kitchen. The applicant would be required to remove one of the kitchens as well as providing an interior door.

Mr. Bradshaw opened the public hearing. Tony Lopez, applicant, spoke in favor of the request. He explained that his family needed more space and that combining the units and removing one of the kitchens would not be a problem. He stated that his wife's health was not good and they planned to build a ramp to provide access if she ever required a wheelchair. The addition would also be next to the parking area so the ramp would provide quick access to their vehicle in the event of an emergency.

Adella Lopez, the applicant's wife, spoke in favor of the request. She also stated that she understood the required changes and they would not be a problem.

Mr. Bradshaw closed the public hearing. Mr. Salisbury suggested tabling the request until the modifications were complete. Mr. Santee clarified that Building Inspections could not issue permits for the addition until they had completed all the proper modifications. Mr. Santee asked Mr. Armstrong if that was an adequate safeguard and he confirmed that it was. Mr. Salisbury expressed concerns about the conditions being met. Mr. Langholtz stated that the applicants seemed to understand the conditions. Mr. Waldruff asked if there were other ways they could expand their home wondered why this had not been a concern when they bought the home 4 months ago. Mr. Langholtz asked staff to comment on the possibility of adding on to another part of the structure. Ms. Brownell explained that the layout of the front unit, where they proposed the addition, did not allow for expansion in another direction without a variance. Bookshelves and a fireplace precluded expansion into one of the other units and the front porch was already close to the front setback. The applicant wanted to add on to the front unit to provide a family gathering area within the parents' unit. The setback for the RM3 district is 10' larger than the setback would be for a home in an RS6 or RS8 district. Mr. Bradshaw asked to see the photograph of the home again for clarification. Ms. Brownell explained that the proposed addition would come to the edge of an existing walkway. Mr. Langholtz stated that the addition would be an improvement to the structure and the neighborhood. Mr. Santee stated that the variance would bring two nonconforming uses into compliance. Mr. Langholtz made a motion to approve the request, with the condition that two of the units be combined and one of the kitchens be removed, based on the following findings:

Unique Conditions of the Property: The existing structure was originally built in 1930 and already extends 3' into the current 25' setback.

Hardship From Strict Interpretation: The addition would help accommodate Mrs. Lopez's medical condition and would bring a currently nonconforming structure into compliance.

Effect on Public Health, Safety, and Welfare: There will be no direct effect; the addition would not extend far enough toward the corner to cause any substantial reduction to visibility.

Mr. Hay seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

Agenda Item BA-2005-37, Request for a variance from the fencing requirement for a townhouse development at 2415, 2417, 2419, 2423, 2425, and 2427 Church Street.

Ms. Brownell gave the staff report. The applicant wanted to remove the requirement for a 6' opaque fence around a private yard for each unit in a townhouse development. The property was subdivided into 6 narrow lots with one unit per lot. The approved drainage plan was designed to address drainage issues on all six lots collectively. The intention was to have water drain across the parcels and collect in a detention pond in the center of the entire development. The Engineering staff was concerned that the required fences would impede drainage across the lots. They determined that a 6" minimum grade clearance at the bottom of all fences would allow sufficient flow underneath, but indicated that the absence of any fencing would provide better clearance. They were concerned that debris could accidentally block the opening or that occupants of the units would intentionally block them for pets or small children. Furthermore, the parcel does not lie within the floodplain so there was no minimum finished floor elevation requirement. The elevation proposed on the site plan is approximately 6" above the level of the ground surrounding the foundation. This does not allow a great margin for error if heavy rainfall were to cause standing water in the yard that could not drain to the detention pond due to any blockages under the fences. Staff recommended approval with the condition that the applicant place a deed restriction that allowed no fences to be built in the future if he was ever to sell the parcels separately due to the effects on public health, safety, and welfare. No comment forms were returned in favor or opposition. Mr. Langholtz asked what would keep the individual occupants from building their own fences. Ms. Brownell stated that the condition for a deed restriction would keep them from being built. Mr. Hay asked if there was a typo on the drainage plan indicating a 100' difference between the proposed finished floor elevation and the ground elevation and Ms. Brownell confirmed that there was.

Mr. Bradshaw opened the public hearing. Andy Stanton, applicant, spoke in favor of the request. Mr. Langholtz asked him if he planned to sell the units after they were built and he replied that he planned to retain them as rental properties. He explained that the only reason for having separate lots for each unit was for parking accommodations and driveway access. Mr. Langholtz expressed his concern about what might happen with the units in the future. Mr. Hay asked Terry Pribble, P.E., of the Engineering Department to answer some questions. Mr. Hay asked his opinion on the effects of the request on the public health, safety, and welfare. Mr. Pribble stated that the drainage plan met the minimum requirements but that the absence of fences would allow better cross-drainage. Mr. Hay asked how long the detention pond was expected to hold water and Mr. Pribble said that he had estimated approximately an hour at the most.

Mr. Bradshaw closed the public hearing. Mr. Waldruff asked Mr. Hay to remind him of what Mr. Pribble had stated about the drainage plan. Mr. Hay replied that the drainage plan met the minimum standards. Mr. Langholtz made a motion to approve the request, with the condition that a deed restriction be placed to prohibit any fences in the future, based on the following findings:

Unique Conditions of the Property: The shallow grade of the lot provides slow drainage to the detention pond that could be exacerbated if the water was blocked by fences.

Hardship From Strict Interpretation: Any blockages will prohibit cross-drainage and may cause standing water behind the units.

Effect on Public Health, Safety, and Welfare: The presence of standing water due to blockages during a heavy rainfall could put the units in danger of flooding because of their low finished floor elevations.

Mr. Waldruff seconded the motion, which passed by a vote of 4 in favor and 1 opposed.

Agenda Item BA-2005-38, Request for (1) a 2'5" variance to the 10' interior side setback and (2) a 1.7' variance to the minimum finished floor elevation requirement in the 100-year floodplain at 710 Elmwood Drive.

Ms. Brownell gave the staff report. The applicant wanted to construct an addition to the rear of the existing home at the same finished floor elevation as the rest of the house. The home sits diagonally on the parcel and the corner of the addition would extend 2'5" into the 10' interior side setback. The property lies completely within the 100-year floodplain and the proposed addition greatly exceeds 50% of the value of the existing structure. The applicant will be undergoing double knee-replacement surgery and plans to live in the home throughout retirement. They want the finished floor elevation to be level so the addition will be handicap-accessible after the surgery and when they start to get older. Staff recommended denial for both requests. Two comment forms were returned in favor and none in opposition. Mr. Bradshaw asked if the Board had recently approved an addition for Mr. Guitar, a nearby property-owner. Ms. Brownell stated that Mr. Guitar had installed mitigation on his property to remove it from the floodway but was still required to meet the elevation standards in the 100-year floodplain.

Mr. Bradshaw opened the public hearing. Gail Redden, applicant, spoke in favor of the request. She stated that the home had originally been built in 1959 and that she and her husband had lived there for the past 11 years. She explained that the existing home is 1500 square feet and that they need more room for themselves and their family. Her husband has already had 3 knee surgeries and is scheduled for two more so having a step in the house is not an option. She stated that the variance to the side setback requirement could be dealt with. She had spoken with her contractor and he said that it would be a minor change to the plans to remove just the corner that extended into the setback.

Eddie Chase, Ms. Redden's surveyor, spoke in favor of the request. He stated that the applicant was at a disadvantage because the structure is next to the driveway and garage and that the ground level at the far corner of the structure is actually 1.6' lower. He stated that the house is lower than the new requirements passed in 1982. The old standards required the finished floor to be built 2' above the crown of the street instead of the highest adjacent grade, as the current regulations require. Mr. Bradshaw expressed concerns about creating a trend of variances granted for finished floor elevation.

Mr. Hay asked Ms. Redden if the home had ever been flooded. She stated that it had not and that during the flood four years ago the water had not even come close to the house. She said that

over the 11 years they had lived there she had never seen it come up over the curb. She had received reports from two separate insurance agencies stating that she would not need to carry flood insurance because of the elevation of her home. She stated that they had purchased insurance this past year in order to borrow money against the house to pay for the addition.

Mr. Chase explained that the finished floor in the home was 2.5' above the sidewalk on the nearby bridge over the creek.

Mr. Bradshaw closed the public hearing. Mr. Santee asked Mr. Armstrong for some clarification of the floodplain requirements. Mr. Langholtz asked if the addition could be done in two stages and Mr. Armstrong confirmed that it could as long as each stage's value was less than 50% of the value of the existing structure. Mr. Salisbury asked how FEMA would consider the information Mr. Chase provided. Mr. Waldraff commented that this would be the second variance to finished floor elevation in one day. Mr. Hay stated that he thought the request was warranted but that he was worried about the long-term effects of an approval. Mr. Bradshaw stated that he wanted to help the applicants but was concerned about the possible effects on the rest of the community. Mr. Salisbury stated that the applicant mentioned that they do not need the variance to the side setback. Mr. Waldraff made a motion to deny the variance request for the side setback requirement based on the following findings:

Unique Conditions of the Property: The property meets all the minimum requirements for a lot in an RS12 zoning district.

Hardship From Strict Interpretation: There is no hardship; the applicant could alter the building plans to accommodate the setback requirement.

Effect on Public Health, Safety, and Welfare: There will be no direct effect.

Mr. Langholtz seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Mr. Waldraff made a motion to deny the variance request for finished floor elevation based on the following findings:

Unique Conditions of the Property: The property lies within the 100-year floodplain, which is not particularly unusual in Abilene.

Hardship From Strict Interpretation: There is no hardship, the applicant could build a smaller addition now and expand more at a later date.

Effect on Public Health, Safety, and Welfare: There will be no direct effect, but a trend of approvals for variances to finished floor elevation requirements could jeopardize Abilene's status in the National Flood Insurance Program.

Mr. Hay seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

BOARD OF ADJUSTMENT

June 14, 2005

Page 9

There being no further business, the meeting was adjourned at 10:00 A.M.

Approved: _____, Chairman