

BOARD OF ADJUSTMENT MINUTES

August 22, 2016

The Russellville Board of Adjustment met in its Regular Meeting, Monday, August 22, 2016, at 5:00 p.m. in the Russellville, Arkansas City Hall Council Chambers.

Members Present

Chairman Blake Tarpley
Vice Chair Peggy Stratton
Lannis Nicholson
Mike Wilkins

Members Absent

Secretary Wendell Miller

Visitors Present: Mayor Randy Horton, City Engineer Kurt Jones, City Attorney Trey Smith, Planning Assistant Lequitta Jones, and Richard Setian, Jim Lynch/City Corp, Dave Garza/Barrett and Associates, Dana Warren/ABC, Kirk Warren/ABC, Debra Hefner/ABC, and Steve Hefner/ABC

Welcome Visitors

The First Order of Business was a request to review and approve the minutes of the May 25, 2016 meeting.

Member Stratton made the motion to approve the minutes. The motion was seconded by Member Wilkins and passed unanimously.

The Second Order of Business was a public hearing requesting approval of two variances to allow construction of a daycare center at 2005 East Fairway. Submitted by Kirk and Dana Warren d/b/a ABC Children's Academy. (BOA.16.07.3619)

2A. A variance from *Article 3.21 Sidewalks*.

2B. A variance from Article 3.21.3 Payment In Lieu of Construction.

Planner Walden said this application involves a request to waive the requirement of sidewalks on the site of a daycare center located at 2005 East Fairway. Additionally, they are requesting to waive the option fee in lieu, which is what the staff had requested that they pay a fee in lieu of sidewalk improvements on this site. Adjacent is a multi-use trail that runs along the opposite frontage of Fairway Boulevard. The reason staff had indicated the preference would be for fee in lieu is because there is development that have occurred on either side that did not have sidewalks. And so it would be advantageous to get a fee in lieu so at a future date that the City could go back and put sidewalks in that location and do them all at one time. The applicant didn't demonstrate how the application meets any of the standards of approval that are required for approving an actual variance which are contained

in Article 9.3.2 of the Zoning Code. Due to that and failing to see how it would meet those variance standards the staff recommendation is denial on both requested variances.

Dana Warren with ABC Children's Academy said we are requesting a variance for the sidewalks because on the other side of the street, south side of the road, there is an 8-foot multi-purpose sidewalk that is larger than average extending from Knoxville almost to Elmira. So, most of the traffic goes east and west on the extra wide sidewalk. Along that road there is an extra wide sidewalk that is already in existence. So we were hoping the City of Russellville would consider not mandating that we place a sidewalk for just the small amount of frontage that we had on our property. The retirement home west of us did not put in a sidewalk and will not put in a sidewalk. Our small section of sidewalk would have no purpose. The north side of the street is broken up by streets that go into the subdivision on Utica.

Member Wilkins asked Engineer Jones as the rest of the property develops along that street wouldn't you anticipate sidewalk on both sides of the street? Mr. Jones said yes.

The members agreed with Member Stratton saying at this time to put a sidewalk in seem asinine, but with time there will be other developments on the other side. That is why the in lieu was put in place so the City would have money to do those types of things. Member Stratton said as long as there are guidelines it is our job to enforce those instead of handing out variances because it is not financially feasible for somebody to do that.

Member Wilkins made the motion to deny the request. Member Stratton seconded the motion and passed unanimously.

The Third Order of Business was a public hearing requesting approval for a variance from *Article 3.21 Sidewalks*, to allow no construction of sidewalks for Phase II and Phase III of Sunrise Estates to match the existing Phase I. Submitted by Dave Garza of Barrett & Associate on behalf of CP Partners, Inc. (BOA.16.08.3621)

Planner Walden said this application involves a request to waive the requirement of sidewalks on this phase and subsequent phase of the Sunrise Estates subdivision. The applicant has provided a written explanation of how the application meets five standards contained in Section 1.16 of the Land Subdivision and Development Code. When considering a variance one of the main things that you consider in terms of looking at the variance are the *Variance Standards 9.3.2*: The applicants demonstrates the special conditions and circumstances exist that are peculiar to the land, structure, building involved that aren't applicable to lands; the interpretation of the provisions of this code would deprived applicant of rights commonly enjoyed by other property in the same district under the terms of the code; that special circumstances and conditions exist that don't result from the action of the applicant; and granting the variance requested will not confer on the applicant any special privilege that is denied by the Zoning Code to other lands in the district.

So based on that in terms of looking at the sort of consistencies of this application with those variance standards it's not apparent that the sidewalk requirement did any known physical aspects to the land would deprive the applicant of the ability to build the subdivision. It

appears the concern is financial. In terms of looking at Standard Three that standard is not applicable and Standard Four is not generally applicable. The recommendation for this application is denial. The reasoning for the variance appears to largely be based upon financial consideration and not unique topographic or physical constraints that make building sidewalks difficult or impossible. While financial considerations are understandable they are not meant to be a basis for approval of a variance.

Dave Garza with Barrett & Associates said the subdivision was started back in 2008. The design started in 2007. The first phase has taken since 2008 to complete due to the economy collapse. Mr. Garza said if they had gotten to continued along, we would not be here tonight because they would have been under the current rule at that time as they continue to the next phases.

Mr. Garza asked to revised the request from installing two sidewalks to constructing one sidewalk on the left side of each of the street, which would be north of 9th Street and east side of the cul-de-sac street. And should the City ever bring sidewalks to that area as they are doing now, they are going to be doing them only on one side like they are now. And we will continue that on the next phases as well.

Member Wilkins asked if they would have to pull this request and resubmit to change the original submittal? City Attorney Smith said he didn't think so because the request is to reduce the request. It would only be a modification. The members agreed with Member Wilkins the needs for sidewalks, mentioning our children's need for sidewalks.

Member Nicholson said *Ordinance 321 Sidewalk* is pretty black and white. I will have to support the Planning Commission and City Council. Mr. Nicholson said we need to be consistent. Member Nicholson made the motion to deny the request for the variance. Member Wilkins seconded the motion and passed unanimously.

Adjourned.

Chairman Blake Tarpley