
BOARD OF ADJUSTMENT

December 8, 2009

Minutes

Members Present: Robert Beermann
 Wayne Bradshaw
 Brad Carter
 Scott Hay
 Morton Langholtz

Staff Present: Kelley Messer, Assistant City Attorney
 Ben Bryner, Planning Services Manager
 Zack Rainbow, Planner I
 JoAnn Sczech, Executive Secretary, Recording

Others Present: Vincent Huebinger
 Terrance Conner
 Richard E. Shelburn
 Royce G. Peterson
 Mike Thornton
 Gary L. Peterson

Item One: Call the Meeting to Order:

Mr. Bradshaw called the meeting to order at 8:50 AM and declared a quorum present.

Item Two: Approval of the Minutes

Col. Morton Langholtz moved to approve the minutes of the November 10, 2009, meeting. Mr. Hay seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Carter, Hay and Langholtz) to none (0) opposed.

Mr. Bradshaw read the opening statement for the Board of Adjustment.

Item Three: Oaths and Statements

Col. Langholtz, Mr. Carter and Mr. Beermann completed the Statement of Elected/Appointed Officer and Oath of Office forms.

Item Four: Special Exception/Variance Requests:

a. BA-2009-30

A public hearing to consider a request from Latoya and Terrence Conner for a Special Exception to locate a carport in the front yard setback on property located at 3761 Wilshire Dr. Legal description being RICHLAND ACRES REPLAT, BLOCK U, LOT 33.

Mr. Zack Rainbow presented the staff report. The applicant is requesting a Special Exception to allow for an 18' x 20' carport extending from the existing garage that was installed without a permit. The carport is 3'2" from the front property line and 15'2" from the curb on Wilshire Drive. The parkway width on Trinity Lane is 12'. The Board of Adjustment has the authority to grant a special exception for a front carport up to 5' from the front property line. Therefore, if the special exception is granted the carport must be a minimum of 17' from the curb.

THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:

1. THE PROPOSED USE IS COMPATIBLE WITH THE AREA:

There are other front carports located at 3737, 3750, 3801, and 3849 Wilshire Drive that appear to be within the front building setback. There are also many other carports in the general vicinity of 3761 Wilshire Drive.

2. THERE WOULD BE NO SIGNIFICANT NEGATIVE EFFECT ON PUBLIC FACILITIES:
Staff anticipates no negative effects on public facilities from a carport at this location.

3. THE REQUEST IS IN HARMONY WITH THE INTENT OF THE REGULATIONS:

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 similar front carports, the proposal is consistent with the intent of the regulation.

Property owners within 200 feet of the request were notified. Four (4) comment forms were returned either in favor and one (1) in opposition of the request.

Staff recommends approval of the request with the condition that the carport is no closer than 17 feet from the curb on Wilshire Drive.

Mr. Bradshaw opened the public hearing.

Mr. Terrance Conner stated that he was not aware of the permitting process when the carport was constructed. Mr. Conner stated that the carport was constructed to allow protection from inclement weather for his vehicle and to allow his wife to park in the garage. Mr. Conner stated that it will be safer and easier for his wife and children to access the home.

Mr. Bradshaw asked Mr. Conner if the distance requirement of 17 feet would be a problem since the carport has been constructed.

Mr. Conner stated that the carport could be moved to meet the setback.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2009-30 based on the findings in the staff report and with the condition that the carport be 17 feet from the curb on Wilshire Drive. Mr. Carter seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Carter, Hay and Langholtz) to none (0) opposed.

b. BA-2009-31

A public hearing to consider a request from Richard and Carolyn Shelburn, agent Vincent Gerard & Associates Inc. for a Special Exception to locate a telecommunication facility on property located at 1142 Fulwiler Rd. Legal description being A0704 SUR 34 T & P RY CO, BLOCK 16, ACRES 269.58

Mr. Zack Rainbow presented the staff report for this request. The applicant is requesting to place a 135' monopole telecommunication tower in a AO 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. This is so the Board of Adjustment can 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. Staff feels that the applicant has met the burden of proving that this is the only viable location to build a new telecommunications tower.

The property is primarily used for agricultural uses with the only development being a City owned water tower. The properties to the east are developed with large industrial buildings and the rest of the surrounding properties are used for agricultural uses.

Staff feels that because of its remote location and the only development within is the vicinity is large industrial buildings to the east, that the antenna tower would be compatible with the surrounding land uses.

Staff anticipates no effects on public facilities from a communication tower at this location.

The Zoning Ordinance specifically addresses several conditions that the tower must meet to be located in the city limits. Below you will find some of the issues that should be considered with the Special Exception request and the City's plans for accommodating them:

23-306.5.J(6)(a) "The locations for sitting antennas or antenna towers are listed below in order of decreasing preference: (1) Existing or approved towers (2) Existing alternative tower structures in allowed zones (3) Approved City-owned or other local-government owned land"

There is an existing City owned water tower on the property, but the City does not want to allow co-location because of concerns with security and the impact that an antenna and related equipment could have on the tank structure and coating system. The applicant states that the surrounding industrial uses either didn't meet Verizon's coverage demands or had an unwilling land owner. They state that the proposed location is the only viable location within the area.

23-306.5.J(6)(k) "No new antenna tower exceeding fifty (50) feet in height shall be permitted unless the tower is designed and constructed to accommodate co-location."
The proposed tower will accommodate up to 3 additional wireless carriers.

23-306.5.J(6)(p) "At a minimum, antenna towers shall be equipped with an anti-climbing device and enclosed by security fencing and a locking gate not less than six (6) feet in height."
The applicant submitted a site plan showing such improvements.

Property owners within 200 feet of the request were notified. One (1) comment forms were returned either in favor and none (0) in opposition of the request.

Staff recommends approval as the request meets the criteria to grant the Special Exception.

Mr. Bradshaw opened the public hearing.

Mr. Vincent Huebinger, representing the land owner and Verizon, stated that this telecommunication tower is required to cover Dyess Air Force Base and this area of the city. Mr. Huebinger stated that an attempt was made to locate the tower on the water tower in the area; however, this request was denied. The location of this tower meets the City code in that it is not near a residential area or co-located with another tower.

Mr. Bradshaw closed the public hearing

Col. Langholtz moved to approve BA-2009-31 based on the findings in the staff report. Mr. Carter seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Carter, Hay and Langholtz) to none (0) opposed.

c. BA-2009-32

A public hearing to consider a request from for the purpose of considering a request from Mike Thornton, for a Special Exception to locate a mobile home as a permanent security residence on property located at 210 Ruidosa. Legal description being SPIVA ADDN CONT 1, BLOCK A, LOT 1 & ABANDONED 353.29' X 40' ROAD.

Mr. Zack Rainbow presented the staff report for this case. The applicant proposes to use a travel trailer/mobile home as a permanent security residence in order to prevent theft and ensure greater security for the vehicles and equipment related to the landscaping use that are stored on the lot. Staff feels that the mobile home for a security residence would be appropriate for this location due to the surrounding zoning and land uses.

The subject property is developed as landscaping business. The surrounding properties are developed with industrial type businesses.

The property is surrounded entirely by LI zoning district. Many of the surrounding businesses as well as the subject property store large pieces of equipment outdoors. The property is also not visible from any major thoroughfare. Staff feels that a mobile home (permanent security residence) would be compatible with the surrounding land uses.

Staff anticipates no negative effects on public facilities from a mobile home at this location.

The intent of the regulation is to allow the use of a mobile home as a security residence: "To ensure greater security from theft for equipment and materials stored out-of- doors, the Board of Adjustment may authorize the placement of a mobile home in certain districts where not otherwise permitted, as long as conditions specified herein are met." Some of the conditions are:

- a.) To be used as an accessory residence on any tract of land where permitted by Section 23-306.4 as long as the principal use of such tract shall be commercial, industrial, or mineral extraction.

- d.) Only one (1) such mobile residence shall be permitted on any one or more contiguous lots in common ownership.
- e.) Shall be separated by no less than ten (10) feet from any existing structure or property boundary.
- (f) Shall not be located within regulatory 100-year flood hazard area.

Much of the subject property is located within the 100-yr flood hazard area. There is still room closer to the street where such a structure could be located and still meet building setback.

g.) Other requirements as the Board of Adjustment may deem necessary.

Because of the flood hazard conditions on the subject property and the potential location of the mobile home being closer to Ruidosa, staff would recommend some screening as deemed appropriate by the Board of Adjustment.

Staff feels that these conditions, as well as the others listed in the ordinance, have been met and the request is in harmony with the intent of the regulations.

Property owners within 200 feet of the request were notified. No comment forms were returned either in favor or in opposition of the request.

Staff recommends approval as the request meets the criteria necessary to approve a special exception.

Mr. Bradshaw opened the public hearing.

Mr. Mike Thornton stated that he is requesting to place a mobile home on this property for security. Mr. Thornton operates a landscaping business and a security residence on site would deter theft and/or vandalism.

Col. Langholtz stated that the screening of this mobile home would negate the purpose of the security structure.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2009-32 based on the findings in the staff report without a screening requirement. Mr. Beermann seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Carter, Hay and Langholtz) to none (0) opposed.

d. BA-2009-34

A public hearing to consider a request from for the purpose of considering a request from RGP Enterprises for a 6 foot variance to the required 25 foot rear building setback on property located at 3318 S. Treadaway. Legal description being ABILENE INDUSTRIAL DISTRICT SEC 2, BLOCK J, LOT 203 REP, ACRES 5.89.

Mr. Zack Rainbow presented the staff report for this case. The applicant requests the 6 foot variance to 25 foot rear building setback in order to construct multiple commercial self storage buildings that are

approximately 150 feet in length. The applicant states that he needs to locate the building in the proposed locations in order to fully provide fire apparatus access and safer access to the customers. The buildings would be approximately 19-20 feet from the rear property line.

THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST:

1. THERE ARE CONDITIONS PECULIAR TO THE LAND:

Staff Position: The requested variance is on the rear or west side of the subject property where it abuts the property with the regional detention facility. The adjacent property is undevelopable because on the detention facility. One of the reasons for setbacks is to ensure separation of buildings on adjacent lots. Since the lot adjacent to the subject property is undevelopable, staff does feel that it is a peculiarity in this case.

2. STRICT APPLICATION OF THE REGULATION WOULD RESULT IN A NON-FINANCIAL HARDSHIP:

Staff Position: Staff could find no hardship in this case. The subject property is 5.89 acres and the applicant is wishing to build 10, 150 foot long self storage buildings. There is enough room on the property to design the layout of the buildings while also providing adequate fire lanes, and still meeting the required building setbacks.

3. APPROVAL OF THE REQUEST WOULD NOT HAVE A NEGATIVE EFFECT ON THE PUBLIC HEALTH, SAFETY, OR WELFARE:

Staff Position: Staff anticipates no effect on the general public from this request.

Property owners within 200 feet of the request were notified. Two (2) comment forms were returned in favor and one (1) comment form was returned in opposition of the request.

Staff recommends denial. Although there is a peculiarity, staff was unable to determine a non-financial hardship. The applicant has enough property to redesign the proposed layout of the buildings and fit them on the subject property without the need for a variance.

Mr. Bradshaw opened the public hearing.

Mr. Pete Peterson stated that he has completed developments in Abilene for many years and would not do anything that would not be an enhancement for the City. Mr. Peterson stated that the six (6) foot variance would not violate the retention pond in any way. A site plan was provided by Mr. Peterson indicating the layout of the project. Materials have been purchased to construct this project and although the plan could be rearranged to meet the setback requirement, this would mean a loss of 3,000 square feet. Mr. Peterson stated that he would rather not give up this square footage of building.

Mr. Bryner stated that he had reconfigured the project to fit within the setbacks and provided this information to the Board members.

Mr. Gary L. Peterson, project manager, stated that the layout provided by Mr. Bryner violates the fire code in that it does not provide the appropriate apparatus access for this project. If the variance is denied,

the facility will be reduced in size. If the variance is granted, a portion of the area will be covered in concrete and will result in less area for the City to maintain.

Mr. Hay stated that the layout provided by Mr. Bryner seems to present security issues. The layout presented by Mr. Peterson provides a more efficient security design.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2009-34 based on the findings in the staff report with the exception that strict interpretation of the ordinance would not provide for maximum security of the site and that the buildings will be abutting property that will not be utilized for development. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Beermann, Bradshaw, Carter, Hay and Langholtz) to none (0) opposed.

Item Four: Adjourn

Col. Langholtz moved to adjourn the meeting. Mr. Carter seconded the motion and the motion carried unanimously.

Mr. Bradshaw adjourned the meeting at approximately 9:00 a.m.

Approved: _____, Chairman