
BOARD OF ADJUSTMENT

July 11, 2006

Minutes

Members Present: Wayne Bradshaw
Rick Waldruff

Members Absent: Scott Hay
Morton Langholtz

Alternates Present: David Hejl
Tim Cook
Brenda Coleman

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

Mr. Bradshaw, Chair, called the meeting to order at 8:35 AM and declared a quorum present.

The minutes from the meeting on June 13, 2006 were unanimously approved.

Agenda Item BA-2006-40, Request for a Temporary Permit to occupy a Temporary Security Residence on property located at 6001 Richmond Street.

Ms. Brownell presented the staff report. The applicant proposes to use a travel trailer as a temporary security residence throughout the duration of construction of a single-family home on the site. The applicant provided police reports with her application showing that the original single-family home was destroyed by a fire that was caused by arson, and that items were stolen from a shed on the property around the same time period. The area surrounding the property is primarily vacant and somewhat removed from any nearby development. The remote nature of the site and the time limitations of the temporary permit are consistent with the intent of the regulation and are compatible with the surrounding area.

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

Mr. Bradshaw opened the public hearing. Wendy Chamberlain, applicant, spoke in favor of the request. She stated that she has already contacted an electrician and a plumber for estimates to meet the conditions of the temporary security residence. Mr. Bradshaw asked her if she owned the home when it was burned and she stated that she purchased it later and demolished it. She said that they had experienced problems with theft and dumping at the site.

Mr. Bradshaw closed the public hearing.

Mr. Waldraff made a motion to approve the request. Mr. Hejl seconded the motion, which passed by a vote of 5 in favor and 0 opposed.

Agenda Item BA-2006-41, Request for (1) a Special Exception for a Secondary Single-Family Detached Dwelling and (2) a 20' variance from the 30' rear setback requirement on property located at 2326 Crestline Drive.

Ms. Brownell presented the staff report. The applicants propose to construct the building for use by their mother-in-law. Staff feels that the use and the size of the proposed structure are appropriate for the size of the subject lot and the surrounding area. The additional dwelling unit would have a minimal impact on the density and the character of the single-family neighborhood because of the proposed location and the restrictions on building materials. Staff foresees no negative effects on public facilities or health, safety, and welfare from the request. The lack of a conforming location produces a hardship from strict interpretation of the regulations and the configuration of the property makes it peculiar because there are no locations that would meet all setback requirements.

Staff recommended approval of both requests. No comment forms were returned in favor of the request and seven in opposition. Mr. Waldraff asked if any of the accessory structures on neighboring properties were being occupied and Ms. Brownell stated that there were none to her knowledge. Mr. Santee asked if staff recommended any special conditions and Ms. Brownell said that the ordinance already provided several restrictions that directly addressed the appearance of the use. Mr. Santee asked how staff would ensure that the structure was not rented to a non-relative in the future and Ms. Brownell replied that if staff became aware of the situation it would be treated as a zoning violation. Mr. Santee asked about the kitchen shown on the proposed layout and Ms. Brownell explained that it was permitted for this particular use. Mr. Waldraff asked if the applicants could add on to their home instead. Ms. Brownell stated that they could and that a variance may not be necessary with that option. Mr. Bradshaw commented that the room could still be rented if it had an outside entrance, even if it was attached.

Mr. Bradshaw opened the public hearing. Donald Hegwood, applicant, spoke in favor of the request. Mr. Bradshaw asked why he did not want to add on to the home. Mr. Hegwood stated that the interior configuration of the home made an addition near the proposed site undesirable and that there was no suitable alternate location for an addition. He said that his great grandmother would be occupying the dwelling and that they needed to take care of her as she ages. Mr. Bradshaw asked how long he had lived in the home and he replied that he had been there for two years. Mr. Bradshaw asked if he was aware that the building material must be brick to match his home instead of the wood siding shown in the proposed drawings. Mr. Hegwood stated that he was aware of the requirement and that he was not able to locate the exact type of brick to match since it had been discontinued, but that he was able to find one that was very similar in color.

Mr. Bradshaw closed the public hearing. Mr. Waldraff stated that he did not feel the use was consistent with the area and the other accessory structures in the area did not constitute compatibility because of the proposed occupancy. Mr. Bradshaw commented that the applicant could build the structure under current regulations, it just wouldn't be eligible for occupancy. The Board asked Ms. Brownell to provide any additional comments attached to the notification responses. Ms. Brownell read the comments, which detailed concerns about the building being used as a rental unit and how that might open the door for additional rental units in the neighborhood in the future. Mr. Santee asked about the house being rented in the future to several college students and Ms. Brownell stated that the number would be limited under the maximum number of unrelated individuals per dwelling unit as stated in the Zoning Ordinance.

Mr. Armstrong stated that he was a member of staff when the ordinance was written and would like to provide some additional information. He said that all the same concerns were discussed as the ordinance was being drafted, but ultimately it was adopted to address the needs of the aging community. The conditions were carefully thought out to limit the impact on the surrounding area and it was consistent with the regulations of many other cities. The use was designed to allow elderly individuals independence with the security of having family members nearby to care for them. The Special Exception was put in place to allow a case-by-case analysis of each proposal to ensure its compatibility.

Ms. Brownell explained that the terms of compatibility of the use may not necessarily follow the same methods used for carports. Mr. Santee asked for further explanation. Ms. Brownell stated that other factors could contribute to a proposal's compatibility, including size, placement, and neighborhood characteristics, and that the use may be compatible even in areas without other secondary dwellings. Mr. Santee stated that he did not agree with the legality of the distinction. Mr. Cook asked if domestic servants could occupy the dwelling and Ms. Brownell confirmed that they could. Mr. Waldraff commented that he did not feel the use was compatible and that the applicant could add on to the home instead. Mr. Cook agreed that the applicant could add on to the home. Mr. Waldraff also mentioned that seven of the neighbors were opposed.

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

Compatibility With Surrounding Land Uses: The use is not compatible because of the proposed occupancy.

Effect on Public Facilities: There are no negative effects on public facilities.

Relationship to the Intent of the Regulation: The proposal is not 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-2006-42, Request for a 7' variance from the 25' setback requirement from a minor street-side boundary on property located at 2200 Hickory Street.

Ms. Brownell presented the staff report. The applicant proposes to construct a new building on the campus of Hardin Simmons University. Ms. Brownell explained that although the property is very large, encompassing more than 56 acres, the functional design requirements for the proposed Health Science Center substantially limit the number of desirable sites. The existing underground utilities that serve the surrounding buildings constitute an inflexible barrier at the southern boundary of the proposed site. There is an alternative site available directly south of the existing Science Building that could accommodate the proposed structure. However, the agent claims that the interior configuration of functions within both structures make that site less practical. Staff does not feel that the interior configuration of the existing Science Building and the proposed facility constitute a hardship that would justify encroachment into the street-side boundary setback. Staff is also proposing an ordinance amendment to reduce the street-side boundary setback requirement for College University zoning, but the proposal must still be reviewed by the Planning and Zoning Commission and the City Council. The applicant is requesting the variance to expedite the construction of the new facility. Staff feels that the reduced setback is appropriate, but compatibility is not one of the criteria for variances. Staff does not feel there is a hardship associated with the request, and therefore does not meet the criteria of a variance.

Staff recommended denial of the variance. Three comment forms were returned in favor of the request and none in opposition. Mr. Bradshaw asked her to identify the small building shown in the aerial photograph. Ms. Brownell stated that it is the existing Environmental Lab and that the proposed structure was designed to align with it along the street-side boundary. Ms. Brownell added that it is currently built into the setback and that there were at least three other buildings along Vogel Avenue that also encroach.

Mr. Bradshaw opened the public hearing. Jack Harkins, agent, spoke in favor of the request. He provided a graphic that showed the placement of the utilities that restrict the buildable area of the site. He said that the alternate location had been studied, but it was determined to be undesirable due to the interior configurations of the existing and proposed facilities. He stated that the proposed building would be used by students from Abilene Independent School District and Hardin Simmons University and that the proposed site, which is adjacent to an existing parking lot, would be much more practical. He said that seven out of the ten buildings along the adjacent stretch of Vogel Avenue were built less than 25 feet from the street-side boundary. He stated that construction must get under way as soon as possible so the building would be available for use in Fall 2007. Mr. Waldraff asked if he saw a hardship associated with the request. Mr. Harkins stated that the underground utilities prevent the building from being shifted to meet the setback requirement.

Harold Preston, a representative for Hardin Simmons University, spoke in favor of the request. He explained that AISD will be bussing students to the new facility and would be using the existing parking area along Cedar Street to unload them. Mr. Hejl asked about his future plans for the alternative site. Mr. Preston explained that the university's master plan shows the area to be preserved as green space. Mr. Santee asked what would happen if the request were denied.

Mr. Preston said that the construction would likely be delayed and that the building may not be open until Spring 2008 instead of the fall semester.

Mr. Bradshaw closed the public hearing. Mr. Hejl asked how long the ordinance amendment process would be. Ms. Brownell said that the final review by City Council would be in late August. Mr. Waldraff commented that the placement would be consistent with nearby structures and that the applicant owns a substantial amount of land in the surrounding area.

Ms. Coleman made a motion to approve the request based on the following findings:

Unique Conditions of the Property: The existing underground utilities on the south side of the site create a barrier that prohibits the building from being shifted to meet the setback requirement.

Hardship From Strict Interpretation: The utilities, proximity to parking, and the access by students from AISD create a hardship if the building were shifted to the alternative site.

Effect on Public Health, Safety, and Welfare: There are no negative effects from this request.

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

Agenda Item BA-2006-43, Request for a 15' variance from the 20' rear setback requirement on property located in the 1400 and 1500 blocks of Yeomans Road.

Mr. Armstrong presented the staff report. The applicant is proposing to develop an apartment complex on the subject property comprised of 17 buildings with a total of 68 dwelling units. A row of four apartment buildings is proposed along the north side of the property. Two of the buildings would be five feet from the rear property line. The other two buildings would be approximately nine feet from the rear property line. The applicant acquired the land and as the property was being surveyed, it was discovered that the railroad right-of-way is 100 feet wider than any previous maps or information had shown, including maps that the City of Abilene has. Fifty feet of the 100 feet of additional right-of-way is on the south side of the railroad tracks and part of what the developers believed they had purchased. The applicant is working with the Union Pacific Railroad to acquire additional land adjacent to their site to eliminate the issue. Staff's review of the site plan shows the parking spaces to lack 1 to 2 feet of depth. When the parking is redesigned to meet the City's requirements, the buildings will be within one or two feet of the sidewalk leaving insufficient room for landscaping or other items. This would also be inconsistent with the layout of the rest of the buildings on the site.

Staff recommended approval of the variance. No comment forms were returned in favor or opposition. Mr. Santee asked if the 15' variance would be sufficient to expand the parking to meet all requirements. Mr. Armstrong said that preliminary calculations showed that it would, but that a more thorough review would be completed during the site plan process. Mr. Cook asked about the vacant land to the west and Mr. Armstrong explained that it was being reserved for a possible Phase II of the development. Mr. Santee asked if the setback was a problem for

the adjacent property and Mr. Armstrong replied that he was not sure if the issue came up when it was developed.

Mr. Bradshaw opened the public hearing. David Todd, local agent, spoke in favor of the request. He said that his firm has been doing the survey work that discovered the discrepancy and that the applicants originally thought they owned the additional land. He said that they closed on the property without the additional land so they could begin the development process and were currently working with the railroad to purchase the land. Mr. Hejl asked if they would move the units to the vacant land on the west if the variance were denied. Mr. Todd stated that moving the buildings would not maximize density of the space so they would not consider that as an option. Mr. Santee asked if the parking could be sufficiently expanded with the 15' variance and David Todd confirmed that they could redesign the site accordingly.

Dave Lilley, agent, spoke in favor of the request. He stated that all of his concerns had already been addressed by staff and David Todd. Ms. Coleman asked if they could begin construction on the southern units and leave the northern ones for later after the deal has been finalized with the railroad. Mr. Lilley explained that the development was proposed to be built all at once and that the railroad right-of-way area was planned for green space behind the row of buildings. He said that the railroad has no plans to use or develop the property, and that they were unaware of their ownership until his surveyors uncovered it.

Mr. Bradshaw closed the public hearing. Mr. Santee asked if the variance would apply to the new property line if it was approved and the applicant was able to obtain the additional property. Mr. Armstrong stated that a condition should be placed on a motion for approval to be consistent with the current layout.

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

Unique Conditions of the Property: The applicant acquired the land and as the property was being surveyed, it was discovered that the railroad right-of-way is 100 feet wider than any previous maps or information had shown, including maps that the City of Abilene has. Fifty of the 100 feet of additional right-of-way is on the south side of the railroad tracks and part of what the developers believed they had purchased.

Hardship From Strict Interpretation: The lot has less depth than originally thought and the site plan provided by the applicant shows adequate space to move the buildings to the south to meet the setback requirement without changing the layout of the rest of the site. However, one building would be only 4 feet from the sidewalk and parking area according to the submitted site plan. Staff's review of the site plan shows the parking spaces to lack 1 to 2 feet of depth. When the parking is redesigned to meet the City's requirements, the buildings will be within one or two feet of the sidewalk leaving insufficient room for landscaping or other items. This would also be inconsistent with the layout of the rest of the buildings on the site.

Effect on Public Health, Safety, and Welfare: Since the railroad right-of-way runs along the rear of the property, the lack of setback would not likely have any effect on the general public.

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

Agenda Item BA-2006-44, Request for a Special Exception to locate an antenna tower in Heavy Commercial zoning on property located at 1002 Elm Street.

Mr. Armstrong presented the staff report. The applicant is requesting to place a monopole communication tower in an HC zone. The zoning ordinance allows such antennas in LI and HI zones by right. GC, HC, MU, CU, and AO require a Special Exception from the Board of Adjustment to determine if the applicant has met the burden of proving that building a new tower in one of these zones is a last resort for locating a new antenna. The applicant provides wireless communication services and strives to locate on existing structures when possible. According to the information provided, there are no suitable locations in the area.

Staff recommended denial of the request. No comment forms were returned in favor or in opposition. Mr. Waldruff asked if the recommendation for denial was based on the applicant not providing sufficient justification. Mr. Armstrong explained that further analysis was conducted after packet distribution and that staff had verified the absence of any tall structures in the area. This removed any possibilities for co-location at a suitable height. This information, in addition to the lack of neighborhood opposition, lessens some of the original staff concerns. Mr. Bradshaw asked if AISD would allow co-location on their building and Mr. Armstrong stated that he was not sure.

Mr. Bradshaw opened the public hearing. Jason Hardin, agent, spoke in favor of the request. He stated that the original studies of the area were based on data gathered from complaints of dropped calls and poor reception. They used the data to determine proposed locations for new antennas that would resolve the problems. Sprint has a policy to co-locate whenever possible and to only build new tower structures when absolutely necessary. He said that they researched the Bank of America building, but it was too far away to provide the necessary service. They also looked at the school district building but determined that it was not tall enough. He said that their engineers attempt to design structures to the bare minimum to increase compatibility with the surrounding area. Other poles have utilized stealth construction techniques, but galvanized structures such as the one being proposed actually reduce the visual impact by blending into the skyline. Mr. Waldruff asked about the range of the proposed tower. Mr. Hardin explained that the 100' tower would serve a 1-mile radius. Mr. Waldruff asked about co-locating on the school structure and Mr. Hardin explained that it would reduce the height by 30 feet, which would reduce the coverage by 30%. Mr. Bradshaw asked how many carriers the tower would accommodate and Mr. Hardin stated that two carriers with three antennas could fit. Mr. Cook asked if the lowest carrier would have less coverage. Mr. Hardin stated that it depends on their network and that antenna structures could be placed as close as 10 feet apart.

Mr. Bradshaw closed the public hearing.

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

Compatibility With Surrounding Land Uses: Section 23-306.5.J(6)(d)(2) requires that new antennas be designed to “blend into the character and environment of the area in which they are located.” There are commercial buildings in the area and the Travis school is a 4-story building.

Effect on Public Facilities: There are no negative effects on public facilities.

Relationship to the Intent of the Regulation: The proposal is consistent because it meets all the conditions of the regulations.

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

Agenda Item BA-2006-45, Request for a Special Exception to locate an antenna tower in Heavy Commercial zoning on property located at 1042 Pine Street.

Mr. Armstrong presented the staff report. The applicant is requesting to place a 140’ monopole communication tower in an HC zone. The applicant provides wireless communication services and strives to locate on existing structures when possible. According to the information provided, there are no suitable locations in the area, however staff has not received information regarding use of existing buildings in the downtown area. Staff also has concerns about parking for the existing business on the site when 1500 feet is fenced off for use by the communication provider.

Staff recommended denial of the request. No comment forms were returned in favor of the request or in opposition. Mr. Waldruff asked if there were any tall buildings in the vicinity of the request. Mr. Armstrong stated that Hendrick Medical Center was eight blocks away and the taller buildings in downtown were approximately six blocks away. Mr. Santee asked if any conditions were being recommended to address concerns of public health, safety, and welfare and to improve compatibility. Mr. Armstrong stated that staff recommended screening for all parked vehicles being stored on the property. Mr. Cook asked if the parking on the north side was for customers and employees. Mr. Armstrong said that it was head-in parking in the right-of-way and that the city had changed policies to avoid that type of arrangement for future development.

Mr. Bradshaw opened the public hearing. Jason Hardin, agent, spoke in favor of the request. He stated that this was an area of particularly poor coverage. Moving the antenna further south to be closer to downtown would further reduce the coverage in the target area. The original location was at N. 12th and Grape Streets, which is zoned Shopping Center. Sprint did not feel the use would be compatible there and searched to find a more suitable location prior to applying for City approval. The proposed tower is taller than it would have been at the other location because of the increased distance. Mr. Hardin stated that the vehicles on the proposed site would be removed and that 6-8 of them have already been hauled away. He provided pictures of some of the recent improvements to the site. He stated that they had no problems providing screening or any other conditions the Board may feel were appropriate. Mr. Waldruff asked him to clarify the move from the original site. Mr. Hardin stated that they researched downtown sites when they

were looking for alternate locations, but that the coverage was not sufficient to meet the need in the area.

Bill Smith, applicant, spoke in favor of the request. He stated that he had moved 18 cars already and planned to move another dozen to Pine Street Salvage. He has already discussed cleaning of the site with the current tenants and is willing to provide whatever screening is necessary.

Mr. Bradshaw closed the public hearing. Mr. Hejl mentioned that they could require the fence along the front property line. Ms. Coleman added that they could require it on both the alley and the side that faces Pine Street. Mr. Santee suggested prohibiting parking along Pine Street on unimproved surfaces along with the opaque screening. He said that all inoperable vehicles should be on improved surfaces to ensure compliance with TCEQ by minimizing seepage of fluids leaking from vehicles.

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

- a. Construction and maintenance of a 7' opaque fence along the alley and Pine Street.
- b. No parking of inoperable vehicles in the right-of-way along Pine Street.
- c. All vehicles must be parked on an improved surface.

The motion was based on the following findings:

Compatibility With Surrounding Land Uses: The terms of compatibility were addressed by the conditions.

Effect on Public Facilities: There are no negative effects on public facilities that the conditions did not address.

Relationship to the Intent of the Regulation: The proposal is consistent because it meets all the conditions of the regulations.

Ms. Coleman 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 11:00 A.M.

Approved: _____, Chairman
