
BOARD OF ADJUSTMENT

June 12, 2012

Minutes

Members Present: Roger Huber
 Col. Langholtz
 Bob Beerman
 Wayne Bradshaw
 Scott Hay

Staff Present: Zack Rainbow, Planner II
 Ben Bryner, Planning Services Manager
 Brad Stone, Planner II
 Hong Mang, Intern
 Kelley Messer, Attorney
 Debra Hill, Secretary II (recording)

Others Present: Wade Clark 1101 Tracy Lynn Dr
 Robert Poor 5802 Holiday
 Chuck Meyer 1401 Washington
 Myron Spalding

Item One: Call the Meeting to Order:

Mr. Wayne Bradshaw called the meeting to order at 8:30 A.M. and declared a quorum present.

Item Two: Approval of the Minutes

Col. Langholtz moved to approve the minutes of the May 8th, 2012 meeting. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Hay, Huber, Langholtz, Bradshaw and Beerman) and none (0) opposed.

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

Item Three: Variance:

a. BA-2012-13

A public hearing to consider a request from Robert Poor, for a 22.5' variance to the 25' side yard building setback, and a 20' variance from the 25' front yard building setback in HC (Heavy Commercial) zoning. Legal Description being ROY HERRING, BLOCK A, LOT 24. Located at 5802 Holiday Street.

Mr. Zack Rainbow presented the staff report for this case. The subject parcel is currently vacant with most of the surrounding properties being Light Industrial/Heavy commercial type uses and a few mobile homes to the south. The applicant requests the variance to the front and interior setbacks in order to construct a 24'x32' building. The majority of the subject property lies within the floodway with a smaller portion in the floodplain. The floodway is virtually undevelopable due to FEMA standards, while the floodplain is developable if new structures meet certain elevations. In this case, the building would need to be elevated 1 foot above the base flood elevation as determined by FEMA. The applicant is requesting the variances in order to construct the building so that it's out of the floodway. The proposed building would be 2.5 feet from the side property line and 5 feet from the front property line.

With limited useable space on this property, the setbacks basically prohibit the use of the property creating an undue hardship on the property. Staff feels that because of the physical constraints the floodway causes on the property, that this should be considered a hardship as well as a peculiarity to the subject property

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

1. THERE ARE CONDITIONS PECULIAR TO THE LAND:

Staff Position: Staff feels that the location of the floodway boundary on the property is a peculiarity.

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

Staff Position: Staff feels that the location of the floodway boundary on the property can also be considered a hardship.

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. One (1) comment form was returned in favor and zero (0) in opposition of the request.

Staff is recommending approval and feels that the request meets the criteria necessary to grant a variance.

Mr. Bradshaw opened the public hearing.

Mr. Robert Poor (applicant) spoke in favor of this request. Mr. Beerman questioned the purpose of the proposed building. Mr. Poor explained the building was purchased from AISD in their recent auction and will be moved to this property. He added this building has existing firewalls that would allow this building to be placed next to the property line. Mr. Poor stated this building will be used mainly for storage. Col. Langholtz questioned the type of business Mr. Poor had. Mr. Poor stated he is the owner of the Abilene Speedway dirt tract. Mr. Beerman questioned the foundation for this building. Mr. Poor stated that the building would be set based on the requirements by the City.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2012-13. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Huber, Langholtz, Hay and Beerman) and none (0) opposed.

b. BA-2012-14

A public hearing to consider a request from William Meyer, agent Myron Spalding, for a 12' variance to the 15' exterior side building setback on property zoned MD (Medium Density) zoning district. Legal description being ABILENE HEIGHTS, BLOCK 3, LOT 11. Located at 1341 Washington Boulevard.

Mr. Rainbow presented the staff report for this case. The parcel, as well as the surrounding parcels is being used as multi-family residences. The applicants began a remodel and bathroom addition without the proper building permits. They were issued a stop work order, therefore the reason for the request. The current home sits approximately 3' the side property line, making his house a legal non-conforming structure. The minimum exterior building setback from local streets in MD zoning is 15 feet. The applicants are seeking approximately a 12 foot variance to the 15 foot exterior side building setback. The applicants state that the addition will not extend past the current roofline of the existing front portion of the house.

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 current house was built in 1942 before the current setback rules were in place and it sits approximately 3' from the exterior property line. Many of the homes on the surrounding properties do not meet the current building setbacks either. This existing house is legally non-conforming in this regard and Staff does feel this is a peculiarity to the property.

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

Staff Position: From a strict interpretation of the ordinance, staff was unable to determine a non-financial hardship.

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. One (1) comment forms were returned in favor and zero (0) in opposition of the request. Staff is recommending denial although the variance to the setback would not have a negative effect on any of the adjacent properties; staff was unable to determine a non-financial hardship from a strict interpretation of the Ordinance.

Mr. Bradshaw opened the public hearing.

Mr. Myron Spalding (agent for William Meyer) spoke in favor of this request. He stated this had started as an interior remodel and due to the poor construction previously done to this property, the exterior wall had to be removed and a new wall construction completed. Mr. Spalding stated he was unaware he had needed to obtain a permit for this remodel. He added that the new construction would not extend out further than what was originally in place. Mr. Bradshaw questioned that the previous bathroom was already in this location. Mr. Spalding stated it was. Mr. Bradshaw questions the owner of the property. Mr. Spalding stated the owner is Gibb Meyers from Dallas TX. Mr. Hay questioned if the applicant was aware of any hardship for this request. Mr. Spalding explained the plumbing was ran on top of the outside of the rock siding, so the rock siding had to be removed in order to run the plumbing properly.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2012-14 based on the findings of staff with the exception of a non-financial hardship being: the applicant is replacing the addition to improve the building codes and appropriate construction. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Huber, Langholtz, Hay and Beerman) and none (0) opposed.

c. BA-2012-15

A public hearing to consider a request from The Dwayne Clark Corporation, agent Wade Clark, for a 25' variance to the 50' rear building setback on property zoned LI (Light Industrial) zoning district. Legal description being EAST HORIZON INDUSTRIAL DISTRICT, BLOCK 6, LOT 202. Located at 103 S. Judge Ely Boulevard.

Mr. Rainbow presented the staff report for this case. The subject parcel is developed with a self-service storage facility. The property to the north is railroad right-of-way. The property to the east is a manufacturing use and most of the other properties are developed with multi-family apartments and duplexes. The applicant requests the variance to the rear setback in order to construct a 30' x 90' new building. The new building will be used for self-service storage units. The applicant states that the reason he wishes to locate the building within the rear setback is because it is the only vacant space left on the property. The 2 newest buildings located at the rear of the property were built in 2004 and 2005 at a 25' rear setback. They were built with site plan approval and the proper building permits. The rear setback in the previous Zoning Ordinance, when adjacent to residential was 50' as well. The setback issue was an oversight on staff's fault in allowing the buildings to be set so close to 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: Staff feels that the previously allowed buildings built at the 25' setback 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.

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

Staff Position: In the interest of health, safety and welfare, this proposed variance would allow in industrial use building much closer than what City Council has determined to be an appropriate distance of the location of industrial buildings from residential uses.

Property owners within 200 feet of the request were notified. Two (2) comment forms were returned in favor and zero (0) in opposition of the request. Staff is recommending denial; staff was unable to determine a non-financial hardship in this case and also determined that the proposed variance would have a negative effect on the public health, safety and welfare.

Mr. Beerman questioned the distance between the fence and the apartments located behind the storage units. Mr. Rainbow suggested they are approximately 75 to 100 feet in distance. Mr. Hay questioned the zoning of this area. Mr. Rainbow explained that he has discussed with the applicant and the possibility of rezoning this area to reduce the setback requirements. He added the applicant ready to move forward with the new building.

Mr. Bradshaw opened the public hearing.

Mr. Wade Clark (applicant) spoke in favor of this request. Mr. Clark stated the reasoning for the addition is to allow more units for future customers. He added that at the present time the facility is at its maximum storage and have had to decline customers due to lack of storage units. Mr. Clark stated that the proposed building will take the place of the previously used area for outside storage. He added this would improve the appearance of their facility. Mr. Clark clarified that the apartment located behind the storage units have storage lockers located ten foot off the property line. Mr. Huber questioned the distance between each storage unit. Mr. Clark stated the distance is 20 to 25 feet.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2012-15 as requested based on the peculiarity: staff feels that the previously allowed buildings built at the 25' setback is a peculiarity in this case; the non-financial hardship being the addition is appropriate and fair use of the property previously approved by staff regarding previous development; no negative effect on the public health, safety, or welfare based on the type of use. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Huber, Langholtz, Hay and Beerman) and none (0) opposed.

Item Four: Adjourn

Mr. Bradshaw moved to adjourn the meeting.

Approved: _____, Chairman