
BOARD OF ADJUSTMENT

August 21, 2012

Minutes

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

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

Others Present: Gary Milliorn #5 Trails End
Bryan Holaman 542 Plum
Dan Mark Nickson 542 Plum
Joel Morris 1302 Saddle Lakes
Mark McMillian 441 N Treadway
Bob Eagle 1431 Tanglewood
Dwana Bradshaw 2426 S 39th

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. Morton Langholtz moved to approve the minutes of the July 10th, 2012 meeting. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Hay, Huber, Bradshaw, Langholtz and Beerman) and none (0) opposed.

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

Item Three: Special Exception

a. BA-2012-18

A public hearing to consider a request from Jerry Gage, agent America's Carports for a special exception to locate a carport in the front yard building setback in RS-8 (Single Family Residential) zoning. Legal Description being ELMWOOD WEST SECTION M, LOT 12. Located at 310 Saxon Street.

Mr. Zack Rainbow presented the staff report for this case. This property and most of the surrounding properties are developed with single family homes. The applicant is requesting a Special Exception to allow for a 20' x 20' carport extending from the existing garage. The carport would be 5' from the side property lines and 23 feet from the curb on Saxon Street. The parkway width on Saxon Street 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 multiple other front carports located in the surrounding area that appear to be within the front building setback.

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. Zero (0) comment forms were returned in favor and zero (0) in opposition of the request. Staff is recommending approval as the request meets the criteria necessary to grant a Special Exception.

Mr. Bradshaw opened the public hearing, no one came forward and the public hearing was closed.

Col. Langholtz moved to approve BA-2012-18 as requested. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Huber, Hay, Langholtz and Beerman) and none (0) opposed.

b. BA-2012-19

A public hearing to consider a request from Robert Eagle, agent Jeff Luther Construction for a 27' variance to the 30' rear building setback on property zoned RS-12 (Single Family Residential) zoning district. Legal description being TANGLEWOOD SECTION 1, BLOCK A, LOT 116, REPLAT. Located at 1431 Tanglewood Road.

Mr. Rainbow presented the staff report for this case. The applicant proposes to construct an approximately 740 sq. ft. garage addition extending from the rear of the house. The minimum rear building setback for an addition in RS-12 zoning is 30'. However, the Land Development Code allows for a 50% setback reduction when adjacent to undevelopable land (Elm Creek), which would allow for a 15' rear building setback. The proposed addition would be 3' from the rear property line.

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

1. CONDITIONS PECULIAR TO THE LAND:

The subject property rear boundary is adjacent to Elm Creek. Staff feels that this is a peculiarity to the subject property. The Land Development Code allows for a 50% setback reduction when adjacent to undevelopable land, which would allow for a 15' rear building setback. However, the applicant is requesting a variance to be within 3' of the rear property line.

2. HARDSHIP FROM STRICT INTERPRETATION:

Staff could not find a non-financial hardship in this case.

3. EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:

Staff foresees no negative effects on public health, safety, or welfare from variances at this location.

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 denial since the applicant did not satisfy all of the conditions necessary for a variance. However, if the Board approves the request, staff recommends that the variance applies only to the proposed addition.

Mr. Bradshaw questioned if the garage would be enclosed. Mr. Rainbow stated it would not.

Mr. Bradshaw opened the public hearing.

Mr. Robert Eagle (applicant) spoke in favor of this request. Mr. Eagle stated that the garage is an addition to current remodel to the property.

Mr. Hay questioned if this request was not to be approved, would this be a hardship to him. Mr. Eagle stated that if this request was not to be approved it would result in the loss of parking spaces. He added that this addition would be located to the rear of the property, which is located along Elm Creek, and would not be visible by any other homeowners.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2012-19 as requested based on the findings of the staff report and the approval to only apply to the approved addition; the non-financial hardship being the loss of parking area. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Huber, Hay, Langholtz and Beerman) and none (0) opposed.

c. BA-2012-20

A public hearing to consider a request from Haught's Tree Service, agent Mark McMillan for a 5' variance to the 5' exterior side building setback on property zoned LI (Light Industrial) zoning district. Legal description being OT ABILENE, BLOCK 100, LOT 12. Located at 441 N. Treadaway Boulevard.

Mr. Zack Rainbow presented the staff report for this case. This property is developed with a tree service business. The properties to the east are primarily single family homes. The property to the west is a church and the properties to the north are heavy commercial businesses. The carport would sit over 3 existing parking spaces which are setback 0 feet from the exterior side property line along N. 5th Street. The applicant is requesting a 5' variance to the 5' exterior side setback in order to build a 30'x30' carport to cover a portion of the parking lot. North 5th Street has a right-of-way width of 80' and a large parkway width of 22.5'. However, staff feels that there are other locations on the subject property where a carport could be constructed without the need for a variance.

THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST FOR A SPECIAL EXCEPTION:

1. CONDITIONS PECULIAR TO THE LAND:

The existing driveway on the subject property is located on the exterior side property line. The exterior side street is N. 5th and is classified as a local street and has a larger parkway than most local streets do at 22.5'. This could be considered a peculiarity.

2. HARDSHIP FROM STRICT INTERPRETATION:

Staff could not find a non-financial hardship in this case.

3. EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:

Staff foresees no negative effects on public health, safety, or welfare from a variance at this location.

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, although staff was able to determine a peculiarity in the large right-of-way, staff was unable to determine a non-financial hardship in this case.

Mr. Bradshaw opened the public hearing.

Mr. Mark McMillian (agent for Haught's Tree Service) spoke in favor of this request. Mr. McMillian stated the proposed area for the carport is for customer parking. He added the area behind the existing building is used as a drive way from N. 5th onto N. Treadaway for the business personnel.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2012-20 as requested based on the findings of the staff; the non-financial hardship being the only location for customer parking. Col. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Huber, Hay, Langholtz and Beerman) and none (0) opposed.

d. BA-2012-21

A public hearing to consider a request from Joel and Katie Morris for a 10' variance to the 25' rear building setback on property zoned RS-8 (Single Family Residential) zoning district. Legal description being LAKES AT SADDLE CREEK SUBDIVISION, BLOCK C, LOT 6, ACRES .382. Located at 1303 Saddle Lakes Drive.

Mr. Rainbow presented the staff report for this case. The subject parcel is vacant and the surrounding properties are developed with large single-family residences. The applicant proposes to construct an approximately 5689 sq. ft. house on the vacant lot. The minimum rear building setback in RS-8 zoning is 25'. The applicants are asking for a 10' variance to the 25' rear building setback in order to build the house. The proposed house would be 15' from the rear property line. The subject property is irregularly shaped. However, staff does not feel that this is a peculiarity because the lot is vacant, approximately 16,913 sq. ft., and has a large buildable area. The minimum lot size in the RS-8 zoning district is 8000 sq. ft. Staff feels there is ample buildable space to construct a home of this size without the need for a variance.

THE FOLLOWING 3 CRITERIA MUST BE FOUND IN THE AFFIRMATIVE TO APPROVE THIS REQUEST FOR A SPECIAL EXCEPTION:

1. CONDITIONS PECULIAR TO THE LAND:

Staff could find no conditions peculiar to the land.

2. HARDSHIP FROM STRICT INTERPRETATION:

Staff could find could not find a non-financial hardship in this case.

3. EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:

Staff foresees no negative effects on public health, safety, or welfare from variances at this location.

Property owners within 200 feet of the request were notified. Three (3) comment forms were returned in favor and zero (0) in opposition of the request. Staff is recommending denial as the request does not meet the criteria necessary to grant a variance.

Mr. Bradshaw questioned the odd shape of the lot as being a peculiarity. Mr. Rainbow stated that the lot has ample room to construct a home of this size if it was redesigned to avoid a variance.

Mr. Beerman questioned if an alley was located in this neighborhood. Mr. Rainbow stated there was not.

Mr. Beerman questioned the size of the other lots in this area. Mr. Rainbow stated that other lots in this area are of similar size and peculiarity in which adequate floor plans have been constructed. Mr. Beerman questioned the location of rear setbacks as opposed to the side setbacks. Mr. Rainbow illustrated the area that is considered as the side setbacks for this request.

Mr. Hay compared this lot and the design of the home to the other lots in this neighborhood. Mr. Hay stated that if the design were to be constructed on a normal dimensional lot, it would also have to come before the board for a variance. Mr. Rainbow agreed.

Mr. Bradshaw opened the public hearing.

Mr. Joel Morris (applicant) spoke in favor of this request. Mr. Bradshaw questioned if Mr. Morris has explored other options. Mr. Morris stated there are not many options to explore except to redesign the floor plan. He added this floor plan is a custom floor plan design. Mr. Hay questioned Mr. Morris to describe what hardship would this place on him if this request was denied. Mr. Morris stated if the variance was denied, he would not be able to use this purchased lot for this custom floor plan. Col. Langholtz questioned what part of the floor plan would be located within this variance request. Mr. Morris stated it would be a 3 car garage in that area of the floor plan.

Mr. Rainbow submitted the floor plan for review.

Col. Langholtz questioned the comment forms in favor. Mr. Morris stated the owners directly across and behind this location are in approval of this request.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2012-21 as requested based on the peculiarity being: the odd shape of the lot; the hardship being; not being able to use the custom floor plan; no negative effect on the public health, safety, or welfare based on the type of use. Mr. Beerman 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