
BOARD OF ADJUSTMENT

July 10, 2012

Minutes

Members Present: Roger Huber
Bob Beerman
Wayne Bradshaw
Scott Hay

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

Others Present: Cal Sumrall 1865 Elmwood
Larry Brunner 3802 S 20th
Tim McClarty 2610 S Treadaway
T'Lanye Partin 3472 Santa Monica Dr.

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

Mr. Beerman moved to approve the minutes of the June 12th, 2012 meeting. Mr. Huber seconded the motion and the motion carried by a vote of four (4) in favor (Hay, Huber, Bradshaw and Beerman) and none (0) opposed.

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

Item Three: Variance:

a. BA-2012-16

A public hearing to consider a request from J'Layne Partin, for a 1' variance to the 7' maximum fence height in RS-8 (Single Family Residential) zoning. Legal Description being WYCHWOOD PLAZA, BLOCK B, LOT 19 REP. Located at 3472 Santa Monica Drive.

Mr. Zack Rainbow presented the staff report for this case. The property in question is a single family residence. There are other single family residences to the east, north and south. There is an apartment complex and Cat Claw Creek to the west. The applicant proposes to construct an 8' tall privacy fence around the rear property line of the property. Cat Claw Creek runs along the rear of the property and a 2 story apartment complex is directly across Cat Claw Creek. The apartment buildings are approximately 120 feet away from the rear property line of the subject property.

The applicant is requesting the variance in order to reduce the noise and view of the apartment complex located behind the property. They also state that they feel the 8' fence would provide better security and privacy.

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

1. STRICT APPLICATION OF THE REGULATION WOULD RESULT IN A NON-FINANCIAL HARDSHIP/ CONDITIONS PECULIAR TO THE LAND:

Staff was unable to determine a non-financial hardship or a peculiarity in this case. Many homes in Abilene are adjacent to creek and comply with fence height regulations.

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

Staff does not anticipate any negative effects on the public from the 8 foot fence.

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 or a peculiarity in this case.

Mr. Bradshaw opened the public hearing.

Mr. J'Layne Partin (applicant) spoke in favor of this request. Mr. Partin described the location of his property. He added that the backyard of his property faces a two story apartment complex and the tenants on the second floor can easily see into his backyard. Mr. Partin stated that he also has had to file police reports for theft. He added he has had a gate stolen and food almost stolen from his smoker located in the backyard. Mr. Partin stated the purpose of the fence is to ensure safety and security for his property. He added that he has contacted his neighbors and they approve of this eight foot fence and are also having the same issue that he is. Mr. Partin stated the fence would be stained and landscaping added.

Mr. Bradshaw questioned if Mr. Partin had started the fence. Mr. Partin stated he has only put the posts in. He added that right behind his property is a telephone pole that is a main hub for the neighborhood. Mr. Partin stated that two to three times a week the telephone company is there for maintenance.

Mr. Huber asked when the posts were set. Mr. Partin stated that the post have been set for approximately six months.

Mr. Beerman questioned if there had been a fence previously on this property. Mr. Partin stated that there had not been a fence previously. He added that the alley or easement next to his property is frequently used as a short cut through to Santa Monica. Mr. Partin stated this adds to the issue of security needed for his property.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2012-16 as requested based on the peculiarity that Catclaw Creek and an apartment complex are located behind this property and that the main telephone hub is also located next to this property; the non-financial hardship being the lack of privacy without a fence; and that there will be no negative effect on the public health, safety, or welfare from this request. Mr. Beerman seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Huber, Hay and Beerman) and none (0) opposed.

b. BA-2012-17

A public hearing to consider a request from Calvin Sumrall, for a 2' variance to the 1742' minimum finished floor elevation on property zoned RS-12 (Single Family Residential) zoning district. Legal description being RIVER OAKS SECTION 5, BLOCK B, LOT 10. Located at 1865 Elmwood Drive.

Mr. Rainbow presented the staff report for this case. The parcel and all surrounding properties are developed as single-family residences. The applicant applied for and received a building permit on April 24, 2012, for construction of a 1756 sq. ft. addition to a single family house. The addition is to enlarge a bedroom and bathroom and to also add a garage. The lot is in the 100-year flood plain in Flood Zone A-11 with a base flood level of 1745. The City of Abilene requires that new structures in the flood plain be elevated 1 foot above the base flood level. Therefore when the permit was issued the required minimum finished floor elevation of 1746 feet above mean sea level (msl) was written on the permit. When the applicant received the permit, he noticed the elevation requirement and therefore the reason for the variance request. The Board of Adjustment has the authority to grant a variance up to 2 feet below the base flood elevation. In this case the base flood elevation is 1746 (msl) and the finished floor elevation of the house is 1744.02 at its lowest point.

If a variance is approved, record of this variance will be recorded with the property records at the Taylor County Courthouse so that any potential purchaser of the property will be aware of the low finished floor elevation. If approved, this variance will be likely to significantly increase flood insurance premiums for this property.

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

1. THERE ARE CONDITIONS PECULIAR TO THE LAND:

The entire lot lies within the 100-year Floodplain.

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

Staff could find no hardship with this case. When the applicant applied for a building permit the minimum finished floor elevation of 1746 feet above mean sea level (msl) was written on the permit.

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

The proposed structure would be susceptible to property damage from significant rainfall and variances such as this can ultimately affect flood insurance rates across the community.

Property owners within 200 feet of the request were notified. Thirteen (13) comment forms were returned in favor and zero (0) in opposition of the request. Staff is recommending denial: The request does not meet the criteria to approve a variance.

Mr. Bradshaw opened the public hearing.

Mr. Bradshaw explained to the applicant that with the shortage of board members, this request could be tabled to the following month if he requested.

Mr. Cal Sumrall (applicant) stated he would like to proceed with this request at this time. Mr. Sumrall stated that he had bought this property as an investment and has spent many hours remodeling it. He now intends to expand the size of the home to include a bedroom, bath and garage. Mr. Sumrall stated that if the addition was elevated by 2 ft. it would cause a hardship in the addition of steps entering the added rooms. He added that the elevation would also increase the slope for the garage. Mr. Sumrall described the curb as being 2 ft. lower than the existing home and adding the additional 2 ft. for the add-on could cause undue flooding for his home or the surrounding homes. Mr. Sumrall stated that the flood insurance for this property has been verified by several insurance companies.

Mr. Hay questioned the value of the existing home. Mr. Sumrall stated it was appraised at approximately \$138,000.00 for the square footage of 2500 ft. He added the addition would be approximately 700 square foot and is estimated at a cost of \$80,000.00.

Mr. Larry Brunner (3802 S 20th) spoke in favor of this request. Mr. Brunner stated that before Mr. Sumrall had purchased this house it had been damaged by the flood of 2002. He stated that after Mr. Sumrall purchased the house he remodeled and restored the home and it has made a great improvement to the neighborhood.

Mr. McClarty (Architect, 2610 S Treadaway) expressed his concerns regarding the strict regulations of FEMA. Mr. McClarty stated that in the past the city was able to match the existing floor elevation, the 50/30 rule, but this is currently not in use. Mr. McClarty stated that these types of request would be arising more frequently in the future. He added that this is a hardship to the homeowners regarding health, safety and welfare and would be easily proven.

Mr. Bradshaw closed the public hearing.

Mr. Huber expressed his concerns with any future homeowners of this property regarding acquiring flood insurance and financing.

Mr. Beerman stated he believes this is a reasonable request.

After discussion among the Board members, the following findings were agreed upon.

Mr. Hay moved to approve BA-2012-17 as requested based on the findings of the staff report; the non-financial hardship being loss of privacy and health issues related to the 2 ft. elevation requirements; there would be no negative effect on the public health, safety, or welfare from this request. Mr. Huber seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Huber, Hay and Beerman) and none (0) opposed.

Item Four: Adjourn

Mr. Bradshaw moved to adjourn the meeting.

Approved: _____, Chairman