
BOARD OF ADJUSTMENT
September 10th, 2013
Minutes

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

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

Others Present: Daisy Bergeron
Matt Deel
Robert Kern

Item One: Call the Meeting to Order:

Mr. Bradshaw called the meeting to order at 8:30 A.M. and declared a quorum present.

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

Item Two: Special Exception:

a. BA-2013-26 (tabled from 8/13/2013)

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.

LAND USES:

This property and the surrounding properties are developed with single family homes.

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, the request meets the criteria necessary to grant a Special Exception.

Mr. Bradshaw questioned if the carport needed to be moved back, Mr. Rainbow stated that it would need to be relocated in the front area, a minimum of 17 ft. from the curb.

Mr. Hay questioned how far. Mr. Rainbow stated that depending on where they made their measurements from, some measure from the back of the curb, some measure from the front of the curb so it could possibly vary up to 4-5 ft.

Mr. Bradshaw opened the public hearing

Ms. Bergeron (owner) spoke in favor of this request.

Mr. Bradshaw questioned Ms. Bergeron, if she was aware that a permit was needed to build this carport, stated that she was not aware that one was needed.

Mr. Bradshaw inquired who had built this carport. Ms. Bergeron indicated the construction was completed by them. Mr. Bradshaw inquired the length of time she has lived at this residence. Ms. Bergeron stated two years.

Mr. Langholtz questioned if the modifications have been made to the carport as of yet. He mentioned if the *Special Exception* was to be approved, the carport would need to be relocated to meet the legal measurements.

Mr. Bradshaw closed the public hearing.

Col. Langholtz moved to approve the Special Exception based on the findings of the staff report. Mr. Beerman seconded the motion and the motion carried by a vote of five (5) in favor (Langholtz, Huber, Hay, and Bradshaw). None (0) opposed.

b. BA-2013-30

A public hearing to consider a request from Volkswagen of Abilene, agent Robert Kern, for a variance to allow more than one free-standing sign per street frontage in GC (General Commercial) zoning. Legal Description being TOWN & COUNTRY VILLAGE SECTION 2, BLOCK A, LOT 1. Located at 1350 S. Clack St.

Mr. Zack Rainbow presented the staff report for this case. The applicant proposes to put a second free-standing sign on the front of their property along S. Clack Street. The Sign Regulations allows a maximum of one free-standing sign per business per street frontage with a maximum height of 50' and a maximum area of 300 square feet. The subject property has frontage along both S. Clack Street on the front property line and Hartford Street on the southern property line. The applicant would be able to have 2 separate signs at this location, but only one per street frontage.

The applicant is proposing to place 2 signs, 20' tall and 34 square foot, along the South Clack St. frontage. They state that this is their preference as opposed to placing a much larger second sign along Hartford Street. They also state that the effectiveness of signage along the Hartford frontage would be negated by the distance from S. Clack Street and any visibility would be blocked by the existing gas station.

City Council voted to adopt the Sign Regulations in order to provide uniform sign standards which promote a positive city image reflecting order, harmony, and pride, thereby strengthening the economic stability of Abilene's business, cultural, and residential areas. The intent was that when a sign was replaced or a new site was developed, it must comply with the Sign Regulations. The rationale of the Sign Regulations is to improve the quality of the visual environment throughout the City by reducing the sign clutter throughout the City of Abilene while still allowing businesses to adequately advertise.

SECTION AND REQUIREMENT OF ZONING ORDINANCE BEING VARIED:

Section 23-121: of the Sign Regulations ordinance which states that one freestanding sign per business per street frontage shall be permitted.

LAND USES:

This property and the property to the north are car dealerships. The property to the south is a gas station and the property to the west is an apartment complex.

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

1. THERE ARE CONDITIONS PECULIAR TO THE LAND:

There are no conditions peculiar to the land.

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

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:

Through the adoption of the current sign regulations, the City Council has found that limitations on the total number of signs on a site are in the best interests of the general welfare of the city.

Therefore, based on the standards adopted in the ordinance, the allowance of two signs for a business on one street frontage, rather than the allowable one sign, would have a negative effect on the public welfare.

STAFF RECOMMENDATION: Denial. The request does not meet the criteria necessary to approve a variance because there are is no hardship in this case. The subject property has street frontage on 2 sides which would allow for the second sign along the Hartford Street frontage. The Board's role is to determine whether or not a hardship exists and not to second guess the prior legislative decisions of the Council. The Board should rely on the policy guidance provided by the City Council and, unless a true hardship exists, this variance request should be denied.

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 necessary to approve a variance because there are is no hardship in this case. The subject property has street frontage on 2 sides which would allow for the second sign along the Hartford Street frontage. The Board's role is to determine whether or not a hardship exists and not to second guess the prior legislative decisions of the Council. The Board should rely on the policy guidance provided by the City Council and, unless a true hardship exists, this variance request should be denied.

Mr. Bradshaw inquired about the two (2) signs on Clack instead of putting one (1) on Hartford. Mr. Rainbow stated that they would prefer to put two (2) smaller signs at 20ft. (30 sq. ft.) instead of one (1) at 20ft (34 sq. ft. in height) and putting a larger one possibly 50 ft. in height, 300 sq. ft. sign on Hartford. They could have two (2) at this location, one would need to be south along Hartford. The reason for this request is to eliminate sign clutter, allowing one (1) per street frontage.

Mr. Bradshaw opened the public hearing.

Mr. Kern (Acme Signs) spoke in favor of this request. Mr. Kern explained that the topography along Hartford Street would make it an undesirable main entrance. Also the visibility of a sign along Hartford Street would be negated by distance the fact that there is a convenience store and gas canopy along Clack Street. Mr. Kern stated that there are two (2) pole signs, one is 50' ft. tall 68 sq. ft. pylon sign that has been permitted by the City.

Mr. Kern is requesting to add another sign that is 20 ft. tall and 34 sq. ft. He explained the reason for the additional signage, the dealership sells both new and used vehicles, a program that is requirement by Volkswagen. We would rather put a 30 sq. ft. sign at 20 ft. rather than a 300 sq. ft. sign at 50 ft. to identify the used vehicles. We are allowed two (2) pylons at 50 ft. by 300 sq. ft. each accumulation of 600 sq. ft. What we are proposing, is to have a total square footage of 100 sq. ft. for both signs, one (1) 50 ft. one (1) 20 ft., less than what they are allowing on the property.

Mr. Bradshaw inquired about the sign that was permitted on its location and how far apart from one another they were.

Mr. Kern stated the north end of the entrance will be the location of these signs, with the distance being approximately 150 ft.

Mr. Langholtz inquired why there is a need for two (2) signs. He explained, those driving down Clack Street, and observe multiple vehicles of same similarities parked on a lot, and a building in the back you have an idea that this is a car lot. He stated that there is one sign on Clack Street, and does not feel another sign is needed.

Mr. Kern explained that the second sign in question, is the smaller sign it identifies that the dealership with having used vehicles.

Mr. Langholtz stated that most dealerships have both new and used vehicles on their lots. He questioned the reason for having two (2) signs on the same street.

Mr. Kern explained that the entrance on Hartford Street, the visibility is obscured by the convenience store and gas canopy. He clarified, that due to the topography there is not a side entrance. He stated that they are trying to make sure customers have adequate identification of their products, and to maximize the effect of their advertisement.

Mr. Huber questioned about the topography on Hartford Street. He questioned if measuring from the curb then it would be quite a bit lower than normal.

Mr. Kern indicated the driveway entrance into the convenience store is elevated, the property behind has an even higher elevation. He explained, that due to the steep incline into the property it would not make a good entrance or exit.

Mr. Bradshaw questioned if the sign, could be put in the corner of Hartford Street, where the corner post was.

Mr. Beerman asked to see the picture of the existing pole on the frontage road.

Mr. Rainbow stated that there is not a sign pole as of right now, it has already been permitted by the City.

Mr. Kern explained in the picture, the pole to the left is for the convenience store, at a height of 44' ft. tall, we are asking for one, 20 ft. in height positioned near that pole.

Mr. Beerman inquired if he had a Plan B for a signage size, on Clack Street if this is not approved.

Mr. Kern explained that they already have an approval for one on Clack Street, rather than a

20 ft. tall 34 sq. ft. sign, option would be to put a 50 ft. tall 300 sq. ft. sign on the larger part of the property behind the convenience store. He explained, to minimize sign clutter.
Mr. Beerman inquired about both sign dimensions on Clack Street.

Mr. Kern indicated that the size of both signs is; 68 sq. ft., second (2) one proposed will be 34 sq. ft. a total of a little more than 100 sq. ft., have been allowed 600 sq. ft. for that area. He stated that they would have some effectiveness due to the Hartford Street visibility.

Mr. Beerman closed the public hearing.

Mr. Langholtz stated he feels that one (1) sign is sufficient for that property.

Mr. Hay mentioned that he did not perceive that there was any peculiarity to the land, a non-financial hardship or negative effects on the public.

Mr. Bradshaw opened the public hearing to discuss the three (3) criteria's were needed for an approval for this *variance*.

Mr. Kern discussed the incline off of the entrance.

Mr. Langholtz questioned the wording on the signs.

Mr. Kern stated that there will be two signs on each side of the entrance indicating new and used vehicles.

Mr. Bradshaw closed the public hearing.

Mr. Hay moved to deny the Variance as requested based on non-finding of the conditions required to approve a variance. Mr. Langholtz seconded the motion and the motion carried by a vote of five (5) in favor (Bradshaw, Beerman, Huber, Langholtz and Hay) and none (0) opposed.

Item Four: Adjourn

Mr. Bradshaw moved to adjourn the meeting at 9:01am

Approved: _____, Chairman