
BOARD OF ADJUSTMENT
December 13, 2005
Minutes

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

Members Absent:

Alternates Present: David Hejl

Staff Present: Justin Fortney, Planner I
Gloria Brownell, Planner I
Dan Santee, First Assistant City Attorney
Rodney Fletcher, Permit Specialist
Jeff Armstrong, Development Services Manager

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

The minutes of the November 8, 2005 meeting were unanimously approved.

Agenda Item BA-2005-74, Request for a 3.5' variance from the 25' rear setback requirement at 35 Cobblestone Lane.

Mr. Fortney presented the staff report. The applicant is proposing to enlarge the master bedroom, closet, and bathroom an additional 22.2' from the back of their house. This would end up being 3.5' into the setback. They do not want to extend eastward because this would position their bedroom window within 5' of their fence and require them to move their AC unit. When some of the homes in this area were built, the rear setbacks were 20' rather than 25'. This is why some of the homes are only 20 feet from the rear property line. There are no conditions peculiar to the land. The minimum lot size of the RS8 zoning district is 8,000 sq ft. The applicant's parcel is 10,350 sq ft. The minimum lot dimensions are 70' by 100' and the applicant's parcel is 88' by 122. Staff is unable to find a hardship. Staff foresees no negative effects on public health, safety, or welfare from a variance at this address. Because 2 of the conditions necessary to approve a variance have not been met, staff recommends denial.

Staff recommended denial of the variance. Six comment forms were returned in favor of the request and none in opposition.

Mr. Hejl asked how many other homes in the area were built to the 20' rear setback standard. Mr. Fortney stated that he noticed at least two, and possibly more but he could not determine the exact distance from the property lines. Mr. Bradshaw asked how far toward the rear the applicant proposed to build and Mr. Fortney explained that the addition would be 21.5' from the rear property line. Mr. Hay asked Mr. Fortney if he felt that the different standard to which the

BOARD OF ADJUSTMENT

December 13, 2005

Page 2

surrounding homes had been originally built constituted a peculiarity for this particular property. Mr. Fortney stated that the lot size and the current setback requirements were standard with other RS8 properties throughout the city and were not peculiar to the subject parcel.

Mr. Bradshaw opened the public hearing. David and Patti McCaghren, applicants, spoke in favor of the request. Mr. McCaghren stated that the home was built in 1966 and that Cobblestone Lane had been included in the Parade of Homes event. His family has lived there for ten years and several of the neighbors have owned their homes for twenty years or more. He stated that the proposed site plan had changed slightly to exclude the mechanical room because it would not be necessary to the addition. Mr. Bradshaw stated that it would not change the request because the encroachment into the rear setback remained the same. Mrs. McCaghren stated that the master bedroom was currently located on the southeast side of the house and that it was the same size as the other bedrooms in the home. The existing attached bathroom has two entrances and does not provide the privacy typical to a master bathroom. The addition would provide a true master bathroom, additional square footage for the bedroom, and additional closet space.

The applicants provided photographs of existing homes within the neighborhood that do not conform to current setback regulations. Mrs. McCaghren stated that even with the variance, their home would be farther from the rear property line than others in the neighborhood. She added that they very much enjoyed the surrounding neighborhood and that they would rather add on to their current home than move to a larger one somewhere else. Mr. McCaghren stated that expansion toward the east was precluded by the existing roofline and the proposed layout provided the best accommodation to the exterior appearance of the existing home.

Mr. Bradshaw closed the public hearing. Mr. Santee asked Mr. Fortney how many of the surrounding homes had been built to the other standard. Mr. Fortney explained that he had noticed at least two, and possibly more. Mr. Santee asked when the regulation had changed and Mr. Fortney replied that it had been sometime in the 1960's. Mr. Santee asked him if that constituted a peculiarity and Mr. Fortney stated that it was standard for other RS8 lots throughout the city. Mr. Salisbury asked Mr. Fortney to explain the new construction in one of the photographs provided by the applicant. Mr. Fortney stated that it was an accessory building and was subject to different setback regulations than the primary structure on the property. He stated that the property owner had obtained all the necessary building permits and that the structure would be in compliance with current standards. Mr. Santee stated that the differing setback regulations within the neighborhood seemed peculiar in his opinion. Mr. Hay stated that he thought a hardship existed because they could not develop their property to the same standard as their neighbors.

Mr. Hejl made a motion to approve the request based on the following findings:

Unique Conditions of the Property: The zoning regulations changed at one time requiring this property to have a 25' setback and homes that were built previously had only a 20' setback.

Hardship From Strict Interpretation: The greater setback standards caused a hardship because the applicants could not develop their property to the same standard as some of the their neighbors.

BOARD OF ADJUSTMENT

December 13, 2005

Page 3

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

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

Agenda Item BA-2005-68, Request for a Special Exception to locate a carport in the front yard setback at 731 Amherst Drive.

Mr. Fortney presented the staff report. The applicant proposes constructing a carport in the front yard over an existing driveway. The proposed carport would be 15 feet from the front property line and 27 feet from Amherst Drive. The intent of this regulation is to allow carports in front yards only in areas where such structures already exist. This provides for uniform and consistent development in areas with no front carports while providing an opportunity for property owners in areas with carports to make similar improvement to their properties. Since this proposed carport is in an area with other front carports, the proposal is consistent with the intent of the regulation. Staff anticipates no effects on public facilities from a carport at this location.

Staff recommended approval of the Special Exception. 7 comment forms were returned in favor of the request and none in opposition to the request.

Mr. Bradshaw opened the public hearing. Frank McCombs, applicant, spoke in favor of the request. Mr. Bradshaw asked if there was an existing garage and Mr. McCombs stated that there was and that he used it primarily for storage. Mr. Bradshaw asked how long he had owned the home and he stated that he had lived there for about 35 years.

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 other front carports in the vicinity of the request.

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

Relationship to the Intent of the Regulation: This request is in an area with several other front carports and is, therefore, 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-2005-69, Request for a Special Exception to locate a carport in the front yard setback at 2009 Meadowbrook Drive.

Mr. Fortney presented the staff report. The applicant has already built a carport over an existing driveway. The proposed carport is 5 feet from the front property line and 17 feet from

BOARD OF ADJUSTMENT

December 13, 2005

Page 4

Meadowbrook Drive. Since this carport is in an area with other front carports, the proposal is consistent with the intent of the regulation. Staff anticipates no effects on public facilities from a carport at this location.

Staff recommended approval of the Special Exception. One comment form was returned in favor of the request and none in opposition.

Mr. Bradshaw opened the public hearing. No one spoke in favor of the request. Mr. Fortney stated that he had never spoken directly with the applicant, but had been in contact with the agent. Mr. Hay asked about the agent's relationship to the applicant and Mr. Fortney replied that he did not know. Mr. Bradshaw asked how the Planning Department discovered the unpermitted carport. Mr. Fortney explained that the applicant had submitted his application for the Special Exception before any violation had been discovered by Building Inspection or the Planning Department. He stated that the request had been considered as if the carport had not yet been constructed.

Mr. Bradshaw closed the public hearing. Mr. Santee stated that the Building Inspection Department typically assessed double permit fees for structures constructed without the proper permits.

Mr. Waldraff made a motion to approve the request based on the following findings:

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

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

Relationship to the Intent of the Regulation: This request is in an area with other front carports and is, therefore, consistent with the intent of the regulation.

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

Agenda Item BA-2005-70, Request for a Special Exception to locate a carport in the front yard setback at 4718 South 6th Street.

Mr. Fortney presented the staff report. The applicant proposes constructing a carport in the front yard over an existing driveway. The proposed carport would be 15 feet from the front property line and 27 feet from South 6th Street. The intent of this regulation is to allow carports in front yards only in areas where such structures already exist. This provides for uniform and consistent development in areas with no front carports while providing an opportunity for property owners in areas with carports to make similar improvement to their properties. Since this proposed carport is in an area with other front carports, the proposal is consistent with the intent of the regulation. Staff anticipates no effects on public facilities from a carport at this location.

BOARD OF ADJUSTMENT

December 13, 2005

Page 5

Staff recommended approval of the Special Exception. 4 comment forms were returned in favor of the request and one in opposition, who commented that this was because she was unsure of the construction materials that would be used.

Mr. Bradshaw opened the public hearing. Stephen Moore, applicant, spoke in favor of the request. Mr. Hay asked him if he had spoken with the neighbor who returned the comment in opposition. Mr. Moore stated that the neighbor was an elderly woman whom he rarely saw. He added that the house belonged to his parents and that he was representing them. Mr. Langholtz asked about the construction materials and the design of the proposed carport. Mr. Moore explained that the carport would extend from the existing roofline and utilize the same roofing materials. He stated that both his parents were handicapped and they wanted the carport to create easier access to the vehicles. The existing garage does not have an interior entrance to the home and is too small to allow easy wheelchair access once the vehicle is parked inside.

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 other front carports in the immediate vicinity of the request.

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

Relationship to the Intent of the Regulation: This request is in an area with other front carports and is, therefore, 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-2005-71, Request for a Special Exception to locate a carport in the front yard setback at 2033 Lowden Street.

Mr. Fortney presented the staff report. The applicant proposes constructing a carport in the front yard over an existing driveway. The proposed carport would be 5 feet from the front property line and 17 feet from Lowden Street. The intent of this regulation is to allow carports in front yards only in areas where such structures already exist. This provides for uniform and consistent development in areas with no front carports while providing an opportunity for property owners in areas with carports to make similar improvement to their properties. Since this proposed carport is in an area with other front carports, the proposal is consistent with the intent of the regulation. Staff anticipates no effects on public facilities from a carport at this location.

Staff recommended approval of the Special Exception. two comment forms were returned in favor of the request and none in opposition.

Mr. Bradshaw opened the public hearing. Lee Maldonado, agent, spoke in favor of the request. He explained that the applicants owned two new vehicles and no garage. Mr. Langholtz asked

BOARD OF ADJUSTMENT

December 13, 2005

Page 6

about the construction materials and the design of the proposed carport. Mr. Maldonado stated that they would replace the existing driveway and that the carport would be of metal construction with a panel roof.

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 other front carports in the immediate vicinity of the request.

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

Relationship to the Intent of the Regulation: This request is in an area with other front carports and is, therefore, consistent with the intent of the regulation.

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

Agenda Item BA-2005-72, Request for a second 180-day extension for a 20' variance .

Mr. Fortney presented the staff report. The applicant proposed to demolish the existing store to construct a new convenience store. They wanted to provide more space for larger vehicles to maneuver around the fuel pumps. To accommodate this, they requested a 20' variance from the 25' rear setback requirement, which would place the building 5' from the rear property line. This variance request (BA-6504) was approved on November 9, 2004. City regulations require the applicant to obtain a building permit within 180 days of the hearing date; in this case the deadline was May 8, 2005. The applicant was unable to prepare plans in the specified amount of time due to logistical complications. The applicant was unable to obtain final approval. The plans were almost complete and the 180-day extension should have provided a sufficient amount of time to obtain all the necessary permits. The applicant's 180-day extension expired on November 4th, after an application for a second 180-day extension was submitted. The applicant states that they are now in the process of acquiring the adjoining property to the north, which would alter the layout of the site. If additional land is being acquired, a variance may not be necessary. If the acquired land is not related to the convenience store, then it should not have affected the development timeline from the previous 180-day extension.

Staff recommends approval of the request, only if the Board of Adjustment feels that acquiring additional land would not have affected their original decision. If the board feels that the information they were given to grant a variance has changed, staff recommends denial of the request and would suggest that the applicant reapplies for the variance under the new circumstances. Two comment forms were returned in favor of the request and none in opposition.

Mr. Bradshaw asked for clarification of the staff recommendation. Mr. Fortney explained that the original approval of the variance might have been different if the additional lot had been

BOARD OF ADJUSTMENT

December 13, 2005

Page 7

considered in the request. He stated that any changes to the site plan that was originally submitted should be considered with a new variance request instead of a request for an extension to the previous variance. Mr. Santee stated that the previously granted variance would not apply to any new property acquired by the applicant. Mr. Hay asked if there was any reason to believe that the site plan would change with the acquisition of additional property. Mr. Fortney stated that the agent had not provided specific details and may address that in the public hearing.

Mr. Bradshaw opened the public hearing. Len Hitch, applicant, spoke in favor of the request. He stated that the extra property was intended for development of a diesel island that would be an addition to the previously submitted site plan. He explained that he wished to develop everything at the same time and that the purchase of the property had been delayed due to the out-of-town owners. Mr. Hay asked if the proposed diesel canopy would be separate from what was reviewed during the variance request and Mr. Hitch confirmed that it would be.

Mr. Bradshaw closed the public hearing. Mr. Santee stated that the motion should address the fact that the variance will not apply to any additional property acquired and will not be increased if the site plan is modified prior to development.

Mr. hay made a motion to approve the request with the condition that any new information presented does not change the previously approved variance. Mr. Waldraff seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2005-73, Request for (1) a 15' variance from the 30' rear setback requirement and (2) a 5' variance from the 25' front setback requirement at 4626 Hummingbird Circle.

Mr. Fortney presented the staff report. The applicant's lot just meets the minimum lot size of the RS12 zoning district (12,000 sq ft). The minimum lot dimensions are 80' by 100'. The applicant's parcel is oddly shaped and approximately 70' by 105'. The depth of this lot is misleading because the depth of 105' is to a corner instead of a parallel property line. This lot has insufficient depth to overcome the intrusion of the cul-de-sac as most lots fronting on them do. The applicant has been working with an architect to position a house on the lot that is about 2,000 sq ft. The average size of the 4 existing houses on Hummingbird Circle is 2,554 sq ft. The applicant has been unable to design his home with a practical layout inside of the present setbacks. This lot is the smallest on the street and also has an unusual shape. The larger lot to the north received a 13' variance to the rear yard setback. The lot to the east should have received a 20' variance to the rear yard setback. When the home was built in 1997, the rear yard was construed as a side yard, in order to allow the home to be within 10' of the property line.

Staff recommended approval of the variance. Three comment forms were returned in favor of the request and one in opposition who felt that this might increase water runoff onto her property.

Mr. Bradshaw asked which property owner had opposed the request. Mr. Fortney indicated that it was the owner of the 10-acre parcel that was directly to the south of the subject parcel.

BOARD OF ADJUSTMENT

December 13, 2005

Page 8

Mr. Bradshaw opened the public hearing. Jimmy MacDonald of Blakely Builders spoke in favor of the request. He stated that he was the contractor hired to construct the proposed home and that he would be representing the applicants. He added that the lot was irregularly shaped and the substantial setbacks made it difficult to design a home to fit without variances.

Mr. Bradshaw closed the public hearing.

Mr. Hay made a motion to approve both variance requests based on the following findings:

Unique Conditions of the Property: The subject parcel barely meets the minimum lot size of the RS12 zoning district (12,000 sq ft). The minimum lot dimensions are 80' by 100' and the applicant's parcel is oddly shaped at approximately 70' by 105'. The depth of this lot is misleading because the depth of 105' is to a corner instead of a parallel property line. This lot has insufficient depth to overcome the intrusion of the cul-de-sac on the northeast corner.

Hardship From Strict Interpretation: The applicant could not develop the lot with a reasonably sized or shaped structure without a variance.

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

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

Agenda Item BA-2005-75, Request for a Special Exception to allow an existing single-family residence to be rebuilt in a Heavy Industrial zoning district if it is ever destroyed by more than 50 percent located at 933 Lane Avenue.

Mr. Fortney presented the staff report. The homes on this street were built from 1916 to 1957, with the applicants home being built in 1936. These homes were not inside the City limits when they were built, and even if they were, zoning didn't begin until 1946. This general area was zoned HI when it was annexed by the City in 1951. A couple is attempting to buy this home, but their lender is requiring the present owner to receive a special exception before they will lend the money. If the home were destroyed by more than 50% of its value, the City could not permit the home to be rebuilt without receiving a special exception at that time. Since there is a chance that they could be denied a special exception, the lender is requesting that the present owner obtains one before they will lend the money. Another way this situation could have been resolved would be to rezone the area that is developed with homes. This option would have been inappropriate because a residential district would not be compatible with the heavy industrial that would surround it.

Staff recommended approval of the Special Exception. One comment form was returned in favor of the request and none in opposition.

Mr. Bradshaw opened the public hearing. Rosemary Galindo, applicant, spoke in favor of the request. She stated that her husband had just retired after 21 years of serving in the Air Force. She said that they had bought the home when he was stationed at Dyess Air Force Base, but were now trying to sell it after she received a position in Edinburgh, Texas.

BOARD OF ADJUSTMENT

December 13, 2005

Page 9

Lisa Boyce of McAfee Mortgage spoke in favor of the request. She stated that she represented the lender and that the buyers were purchasing a home for the first time. They had applied for a Federal Housing Administration (FHA) loan that required the Special Exception.

Sue Garcia spoke in favor of the request. She stated that she was the real estate agent and that the home in question had been completely refinished and remodeled. She stated that this was the nicest home in the buyers' price range and that it was very important that they received the Special Exception to finalize their purchase.

Sherry Bean spoke in favor of the request. She stated that she owned the home at 911 Lane Avenue and was concerned that she may or may not be permitted to rebuild her home also. Mr. Santee stated that she would need to go through the same procedure as the Galindo's in order to have that ability. She stated that she had no objection to the home in question being rebuilt.

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: Most of this block is developed with residential homes, making this a compatible land use.

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

Relationship to the Intent of the Regulation: Residential uses are not allowed in HI zoning districts because they are not generally compatible with the uses permitted in those districts. The most basic intent of the regulation is to have an individual review of a property to determine if a single-family home would be compatible with the surrounding land uses. In this specific case, staff believes that it is compatible.

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

There being no further business, the meeting was adjourned at 9:30 A.M.

Approved: _____, Chairman