
BOARD OF ADJUSTMENT

April 11, 2006

Minutes

Members Present: Wayne Bradshaw
Scott Hay
Morton Langholtz
Rick Waldruff

Members Absent: Jim Salisbury

Alternates Present: Tim Cook

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

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

The minutes from the meeting on March 14, 2006 were unanimously approved.

Agenda Item BA-2006-20, Request for a Special Exception to locate a wireless communication tower in GC (General Commercial) zoning on property located at 1458 Woodard Street.

Mr. Langholtz made a motion to remove the item from the table. Mr. Cook seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Mr. Fortney presented the staff report. This Special Exception for a 75' communication tower to locate in a General Commercial zoning district was tabled from March meeting, partly so staff could look into the matter of the existing 80' tower. The tower in question did obtain a building permit and a Special Exception from the Board of Adjustment. Staff recommended denial of the Special Exception because it was determined to be incompatible with the surrounding residential area. The Board of Adjustment approved the Special Exception with the understanding that it would accommodate co-location, but did not specify how many antennas it must accommodate. The Board also conditioned approval of the tower on it utilizing a stealth design. Since it was discovered that the tower has a visible antenna, staff has contacted the owner to inform them that it is in violation of the conditions of the Special Exception. In the past week the existing 100' tower and satellite dishes have been in the process of being removed. The applicant is requesting to place a 75' monopole communication tower with large brackets to hold the antenna in a GC

zone across from a residential neighborhood on part of the lot. Communication towers are allowed in LI and HI zones. A tower placed in GC requires a Special Exception from the Board of Adjustment. The Zoning Ordinance specifies that every tower and associated equipment shall be located to minimize its obtrusiveness to the surrounding area. Perhaps one of the most obtrusive aspects of a tower is its close proximity to a residential neighborhood and the appearance of the equipment area that is associated with it. The area that is going to be set aside for this tower is much larger than for this existing 80' tower. There are some minimum criteria that must be met prior to approving a Special Exception for a tower. It must be compatible with the surrounding land uses, it cannot have any negative effects on public facilities, and it must be consistent with the intent of the regulation.

Staff recommended denial of the Special Exception. One comment form was returned in favor of the request and 2 in opposition. Mr. Bradshaw stated that he had driven past the area several times and it did not appear that the satellite dishes were being removed. Mr. Fortney explained that the contractors had just begun the removal and that all of the dishes had been detached from their bases. Mr. Hay asked if the ordinance specifically required three opportunities for co-location to comply with the regulation. Mr. Fortney stated that the Zoning Ordinance did not offer a specific number, but added that the Board could designate a specific number by placing a condition on their approval. He added that the existing tower that was discussed during the previous meeting was in compliance with the co-location requirement. Mr. Hay questioned Staff's determination of incompatibility with the consideration that others in the area were being removed. Mr. Fortney stated that the proximity to the residential area made the use incompatible regardless of the number. He explained that compatibility was more subjective than some of the other criteria the Board typically considers. Mr. Bradshaw asked if Staff felt the use would be more compatible considering the proposed tower would be shorter than another one in the same area. Mr. Fortney explained that the number of towers can also be incompatible, not just the size or appearance. Mr. Bradshaw suggested a privacy fence at the base of the structure to screen associated equipment to help make the use more compatible.

Mr. Bradshaw opened the public hearing. Laddie Galloway, agent, spoke in favor of the request. He stated that his customer had requested the tower and that his company was contracted to build it if approved. He explained that the proposed monopole would accommodate 3 antennas and that it would allow his customer to have coverage over a wider area. He stated that the monopole was more visible, but its greater effectiveness helped reduce the number of poles. He stated that he was willing to provide the screening fence at the base of the structure. Mr. Bradshaw asked him if he verified that the existing tower could not accommodate the antenna. Mr. Galloway explained that he was a former employee of the company that built the existing tower and that it was designed to accommodate only two antennas. Mr. Bradshaw asked if it was the tower structure or the ground space that limited the capacity. Mr. Galloway stated that both contributed to the problem.

Scott Senter spoke in favor of the request. He stated that he had helped conduct the sale of property for the existing tower and that it was a very small site. He said that the subject parcel was used as a parking lot for postal vehicles in the past, and that employees from a neighboring business park there now. He stated that the General Commercial zoning on the parcel allowed many uses that would not be compatible with the surrounding neighborhood. He said that they

had looked for other locations, but that this one was ideal for the tower. He stated that he had notified the owner of the existing tower about their violation of the stealth requirement. He said that it was a good use of the land to have the antenna tower with the parking lot.

Jesse Goodyear spoke in opposition of the request. He stated that his wife's property at 1501 Barrow Street was within the notification area. He said that cities have the authority to regulate towers with regard to surrounding property values. He added that the proposed tower was very close to his rental property and that it would reduce the amount of rent he could charge to future tenants. Mr. Bradshaw asked if he thought that one additional tower in an area that already had them would hurt his property value. He said his main concern was that it would open the door to even more in the area. Mr. Bradshaw asked if this would be the second one in the area. Mr. Fortney clarified that it would be the third, but one was in the process of being removed. Mr. Goodyear stated that he would prefer to see a privacy fence if it were approved. He stated that the telecommunication industry has been collecting fees on every cellular phone bill to cover infrastructure costs. He stated that they had the money to use stealth technology to place panels on the roofs of nearby structures instead of building a new tower.

Laddie Galloway, agent, spoke again at Mr. Bradshaw's request. Mr. Bradshaw asked him if there was a panel, like the one mentioned by Mr. Goodyear, that could be located on the roof of the neighboring Walgreen Drug Store. Mr. Galloway stated that no panels could be attached to the exterior of that building without being visible.

Mr. Bradshaw closed the public hearing.

Mr. Bradshaw stated that one more tower seemed compatible if they provided the privacy fence to screen the equipment at the base of the structure. Mr. Langholtz asked if the Board could stipulate the type of materials used to build the fence and Mr. Santee confirmed that they could. Mr. Hay stated that it seemed compatible especially because the third tower was being removed. He added that it seemed consistent with the intent of the regulation because it met all the conditions stated in the Zoning Ordinance. He said that the Board could control any additional antennas in the area because they will be required to go through the same process.

Mr. Hay made a motion to approve the request, with the following conditions:

- (1) One of the other existing towers in the area must be removed
- (2) The proposed tower must be designed for co-location to accommodate a minimum of three antenna structures
- (3) A 6-foot wooden privacy fence must be constructed around the base of the structure to screen all equipment associated with the tower structure

Mr. Hay based the motion on the following findings:

Compatibility With Surrounding Land Uses: The use is compatible since it is replacing an existing tower already in the area.

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

Relationship to the Intent of the Regulation: The applicant has shown that there is no opportunity to co-locate on an existing tower in the area and the request meets all other requirements as stated in the Zoning Ordinance.

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

Agenda Item BA-2006-23, Request for a Special Exception to locate a carport in the front yard setback on property located at 1217 South LaSalle Drive.

Ms. Brownell presented the staff report. The applicant proposes to construct a 12' x 21' carport extending from an enclosed garage over the existing driveway. The proposed carport would be 6 feet from the front property line and 18 feet from the curb on South LaSalle Drive. Since this proposed carport is in an area with other carports, the proposal is compatible and consistent with the intent of the regulation.

Staff recommended approval of the Special Exception. Five comment forms were returned in favor of the request and one in opposition.

Mr. Bradshaw opened the public hearing. Ray Young of Abilene Portable Buildings, agent, spoke in favor of the request. He stated that the applicant wanted to protect her new truck from rain and hail damage.

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

Agenda Item BA-2006-24, Request for a Special Exception to locate a carport in the front yard setback on property located at 1049 South Bowie Drive.

Ms. Brownell presented the staff report. The applicant proposes to construct a 12' x 20' carport extending from a one-car garage over the existing driveway. The proposed carport would be 14 feet from the front property line and 29 feet from the curb on South Bowie Drive. Since this

proposed carport is in an area with other carports, the proposal is compatible and consistent with the intent of the regulation.

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. No one spoke in favor or opposition of the request.

Mr. Bradshaw closed the public hearing. Mr. Waldruff asked if freestanding carports were permitted under the guidelines of the Special Exception. Ms. Brownell explained that carports placed in front of a residence needed to either be attached or appear to be attached to the primary structure, so completely freestanding portable carports would not be permitted. Mr. Santee stated that the Board members could place condition, including building materials and appearance restrictions, upon motions for approval. Mr. Fortney suggested restricting carports to being site-built structures.

Mr. Waldruff made a motion to approve the request with the condition that the structure is built on-site and attached to the primary structure, 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. Cook seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2006-25, Request for a Special Exception to locate a carport in the front yard setback on property located at 1226 Graham Street.

Ms. Brownell presented the staff report. The applicant proposes to construct a 30' x 22' carport extending from an enclosed garage over the existing driveway. The proposed carport would be 5 feet from the front property line and 20 feet from the curb on Graham Street. Since this proposed carport is in an area with other carports, the proposal is compatible and consistent with the intent of the regulation.

Staff recommended approval of the Special Exception. Two comment forms were returned in favor of the request and none in opposition. Mr. Hay asked if the existing driveway paving was permissible. Ms. Brownell stated that the proposed carport appeared to cover more than the existing driveway and that the applicant would be responsible for improving the surface under the entire structure.

Mr. Bradshaw opened the public hearing. Gregoria Munoz, applicant, spoke in favor of the request. Mr. Hay asked if she knew of the paving requirement and she stated that she did and that it would not be a problem.

Mr. Bradshaw closed the public hearing.

Mr. Hay made a motion to approve the request, with the condition that the surface is paved underneath, 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. Waldraff seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2006-26, Request for an 8' variance from the 15' exterior side setback requirement for an addition to a single-family residence on property located at 1641 Matador Street.

Ms. Brownell presented the staff report. Mr. Young is a disabled veteran and has been using the original restroom built in the home in 1949. The size and configuration of the small restroom has become problematic for the couple and they propose to construct a larger, more accessible restroom adjacent to their living space. The added distance they would need to travel to access a restroom in another location would be difficult with Mr. Young's current physical condition. Mr. Young's property is peculiar because the home was centered on the parcel, even though it is located on a corner. If the home had been placed closer to the interior side, as most corner lots are configured, he would have had sufficient space to construct the addition without a variance. Staff foresees no negative effects on public health, safety, or welfare since the addition would still be 22 feet from the curb on Hunt Street, which allows sufficient visibility at the intersection for vehicles in the right-of-way. The interior configuration of the home constitutes a non-financial hardship for the couple due to their medical conditions and the extra distance required to access the restroom if placed anywhere else.

Staff recommended approval with the condition that the variance only apply to the proposed addition. No comment forms were returned in favor or in opposition of the request.

Mr. Bradshaw opened the public hearing. Leck Matthews of Battles Home Improvement spoke in favor of the request. He stated that he had been contracted to build the addition and that Mr. Young could not attend the meeting because of his health.

Mr. Bradshaw closed the public hearing.

Mr. Langholtz made a motion to approve the request, with the condition that the variance only apply to the proposed addition, based on the following findings:

Unique Conditions of the Property: The home was centered on the parcel when it was originally constructed in 1949, leaving 17 feet on each side. If the home had been placed closer to the interior side setback requirement of 5 feet, there would have been sufficient space to construct the addition without a variance.

Hardship From Strict Interpretation: The interior configuration of the home precludes the addition from being built in any other location where it would still be reasonably accessible for the applicants.

Effect on Public Health, Safety, and Welfare: There will be no negative effect on public health, safety, or welfare from a variance at this location.

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

Agenda Item BA-2006-27, Request for (1) a 5' variance from the 60' minimum lot width requirement in RS6 zoning and (2) a 335 square foot variance from the 6,000 square foot minimum lot area requirement in RS6 zoning for property located at 1833 South 9th Street.

Ms. Brownell presented the staff report. The applicant owns and lives on the parcel adjacent to the subject parcel. The two properties face S. 9th Street and he has no access to the alley with the current configuration. He would like to resubdivide the parcels to combine the southern 37 feet of the subject parcel with his other lot. This would reduce the depth of the subject parcel to only 103 feet, which would create a lot of only 5665 square feet. The 55' lot width of the subject parcel is an existing legal non-conforming dimension. It is allowed to remain in its current condition, but any resubdivision cannot further reduce the dimensions or create any additional non-conformities without a variance. New subdivisions are required to meet the standards in place at the time the plat application is submitted. Both parcels would conform to current regulations if Mr. Sewell moved the shared property line 5 feet further west. He does not want to provide the additional 5 feet from his own parcel because of an existing rock wall constructed along the property line. He would lose possession of the wall if it were located completely on the other property. Staff felt that the possession of the wall did not constitute a sufficient hardship, especially when a reasonable alternative was available.

Staff recommended denial of the variances. No comment forms were returned in favor or opposition of the request. Mr. Langholtz asked if the applicant had been informed of the alternative and Ms. Brownell confirmed that he had. Mr. Santee asked if there would be any utility issues if the property line was shifted further west as Ms. Brownell had suggested, and she stated that at most only individual service lines were placed between the structures since there were no designated easements on the plat.

Mr. Bradshaw opened the public hearing. Tommy Sewell, applicant, spoke in favor of the request. He stated that he was agreeable with the alternative solution. Mr. Langholtz asked Mr. Santee if the applicant should withdraw his request. Mr. Santee suggested that the Board table the case to ensure that Mr. Sewell could reinstate his request if any problems arose during the replatting process.

Mr. Bradshaw closed the public hearing.

Mr. Langholtz made a motion to table the request.

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

Agenda Item BA-2006-28, Request for (1) an 8' variance from the 15' exterior side setback requirement and (2) a 1' variance from the 20' front setback requirement on property located at 1542 Orange Street.

Ms. Brownell presented the staff report. The applicant proposes to move an existing home on to the site, but has had difficulty fitting it onto the substandard parcel. The subject parcel is only 50 feet wide, which is substandard for the RM3 minimum lot width requirement of 60 feet. There is also an existing underground cellar near the rear of the property that prevents the home from being placed in compliance with the 20-foot front setback requirement. Exterior side setbacks are more substantial than interior side setbacks and reduce the amount of buildable area on corner lots. The substandard width of the parcel constitutes a hardship due to the reduction of buildable area. Furthermore, the existing underground cellar near the rear of the property poses a safety concern if the home was placed above it. Staff foresees no negative effects on public health, safety, or welfare from variances at this location. The home would be 23 feet from the curb on N. 16th Street, which allows more than sufficient visibility from the corner.

Staff recommended approval of the request with the condition that the variances only apply to the proposed structure. One comment form was returned in favor of the request and none in opposition.

Mr. Bradshaw opened the public hearing. Joe Stokes, Jr., applicant, spoke in favor of the request. He stated that the existing trees on the interior side made it difficult to move the home further south, and that he was concerned about the safety of placing the home over the underground cellar.

Mr. Bradshaw closed the public hearing.

Mr. Langholtz made a motion to approve the request, with the condition that the variances only apply to the proposed structure, based on the following findings:

Unique Conditions of the Property: The subject parcel is only 50 feet wide, which is substandard for the RM3 minimum lot width requirement of 60 feet. There is also an existing underground

cellar near the rear of the property that prevents the home from being placed in compliance with the 20-foot front setback requirement.

Hardship From Strict Interpretation: The applicant is moving an existing home onto this substandard vacant lot. Exterior side setbacks are more substantial than interior side setbacks and reduce the amount of buildable area on corner lots. The substandard width of the parcel constitutes a hardship due to the reduction of buildable area. Furthermore, the existing underground cellar near the rear of the property poses a safety concern if the home was placed above it.

Effect on Public Health, Safety, and Welfare: There will be no negative effect on public health, safety, or welfare from a variance at this location.

Mr. Cook 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 9:40 A.M.

Approved: _____, Chairman