
BOARD OF ADJUSTMENT
August 13th, 2013
Minutes

Members Present: Roger Huber
Col. Morton Langholtz
Wayne Bradshaw
Ms. Ramsay

Staff Present: Zack Rainbow, Planner II
Ben Bryner, Planning Services Manager (recording)
Kelley Messer, Asst.City Attorney
Donna Boarts, Secretary II (Recording)

Others Present: Mike Dodson
Dewayne Latham
Osbaldo Trevino
Gary Milliorn
Mike Dunnahoo
Richard Valdez
Rachel Valdez
Gene & Becky Taves

Item One: Call the Meeting to Order:

Mr. Bradshaw called the meeting to order at 8:35 A.M. and declared a quorum present.
Mr. Bradshaw read the opening statement for the Board of Adjustment.

Item Two: Special Exception:

a. BA-2013-25

A public hearing to consider a request from Osbaldo Trevino for a special exception to locate a carport in the front yard building setback in RS6 (Residential Single-Family) zoning. Legal Description being SOUTHWEST PARK SECTION 1, BLOCK 9, LOT 2. Located at 1610 Ballinger St.

Mr. Zack Rainbow presented the staff report for this case. The applicant is requesting a Special Exception to allow for a 19' x 18' carport extending from the existing garage. The carport would be approximately 3' from the side property line and 20 feet from the curb on Ballinger Street. The parkway width on Ballinger 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. Five (5) comment forms were returned in favor and none (0) in opposition.

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

Mr. Bradshaw opened the public hearing

Mr. Trevino (applicant) spoke in favor of this request.

Mr. Bradshaw questioned Mr. Trevino on how long he has lived at his residence. Mr. Trevino stated eleven years. He also indicated that the garage was already enclosed when he purchased the home. Mr. Trevino stated since it will be attached to the home so the building materials will be similar.

Mr. Langholz questioned what type of materials is going to be used to build the carport...

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve BA-2013-25 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, Ramsay, and Bradshaw) and none (0) opposed.

b. BA-2013-26

A public hearing to consider a request from Daisy Bergeron for a special exception to locate a carport in the front yard building setback in RS6 (Residential Single-Family) zoning. Legal Description being LYTLE SHORES SOUTH SECTION 3, BLOCK H, LOT 34. Located at 3650 Trinity Ln.

Mr. Zack Rainbow presented the staff report for this case. The applicant had a 20' x 20' front carport constructed without a building permit. When the applicant came in to get a permit it was discovered that the carport did not meet the required setbacks. Therefore, the reason for the request. The carport is approximately 18' from the side property line and 12 feet from the curb on Trinity Lane. The parkway width on Trinity Lane 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.

Property owners within 200 feet of the request were notified. Zero (0) comment forms were returned in favor and none (0) in opposition

STAFF RECOMMENDATION: Staff is recommending approval as the request meets the criteria necessary to grant a Special Exception with condition the carport be 17' from the curb.

Mr. Langholtz questioned about the 1 ft. adjustment, Mr. Rainbow reiterated that it would need to be a 5 ft. adjustment, will need to be 17 ft. from the curb.

Mr. Huber was concerned about the right post being on the property line. Mr. Rainbow stated that the roof extends to the front property line. Mr. Bradshaw mentioned that the post would need to be moved.

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

Mr. Langholtz questioned why the applicant/contractor was not available, feels it needs to be discussed before a decision can be made. Discussed option to table the item to discuss further or deny.

Mr. Rainbow indicated that he has spoken to Ms. Bergeron (applicant) and the builder regarding the construction of the carport. Mr. Rainbow believes that the builder is just starting out as a new contractor

stated that he was not aware that a permit was needed. Ms. Ramsay questioned if the builder is aware that a permit is now needed. Mr. Rainbow stated that they had received a stop work order complaint. At that time the contractor applied for the permit and is awaiting the outcome of this meeting. Mr. Bradshaw explained that the builder needs to be here next time.

Col. Langholtz moved to TABLE ITEM BA-2013-26 to the next meeting. Mr. Huber seconded the motion and the motion carried by a vote of five (5) in favors (Langholtz, Huber, Ramsay and Bradshaw) and none (0) opposed.

c. CA-2013-27

A public hearing to consider a request from Richard and Rachel Valdez for a 10' variance to the required 15' exterior side building setback in RS6 (Residential Single-Family) zoning. Legal Description being ELMWOOD WEST SECTION 10, BLOCK C, LOT 1. Located at 1321 Buccaneer Dr.

Mr. Zack Rainbow presented the staff report for this case. The applicants applied for a building permit to enclose their existing, open carport that is built 5 feet from the exterior property line. The minimum exterior side building setback for enclosed structures is 15 feet, therefore their permit was denied on 6/3/2013. The contractor went ahead with the work without the permit and was issued a stop work order. The applicants wish to finish the addition in its current location, therefore the reason for the request. The minimum exterior building setback from local streets in RS6 zoning is 15 feet. The applicants are seeking approximately a 10 foot variance to the 15 exterior side building setback. The applicants state that the addition will not extend past the current roofline of the existing carport. The parcel, as well as the surrounding parcels is being used as single family residences.

SECTION AND REQUIREMENT OF ZONING ORDINANCE BEING VARIED: Chapter 2, Table 2-2: Setback from exterior lot boundary adjacent to local streets: 15'.

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 was unable to determine a peculiarity in this case.

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

Staff Position: 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.

STAFF RECOMMENDATION: Denial. Staff was unable to determine a non-financial hardship or a peculiarity.

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.

Mr. Bradshaw opened the public hearing.

Mr. Valdez (owner) spoke in favor of the request. They are in need of the extra room due to their daughter with medical needs and grandson residing with them now. They would like to enclose their carport for a physical therapy area for their daughter. Mr. Valdez brought in pictures of other homes in the neighborhood showing enclosed garages in their vicinity.

Mrs. Valdez (owner) spoke in favor of this request. Caring for their daughter due to her medical needs makes the home inadequate for four people, therefore enclosing the carport would be needed.

Mr. Dodson spoke in favor of this request. Mr. Dodson is the General Contractor that was hired to repair the roof. In the process noticed a flat area which caused leaking problems. Explained the north side of the carport was at one time enclosed with a slatted wall. Stated that they have not exceeded the boundary of the home. When the stop work order was issued they decided to leave the room as a work out area until it was addressed by the Board.

Mr. Bradshaw questioned Mr. Dodson on how far over the existing roof was done. Mr. Dodson explained that they did not increase the area of the entire house. Mr. Bradshaw explained that with a carport, as long as it is open, the measurements are different than if it's enclosed. Mr. Dodson states that he needs a 10' variance.

Mr. Bradshaw closed the public hearing.

Mr. Langholtz moved to approve the Variance found in the statement based on the peculiarity to the land being: the location of this would be beneficial for their medically disabled daughter now residing with them; any additions to the back of the home would cause great difficulties; and there is no negative effect on the public health, safety, or welfare. Mr. Huber seconded the motion and the motion carried by a vote of four (4) in favor (Langholtz, Huber, Ramsay and Bradshaw). And none (0) opposed.

d. BA-2013-28

A public hearing to consider a request from Mike Dunnahoo agent Gary Million for a 30' variance to the required 30' exterior side building setback in HC (Heavy Commercial) zoning. Legal Description being CHRYSLER MOTORS SUBDIVISION, BLOCK SUBDIVISION #1, ACRES 3.647. Located at 5101 S. 1st St.

Mr. Zack Rainbow presented the staff report for this case. The applicant received a building permit for extensive interior renovations and an addition for the car dealership at 5101 S. 1st Street. In order to accommodate the sales staff and office space while the construction is going on, the applicant has installed multi portable buildings in the parking lot. The buildings were placed on the east side property line at approximately 23' from the curb on South Clack Street.

The square footage of the buildings in total is approximately 4000 sq. ft. The minimum exterior side building setback is 30' and the buildings were installed approximately 0' from the exterior side property line. Therefore, the reason for the variance request.

The applicant states that he placed the buildings in the location in order to still accommodate business traffic and be a safe distance from the construction area. However, staff feels that there is ample space on the property where the buildings could be placed and still meet all of the required building setbacks.

SECTION AND REQUIREMENT OF ZONING ORDINANCE BEING VARIED: Table 2-4: "Setback from Collector, Arterial, or Expressway with Frontage Road =30 feet in HC zoning"

LAND USES:

The subject parcel and the parcel to the south are car dealerships. The properties to the north and east are TXDOT right of ways and the property to the west is a hotel.

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 could find no peculiarities to the subject property.

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: Staff anticipates no effect on the general public from this request.

Property owners within 200 feet of the request were notified. Two (2) comment forms were returned in favor and none (0) in opposition.

STAFF RECOMMENDATION: Denial, staff was unable to determine a peculiarity or a non-financial hardship in this case.

Mr. Bradshaw opened the public hearing

Mr. Gary Milliorn (Contractor) spoke in favor of this request. Stated that he started the project for Mr. Dunnahoo. He had added a service drive and the intent is to do an extensive remodel to an older car dealership. While construction was going on, the dealership had to relocate. Trailers were brought onto the property for office staff and handicapped accessible equipped with ramps and steps. Mr. Dunnahoo wanted to be close to the roadway for advertisement and clientele purposes. Stated that there were no neighbors nearby that would be bothered with the buildings or obstructed view. Expressed that the construction is temporary and is hoping to be in their new showroom by the end of the year.

Mr. Huber questioned about closing the S. 1st entrance. Mr. Milliorn stated that although Mr. Dunnahoo would like them not too, he is going to need the closure due to all the building materials that could possibly cause injury.

Mr. Langholtz stated if the buildings were located elsewhere, it would impede on the construction as well as have an impact on the business. Mr. Million agreed on the importance this temporary building is, making the main entrance off Clack St. while construction works off the Alameda entrance.

Mr. Dunnahoo spoke in favor of this request. Explained that this is going to be an enormous project to accommodate customers and not inconvenience anyone. Feels this is the logical place for the construction and still stay in business while renovating. Stated that 80-100 customers a day travel through the service area. If moved, it will be an inconvenience to the customers. Explains that they have made it beneficial for those with challenges.

Mr. Bradshaw closed the public hearing

Col Langholtz moved to approve the Variance as requested based on conditions peculiar to the land being: Safety concerns during construction, as well as impeding the flow of business traffic; relocating trailers would be a hardship to customers and possibly a safety issue as well; and no negative effect on the public health, safety, or welfare based on the type of use. Ms. Ramsay seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Huber, Langholtz, and Ramsay) and none (0) opposed.

e. BA-2013-29

A public hearing to consider a request from Eugene Taves for a 27' variance to the maximum 8' sign height in PD #9/COR (Planned Development/Corridor Overlay) zoning. Legal Description being HUNTERS CREEK ADDITION CONTINUATION 1, BLOCK B, LOT 1 & 2. Located at 5125 Buffalo Gap Rd.

Mr. Zack Rainbow presented the staff report for these cases. The applicant currently has a 35 foot pole sign with the Golden Chick logo on the top of it. The top of the sign was significantly damaged in the recent storms. He is requesting this variance in order to replace the sign face and frame with a new Golden Chick logo and still be able to use the existing pole. The applicant states that a complete replacement of the top of the sign would be cheaper than repairing the existing damaged logo, because they no longer make old logo signs.

In 1995 the City Council adopted the corridor overlay zone with the recommendation of the Planning and Zoning Commission. This was due to property owners in this area requesting that the aesthetics and integrity of the area be protected. The overlay zone was applied to 600 feet east and west of the centerline of Buffalo Gap Road from Highway 83/ 84 to 500 feet south of Beltway South. The reason behind the corridor overlay was to keep Buffalo Gap Road an attractive entrance into the City. The corridor overlay requires commercial businesses to have screening of outdoor storage, landscaping, and reduced height and square footage of freestanding signs. When this corridor overlay was adopted, it was with the intent that when a sign was replaced or a site was redeveloped it must be done to the regulations of the corridor overlay zone.

If properties are not required to abide by the overlay regulations, this somewhat developed area will never materialize into what the citizens, Planning and Zoning Commission and the City Council had envisioned.

Section and Requirement of Zoning Ordinance being varied:

Table 2-10: “Maximum Sign Height = free-standing signs in the Corridor Overlay to be no taller than 8 feet if they have a base zoning of NR”

LAND USES: The subject parcel is developed with a Golden Chick Restaurant. The parcels to the south are developed with a gas station and offices. The parcels to the east are developed with townhouses and the property to the north is a dry cleaner.

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 could find no peculiarities to the subject property.

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: The City Council has found that the adopted regulations are in the best interest of the health, safety, and welfare of the community and staff has found no rationale for supporting a deviation from the adopted regulations.

Property owners within 200 feet of the request were notified. Zero (0) comment forms were returned in favor and none (0) in opposition.

STAFF RECOMMENDATION: Denial, the request does not meet the criteria required to approve a variance.

Mr. Bradshaw opened the public hearing.

Mr. Taves (owner) spoke in favor of this request. Stated that he needs to repair the older business sign due to wind damage. Explains that the older sign was larger than the newer sign in question and would prefer to go with the newer smaller logo. He explained that if sign was made shorter, City landscape would make it hard to be able to see the sign. Going with the new logo not only looks more appealing but the cost would be considerably less.

Mr. Bradshaw questioned if the old logo was still able to be purchased. Mr. Taves stated that it was, but at a considerable cost due to having a custom sign.

Mr. Langholz questioned if Mr. Taves had a choice of replacing with the old logo or not replacing it at all, what would be your preference.

Mr. Taves stated that the corporate office for Golden Chick would require a sign therefore would have to use their old logo.

Mrs. Taves (owner) spoke in favor of this request. Stated that it would not be easy to use the old sign. Need to find someone that could accommodate this special older design without cost becoming a factor. Medical and financial costs are hurting our ability to purchase the older style sign due to Mr. Taves health issues.

Mr. Bradshaw closed the public hearing.

Mr. Rainbow reiterated that the City cannot require you replacement of an old sign, the intent is the need to replace a sign that is damaged beyond 50%.

Ms. Kelley Messer spoke about the landscaping overgrowth possibly being an issue with seeing the sign and could be trimmed.

Mr. Ben Bryner believes that the landscaping was required during construction and trees and shrubs were planted at the time. Improvement did not require a site plan and the pole sign was existing at the time they moved in.

Mr. Langholtz moved to approve the Variance as requested based on the peculiarity being; that he growth and density of the landscaping; the hardship being that replacing the sign due to storm damage being a higher cost to the owners, and no negative effect on the public health, safety, or welfare based on the type of use. Mr. Huber seconded the motion and the motion carried by a vote of four (4) in favor (Bradshaw, Huber, Langholtz and Ramsay) and none (0) opposed.

Item Four: Adjourn

Mr. Bradshaw moved to adjourn the meeting at 9:35am

Approved: _____, Chairman