
BOARD OF ADJUSTMENT

June 11th, 2013

Minutes

Members Present: Roger Huber
 Rick Waldruff
 Col. Langholtz
 Scott Hay
 Wayne Bradshaw

Staff Present: Zack Rainbow, Planner II
 Ben Bryner, Planning Services Manager (recording)
 Dan Santee, City Attorney
 Donna Boarts, Secretary II (Recording)

Others Present: Jack Esterling
 Mr. & Mrs. Brigman
 Kathi Ames Hernandez
 P.V. McMinn

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:

No minutes were submitted for approval

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

Item Three: Variance

a. BA-2013-15

A public hearing to consider a request from Aubrey Martin, agent America's Carports for a special exception to locate a carport in the front yard building setback in RS6 (Residential Single-Family) zoning. Legal Description being WESTVIEW PARK, BLOCK G, LOT 41. Located at 818 Briarwood St.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to allow for a 22.5' x 19' carport extending from the existing garage. The carport would be 5' from the side property lines and 17 feet from the curb on Briarwood Street. The parkway width on Briarwood Street is 10'. 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 15' 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.

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 RECOMMENDATION: 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 (Agent) spoke in favor of this request. Mr. McMinn described the details to the proposed carport and the reasoning for the request. It will extend over the new concrete with an all steel material.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve based on the findings of staff. Mr. Huber seconded the motion and the motion carried by a vote of Five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Waldraff) and zero (0) opposed.

b. BA-2013-16

A public hearing to consider a request from Kathi Ames for a special exception to locate a carport in the front yard building setback in RS6 (Residential Single-Family) zoning. Legal Description being NORTHWOOD SECTION 5, BLOCK 5, LOT 9. Located at 1934 Rosewood Dr.

The applicant is requesting a Special Exception to allow for a 20' x 20' carport extending from the existing garage. The carport would be 10' from the side property lines and 20 feet from the curb on Rosewood Drive. The parkway width on Rosewood 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.

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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.

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

STAFF RECOMMENDATION: Staff is recommending approval as the request meets the criteria necessary to grant a Special Exception

Mr. Bradshaw opened the public hearing.

Mrs. Kathi Ames-Hernandez (applicant) spoke in favor of this request. Mrs. Ames-Hernandez described the details of the proposed carport and the reason for the request.

Col. Langholtz questioned the type of material that would be used for the carport and who would be doing the construction. Mrs. Ames-Hernandez stated a local contractor but was unsure of his business name.

Mr. Bradshaw asked if the garage is able to be utilized at this time

Mrs. Kathi Ames-Hernandez stated that the garage does not have space for a vehicle at this time.

Mr. Bradshaw closed the public hearing

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

c. BA-2013-17

A public hearing to consider a request from Kenneth Bear, agent Jerry Sayas for a special exception to locate a carport in the front yard building setback in RS6 (Residential Single-Family) zoning. Legal Description being SUNSET PARK ADDITION, BLOCK A, LOT 21. Located at 1965 Woodard St.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special exception to allow for a 20' x 12' carport extending from the existing garage. The proposed carport would be 6' from the side property lines and 19 feet from the curb on 1965 Woodard Street. The parkway width on Woodard Street is 15'. 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 20' 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.

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 RECOMMENDATION: Staff is recommending approval with the condition that the carport must be a minimum of 20 feet from the curb.

Mr. Rainbow states the due to the size of the garage it cannot accommodate a larger vehicle. Col. Langholtz asked if anyone has spoken to Mr. Sayas and if he was aware of the (1) foot difference in the measuring.

Mr. Rainbow says he spoke to Mr. Sayas regarding the size difference and has made it known it cannot go over the 20 foot measurement.

Mr. Bradshaw opened the public hearing.

Mr. Sayas (agent) I am the contractor that will be building the awning, due to the residents having a larger vehicle the small carport will not cover it.

Mr. Bradshaw explains that they can grant the approval for the carport but have to deal with the City on the size. Mr. Sayas states the size of the awning will be 12x20.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2013-17 based on the findings of staff. Mr. Waldraff seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Waldraff) and none (0) opposed.

Numbers: #BA-2013-18 and #BA-2013-19 switched

d. BA-2013-19

A public hearing to consider a request from Jack and Marsha Brigman for a 3' variance to the required 3' interior yard building setback for a carport in RS12 (Residential Single-Family) zoning. Legal Description being RICHLAND ACRES, BLOCK A, LOT 33 LESS 2,089 SQ FT. Located at 4110 Concord Court.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a 3' variance to the required 3' minimum setback for in order to construct a carport extending from the existing house to the northern property line. The applicants state that the reason for the variance request is to build the carport over the existing driveway. The applicant states this is the only location for the carport due to the layout of the house in relation to the driveway and creek. Staff however, feels there is ample buildable space on the property in to construct a carport on the lot without the need for a variance.

SECTION AND REQUIREMENT OF ZONING ORDINANCE BEING VARIED:

Section 2.4.4.2 (b) (2) **Rear and Interior Side Setbacks:** A minimum of three feet (3) unless adjacent to an alley, then one foot (1).

LAND USES:

The property and most of the surrounding properties are developed with large single-family residences.

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.

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

The applicant is requesting a 3' variance to the required 3' minimum setback for in order to construct a carport extending from the existing house to the northern property line. The applicants state that the reason for the variance request is to build the carport over the existing driveway. The applicant states this is the only location for the carport due to the layout of the house in relation to the driveway and creek. Staff however, feels there is ample buildable space on the property in to construct a carport on the lot without the need for a variance.

STAFF RECOMMENDATION: Staff is recommending denial. Staff was unable to determine a non-financial hardship or a peculiarity the variances in this case. If the Board of Adjustment is inclined to approve the variances, staff recommends including the condition that would require them to mitigate any drainage from the carport onto the neighboring property. This can be accomplished by sloping the roof away from the neighbors' property or by installing a gutter that directs the runoff onto the subject property. Additionally, the carport would still need to comply with all applicable building codes.

Col Langholtz asked if there were many carports in the neighborhood.

Mr. Rainbow advised there are quite a few in the area but not many that encroach on the front setback. Asking for a side set carport with a 3ft variance only.

Mr. Waldruff questioned is there room to put it elsewhere?

Mr. Rainbow states the applicant would like to have more removability, other location would be more Costly.

Mr. Waldruff mentioned the effects on the public health and safety and welfare due to possible water runoff.

Mr. Rainbow advised if approved to have a condition that mitigates the water runoff onto the neighboring properties.

Mr. Bradshaw asked if Mr. Rainbow had spoken to any of the neighbors, Mr. Rainbow stated they were notified and received non in favor or in opposition of this carport.

Mr. Bradshaw opened for public hearing.

Mrs. Brigman (applicant) spoke in favor of this request of adding a carport

Col. Langholtz questioned is there anywhere else on the property to put the carport.

Mrs. Brigman states that due to the limited space on the property the driveway is the only space for the

carport, Mr. Don Estes will be the contractor and will allow for drainage on the property.

Mr. Bradshaw asked if that was a garage in the back. Mrs. Brigman stated it is a very small room and there has been a few additions made to the home, it was built in 1942.

Mr. Bradshaw closed the public hearing.

Mr. Hay made a motion to approve the variance as requested with the condition of adding a drainage system.

Mr. Hay moved to approve the variance as requested based on the layout of the existing property being a non-financial hardship, the location of the carport is compatible to the area, and that adding the drainage system would not create a negative effect on the public health, safety, or welfare. 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.

e. BA-2013-18

A public hearing to consider a request from Jack Easterling for a 27' variance to the required 30' rear building setback in RS12 (Residential Single-Family) zoning. Legal Description being, BLOCK 5, 8 & 9, LOT SOUTH 77' NORTH 127' OF 2, OUT LOT A. Located at 4116 Concord Court.

Mr. Zack Rainbow presented the staff report for this case. The applicant previously owned the property located adjacent to this lot at 4116 Concord Court as well, which has a house built on it. Since the 2 lots were under the same ownership, the applicant was allowed to construct an 1199 sq. ft. accessory building on the adjacent lot located at 4110 Concord Court. Being that the building built on the lot located at 4110 Concord Ct. was considered an accessory building at the time, it was allowed to be constructed with less restrictive setbacks than a primary structure. The minimum rear building setback for an addition in RS-12 zoning is 30'. The accessory building was built in 1990, 3' from the rear property line. The applicant has since sold the lot at 4116 Concord Ct. with the primary structure/house on it. The Land Development Code does not allow for accessory buildings on a lot without a primary structure, in this case a house. The applicant is wishing to convert the accessory structure into a primary structure, therefore the reason for the variance request. The rear setback for a primary structure in RS-12 zoning is 30'.

LAND USES:

The subject parcel is developed with an accessory dwelling structure with no primary structure on the lot. The surrounding properties are developed with large single-family residences.

CONDITIONS PECULIAR TO THE LAND:

Staff was unable to determine a non-financial hardship or a peculiarity in this case.

HARDSHIP FROM STRICT INTERPRETATION:

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

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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 one (1) in opposition of the request.

STAFF RECOMMENDATION: Staff recommends denial. Staff was unable to determine a non-financial, non-self-created hardship or peculiarity. However, if the Board approves the request, staff recommends that the variance applies only to the existing building. Also, all applicable subdivision and building codes will still apply.

Mr. Bradshaw opened the public hearing.

Mr. Jack Easterling (applicant) spoke in favor of the request. Mr. Easterling the owner of the property requesting a water meter, City denied that request and feels the property now is useless. Mr. Easterling Purchased both lots in 2008, the previous owner would not split the property at the time tried to sell 4116 Concord and keep 4110 Concord to build a livable residence for his disabled son. Property has kitchen, bathroom a large room and two small rooms, gas/elec meter central air/ heat. Stated that City gave the past owner a permit for a sewer tap at 4110 Concord Court.

Mr. Ben Bryner stated as long as there is a water meter on the property they will issue a sewer tap as long as there is water source already in place and since it was tired to the property on the adjacent lot. It has since been disconnected, Mr. Huber advises to possibly move the building to a centralized location on the lot to meet all requirements.

Mr. Easterling feels it should have never been approved for a meter and he is asking for a 27 ft. variance for a water meter not only for the home but for watering his trees and shrubs.

Mr. Bradshaw closed the public hearing.

Mr. Hay questioned the staff if the building was initially built as an accessory structure for someone that owned the property at 4116 Concord and it was never intended to be a residence.

Mr. Bryner stated that is correct, it is possible to be set up as an accessory dwelling but the owner would need to comply with all the regulations and would need to run off the same utilities as the home so it would not be sold off.

Col Langholtz asked for clarity, if this building was not there and somebody came forward on this lot and wanted to put it 27 feet forward from where it is now would be no problem getting the permits for a 1200 sq. ft. structure on that lot.

Mr. Bryner states yes as long as it was a plated lot and they go through the standard permit process.

Mr. Hay states if approved they would be creating an anomaly to the property that was plated originally

as a single lot under a single ownership, stated that one option would be to move the building to a central location to meet all intended requirements, although the home still would not fit in with the neighborhood.

Mr. Bradshaw re-opened the public hearing.

Mr. Easterling feels the water meter should be grandfathered in.

Mr. Waldraff questioned Mr. Easterling if his son resides at the residence now.

Mr. Easterling stated that no one has lived at the residence since he owned it.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to denial based on the findings of staff. Mr. Huber seconded the motion and the motion carried by a vote of Five (5) in favor (Langholtz, Huber, Hay, Bradshaw and Waldraff) and Zero (0) opposed.

Item Four: Adjourn

Mr. Hay moved to adjourn the meeting.

Approved: _____, Chairman