

**BOARD OF ADJUSTMENT
MINUTES
July 27, 2020 @ 5:00 p.m.**

The Board of Adjustment held a virtual meeting on Monday July 27, 2020 at 5:00 p.m.

Members Present

Vice Chairman Scott Sanders
Secretary Justin Cothren
Don Jacimore
John Choate

Members Absent

Chairman Wendell Miller

Visitors Present: Mayor Richard Harris, City Attorney Trey Smith, City Planner Sara Jondahl, City Engineer Glenn Newman, Public Works Director Kenneth DuVall, Planner I Victoria Marchant, Flood Manager Ben Gray, Fire Marshal Richard Setian, Jim Lynch of City Corporation, David Garza of Barrett & Associates, Nathan Barber, Luke Duffield, Larry Smith, Cody Black, Mary Cohoon, Brad Everett, Sarah Hann, Jason Hann, Suzanne Alford Hodges, Betsy McGuire, Ivory Pearson, Ira Wimer of HTW, Bob Hiegel of HTW, and Chloe Devecsery.

Welcome Visitors

The First Order of Business is a request to review and approve the minutes of the Board of Adjustment June 22, 2020 meeting.

Member Choate made the motion to approve the minutes as written. The motion was seconded by Member Jacimore and passed unanimously.

The Second Order of Business is a request to approve a variance from Article 3.6.1 allowing a 9-foot retaining wall despite the 6-foot height limit, located at 507 Sequoyah Way. Submitted by Barrett & Associates on behalf of Scott and Amanda George. (BOA.20.07.3668)

City Planner Jondahl said this application is to allow construction of a retaining wall up to ten (10) feet in height where Article 3.6 allows walls to a height of six (6) feet. This is a vacant parcel in the Glenwood Neighborhood sloping from Glenwood and 16th down towards Sequoyah Way. Before getting into the comments regarding the wall I want to comment on a statement in the letter from Barrett and Associates. They state “But as you all know the codes are a guide to be used for guiding development and they do not cover everything that comes up for review.” The Zoning Code is adopted by ordinance making these rules the law, if they were adopted by resolution this statement would be true and they would be used as a guide, which would allow us to make an assessment as staff and approve based on reasonable engineering. For example, we are updating the Comprehensive Plan and that will be adopted by resolution since that is used as a guide as we update our zoning code and look towards the future. City Council adopts zoning code by ordinance making

the “code” the law to be obeyed, however, when practical application of the zoning laws cannot be followed there is a process by which one can apply for a variance. The applicant has requested to apply for relief from the strict application of the law. The application is to allow construction of a retaining wall up to ten (10) feet in height where Article 3.6 allows walls to a height of six (6) feet. In Article 3.6 it states Fences, hedges or walls may project into or be located along the side yard from the front building line of the lot to the rear lot line, provided such fences and walls (not hedges or trees) do not exceed a height of 6 feet. Additionally, the definition of a wall per Russellville Zoning Code is “an upright structure of masonry, wood, plaster, or other building materials serving to enclose, divide, or protect an area”. The City Attorney has determined that this wall meets the definition provided in the Russellville Zoning Code and that the wall is protecting an area by keeping the land behind the wall from failure allowing surrounding properties and Glenwood to remain as is, and by protecting the new structure being proposed. The wall will be required by building code to be certified by a structural engineer and inspected by City Staff prior to any certificate of occupancies would be issued for the structure. Applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure, or building involved. Staff has found that the applicant has demonstrated that special conditions exist due to the fact that the literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by others.

Staff recommends approval of this application as a result of the findings below: 1. As required by building code the wall will be certified by a structural engineer as being built in a manner to protect the area behind the wall from failure; and 2. As a result of the findings that the literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by others; and 3. The applicant has met all other variance guidelines.

David Garza of Barrett & Associates said that if the term “guide” that he used was incorrect he apologized, he said he more meant it to mean the literal interpretation. Mr. Garza said to the best of his knowledge this is the first event where a retaining wall has had to receive a variance of any type. He said that when they are looking at laws and codes they’re generally derived because an instance occurred, so you have to look at the intent of what the code is. Mr. Garza said in this instance they are talking about fences and that is probably why this has never come up in the past because everyone has looked at walls as fences. He said there are some brick walls around town and provided some examples. His concern and reason for submitting this application for determination was: 1. To determine whether the interpretation is correct because if you reverse the interpretation then the variance is not required or; 2. If they agree with the interpretation then the applicant was going to request the variance. Mr. Garza said City Planner Jondahl stated that the application form does not allow for the applicant to do multiple choices, you have to do one or the other. They opted to do the variance because they felt that was probably the most prudent in this case. He said his concern with trying to get staffs response on the interpretation is that when the City Attorney did respond he said to look at the definition of a wall. Mr. Garza said if you look at the definition of a wall it says “an upright structure of masonry, wood, plaster, or other building materials serving to enclose, divide, or protect an area.” He said he is concerned about that because it would also include building walls, retaining walls—which we are talking about here—pool walls, and basement walls. Mr. Garza asked at what point do they stop, and explained that’s why he was asking about the interpretation first. He said for them the variance is fine, but he needs to know how to proceed in the future with other projects when he is faced with another wall situation, such as if he is going to put in a pool wall. He said it is a given that we are not going to require a house to get a variance for this even though the

walls are eight feet high and meet the definition of a wall. Mr. Garza said this is why he was bringing it up, it was more so that he would know how to proceed in the future with clients and with projects so that they do not run into this again. He said if this is something that needs to be done again in the future, that is fine at least he knows now. So that he can do that if he has another retaining wall or if he has to do some type of wall that is going to be over six feet high that he will have to address that with the staff to ensure he does not have to get a variance in advance. He knows that process takes time and can time away from the project.

Member Choate made the motion to approve the variance request as presented. The motion was seconded by Member Jacimore and passed unanimously.

Member Choate made a recommendation that Mr. Garza visit with the City Attorney to potentially clear up the ordinance for the whole city. Vice Chairman Sanders said that he personally did not think the retaining wall should be considered a free standing structure.

Chairman Wendell Miller