
BOARD OF ADJUSTMENT

March 12, 2013

Minutes

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

Staff Present: Zack Rainbow, Planner II
 Ben Bryner, Planning Services Manager
 Dan Santee, City Attorney

Others Present: Ray A. Lissery
 Bill Riggs
 Johnny Brazell
 Sandra Kirdy
 Steven Leggett
 P.V. McMinn
 Shane McClung
 Jim Blay
 Aaron Wesson
 Alfonso G. Hernandez

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 February 12, 2013 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-2012-25 (Tabled from 1/8/2013)

A public hearing to consider a request from Alfonso G. Hernandez for a variance to the exterior side and interior side building setbacks, variances to the maximum lot coverage, variance to the maximum area of accessory structures and maximum height for carport/patio covers in MD (Medium Density) zoning. Legal Description being COWDEN HEIGHTS, BLOCK C, LOT 12. Located at 901 Vine Street.

Col. Langholtz moved to remove from the table BA-2012-25. Mr. Huber seconded the motion and the motion carried unanimously.

Mr. Zack Rainbow presented the staff report for this case. The Board of Adjustment requested additional information from the applicant regarding the carport/patio cover, but no additional information has been provided. The applicant's property is 7035 sq. ft. in area, and is developed with a 1268 sq. ft. single-family home. There is also a detached garage that is approximately 1120 sq. ft. that doesn't appear to have ever been permitted. It came to the attention of the City of Abilene that a carport/patio cover had been constructed connecting these 2 structures as well as covering most of the side and rear yards and a Stop Work Order was issued (4-23-2012). The carport/patio cover appears to be setback 0' from the interior property line and within the 5' building setback of the exterior side property line. Therefore, the reason for the setback variance requests. The applicant states that the structure is 900 sq. ft. in area. From what staff can determine, it appears that the new structure is much larger. The Land Development Code has a maximum sq. footage for an accessory building(s) of 10% of the lot area, and maximum lot coverage for all structures of 50% of the lot area. With an area of 7035 sq. ft. for the applicants' lot, the maximum size of all accessory structures total would be 703 sq. ft. With the addition of the unpermitted carport/patio cover there appears to be well over 2000 sq. ft. of accessory structures on the property.

The Land Development Code also has maximum lot coverage for all structures on a lot zoned RS to not exceed 50% of the lot area. Based on what staff could determine, it appears that the structures on this lot exceed the 50% lot coverage of 3517.5 sq. ft.

Finally, the applicant is seeking a variance to the maximum 12' in height for a carport/patio cover. Based on observations by staff, the structure appears to exceed this height.

Staff is recommending denial for all of the variances requested. Staff was unable to determine any peculiarities or a non-financial hardship in this case. Staff also determined negative effects on public health, safety, and welfare.

Mr. Bradshaw opened the public hearing.

Mr. Alfonso Hernandez states that when he asked the contractor why there was no permit pulled on this job, the contractor stated that his employees were supposed to get the permit.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to deny BA-2012-25 based on the findings of staff. Mr. Huber seconded the motion and the motion carried by a vote of four (4) in favor (Langholtz, Huber, Hay, and Bradshaw) and one (1) opposed (Beerman).

b. BA-2013-02

A public hearing to consider a request from Maria de Jourdes Pena for a special exception to locate a carport in the front yard building setback in RS-6 (Residential Single-Family) zoning. Legal Description being ALAMEDA ADDN SEC 8, BLOCK 1, LOT 10. Located at 5244 Aztec Drive.

Mr. Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to allow for a 24' x 24' carport extending from the existing garage. The carport would be 3' from the side property lines and 17 feet from the curb on Aztec Drive. The parkway width on Aztec Drive 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 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.

Staff is recommending approval, the request meets the criteria necessary to grant a Special Exception.

Mr. Bradshaw opened the public hearing.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2013-02 based on the findings of staff. Mr. Beerman seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.

c. BA-2013-03

A public hearing to consider a request from Thomas and Karen Evans, agent P.V. McMinn for special exception to locate a carport in the front yard building setback in RS-6 (Residential Single-Family) zoning. Legal Description being LYTLE SHORES SOUTH SECTION 1, BLOCK C, LOT 18. Located at 3750 Auburn Drive.

Mr. Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to allow for a 20' x 20' carport extending from the existing garage. The carport would be 7' from the side property lines and 12 feet from the curb on Auburn Drive. The parkway width on Auburn Drive 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 on Auburn Drive.

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 in the surrounding area that appear to be within the front building setback. There have been 2 previous Special Exceptions granted by Board of Adjustment in the near vicinity recently.

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.

Staff is recommending approval; the request meets the criteria necessary to grant a Special Exception.

Mr. Bradshaw opened the public hearing.

Mr. P.V. McMinn states the carport to the north on the next lot extend to the 20 x 20, which is reasoning for the request.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2013-03 based on the findings of staff. Mr. Beerman seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.

d. BA-2013-04 & 05

A public hearing to consider a request from habitat for Humanity Abilene, agent Cojer Surveying for a 28' variance to the 100' minimum lot depth, and an 11' variance to the 20' rear building setback in PH (Patio Home) zoning. Legal Description being NORTH PARK ADDITION, BLOCK 25, LOT 117 S & E W 10'. Located at 3002 Simmons Avenue. Legal Description being NORTH PARK ADDITION, BLOCK 25, LOT 118 S & E W 10'. Located at 3010 Simmons Avenue.

Mr. Rainbow presented the staff report for this case. Habitat for Humanity has purchased lots at 3002 Simmons Street as well as 4 adjacent lots to the north with intentions of building patio homes on the lots. They are seeking a 28' variance to the lot depth and an 11' variance to the rear building setback. The applicant states that the placement of any residence on the lot is such that its construction can only be built to the current configuration. Therefore, the reason for the variance requests. Any subdivision of land requires a plat to be filed with the City, and in this case a plat was not filed therefore creating the problem for the lot depth and inability of receiving a building permit. If the property owner was able to acquire the 10' of land that was previously sold to the adjacent property owner, the lot would then be intact and no variances would be needed.

CONDITIONS PECULIAR TO THE LAND:

The subject parcel was previously platted in 1983 with a depth of 82'. Although this would have made the lot legal non-conforming, a building permit could have been issued without the need for a variance. The previous property owner sold off the rear 10' to the adjacent property owner without going through the proper subdivision process.

HARDSHIP FROM STRICT INTERPRETATION:

Staff feels that because the non-conforming issue was a self-created problem it is not a hardship.

EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:

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

Staff recommends denial of both of the variances. The requests do not meet the criteria necessary to approve a variance.

Mr. Bradshaw opened the public hearing.

Mr. Stephen Leggett (Director of Habitat for Humanity) states their mission is provide low cost homes for people are willing to work and pay for it. It might be a difficult situation to try and acquire the 10' of land that was deeded by the previous owners. If the board denies this request then it would take two lots out of the inventory for the Habitat for Humanity.

Mrs. Sandra Kirby states she has lived at 1500 Anson Ave for 20 years and the carport has been there ever since her and her husband bought the property. The sewer and electrical box are on that 10' of land, so it would very difficult to deed that land to the Habitat for Humanity. Mrs. Kirby's expresses some concerns about the easement, safety, noise and privacy. If a privacy fence was built Mrs. Kirby would feel better about the noise and privacy. As far as safety, Mr. Ussery assures her that the 20' fire and utility easement would not be impaired.

Mr. Leggett states that a 6' privacy fence is already part of the project.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2013-04 based on the non conforming issue was really was not self created Mr. Beerman seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.

Mr. Hay moved to approve BA-2013-05 based on the non conforming issue was really was not self created. Mr. Beerman seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.

f. BA-2013-06

A public hearing to consider a request from Johnny and Sharon Brazell for a 10' variance to the 25' interior side building setback in AO (Agricultural Open Space) zoning. Legal Description being KINGS HILL SUBDIVISION, LOT 6, ACRES 2. Located between 7029 and 7045 Maple Street.

Mr. Rainbow presented the staff report for this case. The applicant proposes to construct a new house on the vacant lot. The minimum interior side yard building setback in AO zoning is 25'. The applicants are asking for a 10' variance to the 25' side yard building setback in order to build the house. The proposed house would be 15' from the northern property line and 35' from the southern property line.

The subject property is 115' wide x 700' deep. With the side setbacks totaling 50', the applicants state that the property is too narrow. Therefore, the reason for the variance request. However, staff does not feel that this is not a peculiarity or a hardship because the lot is vacant, approximately 87,233 sq. ft., and has a large buildable area. Even with the 25' side yard building setbacks, there is still enough buildable space for a 65' wide house. Staff feels there is ample buildable space to construct a home of this size without the need for a variance. Based on the plans submitted by the applicants, there is enough room to construct the house they have designed on this lot without the need for a variance. The proposed house could be built if their showed the house shifted south 10' on the lot. Additionally, another appropriate remedy would be to rezone the property to a residential district such as RS-12 which would reduce the interior side setbacks to 10'.

LAND USES:

The subject parcel and the large parcel to the east are vacant. The surrounding properties to the south and north are developed with large single-family residences and the property to the west is Lake Kirby Park.

CONDITIONS PECULIAR TO THE LAND:

Staff could find no conditions peculiar to the land.

HARDSHIP FROM STRICT INTERPRETATION:

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

EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:

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

Staff recommends denial. The request does not meet the criteria necessary to grant a variance.

Mr. Bradshaw opened the public hearing.

Mr. Johnny Brazell is the property owner. He states that the reasoning for this variance is so that vehicles would be able to maneuver around the driveway. The way it is now vehicles would have to go into the garage to maneuver out of the driveway.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to approve BA-2013-05 based on the peculiar based on the rest of the neighborhood and a hardship that limits access to property. Mr. Beerman seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.

g. BA-2013-07

A public hearing to consider a request from Derrick and Tamara Long for a 3’ variance to the 3’ interior side building setback for the carport/patio cover and a variance to the required 6’ separation between accessory buildings and other structures on the same lot in PD#4 (Planned Development) zoning. Legal Description being FAIRWAYS, BLOCK R, LOT 11. Located at 29 Cypress Point.

The applicant is requesting to table until next scheduled meeting.

Mr. Bradshaw opened the public hearing.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to table BA-2013-07 as requested by the applicant. Mr. Beerman seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.

h. BA-2013-08

A public hearing to consider a request from Shane McClung, agent Aaron Wesson for a complete variance to the on-site parking space requirements in HC/H (Heavy Commercial/Historical Overlay) zoning. Legal Description being PARK PLACE CONDOMINIUMS, LOT UNIT A-1. Located at 150 Locust Street.

Mr. Rainbow presented the staff report for this case. The applicant proposes to convert an existing historic warehouse into a personal fitness center. The current zoning of the property is Heavy Commercial and the proposed use as a personal fitness center has an off street parking requirements of 1 space for every 4 seating requirements. In this case, the building was built all the way to the property lines, leaving no space to provide the required on-site parking. The applicant is proposing to use the existing on- street parking spaces to serve the proposed business.

LAND USES:

The subject parcel is developed as an old, historic warehouse with residential units as well. The surrounding properties are surrounded with older industrial and heavy commercial uses.

CONDITIONS PECULIAR TO THE LAND:

The building on the site was built in 1927 as a warehouse. The building was built at approximately 0' setback from the property lines. This leaves no space on-site to provide for required parking for the proposed fitness center use. This could be considered a peculiarity to the property.

HARDSHIP FROM STRICT INTERPRETATION:

Staff could find could not find a non-financial hardship in this case. Staff feels that the proper action to remedy the off street parking requirements problems is a rezoning of the property to Central Business, which would eliminate the off street parking requirements in this case.

EFFECTS ON PUBLIC HEALTH, SAFETY, AND WELFARE:

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

Staff recommends denial. Although Staff was able to determine a peculiarity in this case, Staff was unable to determine a hardship.

Mr. Bradshaw opened the public hearing.

Mr. Aaron Wesson states that the front door of the fitness center is on Locust, parking in the alley in which the adjacent property owners may have an issue with, will not be a problem. The purposed business will be a group fitness center, which will limit the amount of cars to about 10-12 vehicles at a time. Mr. Wesson has tried working out the situation with adjacent property owner, but came to the agreement that there was not enough parking for either party.

Mr. Shane McClung is the building owner. Mr. McClung states there is no need to change the zoning, just fix the parking issue. He feels that the best solution for this problem is to waive the parking. There will be no parking in the alley, because that is not where the door is located.

Mr. Jim Blay (Abilene Plumbing Supply) states he has had his business for 40 years. All employees park on the street. Mr. Blay explains that when his plumbers are leaving the Abilene Plumbing Supply they have to exit out through the alley, also the solid waste drivers have to go through the alley. My only opposition would be parking in the alley.

Mr. Bradshaw closed the public hearing.

Mr. Bradshaw opened the public hearing.

Mr. McClung feels that allowing the variance for this particular business would inhibit any future leases.

Mr. Wesson states that he would fine with the limitation of the variance being just this particular tenant. Mr. Wesson would be willing to put a "no parking" sign if the city will not do so.

Mr. Hay moved to approve BA-2013-08 as request with the exception that this variance applies to the current applicant only. Col Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Beerman) and none (0) opposed.

Item Four: Adjourn

Mr. Bradshaw moved to adjourn the meeting.

Approved: _____, Chairman