

**BOARD OF ADJUSTMENT
MINUTES
August 24th, 2020 @ 5:00 p.m.**

The Board of Adjustment held a virtual meeting on Monday August 24, 2020 at 5:00 p.m.

Members Present

Chairman Wendell Miller
Vice Chairman Scott Sanders
Secretary Justin Cothren
Don Jacimore
John Choate

Visitors Present: Mayor Richard Harris, City Attorney Trey Smith, City Planner Sara Jondahl, City Engineer Glenn Newman, Planner I Victoria Marchant, Permit Clerk Kelsey Dinkel, Flood Manager Ben Gray, Fire Marshal Richard Setian, Jim Lynch of City Corporation, Nathan Barber, Cody Black, Michael (Brad) Everett, Betsy McGuire, Dana Warren, Kirk Warren, Lisa Huelle, Matthew Brewer, and Todd Barnett.

Welcome Visitors

The First Order of Business is a request to review and approve the minutes of the Board of Adjustment July 27, 2020 meeting.

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

The Second Order of Business is a variance from Article 7.2 allowing an addition to a non-conforming structure, located at 1500 S Utica. Submitted by Laura Johnson.

Planner I Marchant said this application is to allow construction of an addition to a non-conforming structure that does not meet the area requirements for the district. The existing conditions are that this property is located in the Cyclone Neighborhood. This is a single family residence. It is a R1 zoned property surrounded by other residential zoned properties.

Staff was working on a building permit for the applicant and it was discovered that the home did not meet the setback requirements for the R1 zone. In Article 9.3.2 the Board of Adjustment has been given specific guidelines in order to grant a variance. First, the applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands. Staff has found the applicant has demonstrated that special conditions exist because setbacks were not accurately measured at the time of construction and this home was built before the current zoning code went into effect. Secondly, no other non-conforming uses in the area were considered as grounds for granting this variance. Third, the granting of the variance is the minimum variance allowing reasonable use of land. Fourth, the granting of this

variance is in harmony with the purpose and intent of the zoning code. Fifth, there are no additional safeguards required. Sixth, the proposed use is in conformance with the Table of Permitted Uses.

Staff recommends that the Board of Adjustment approve this variance request based on the findings of 1. The setbacks were not accurately measured at the time of construction; and 2. The home was built before current Zoning Code went into effect; and 3. The applicant has met all of the other variance requirements.

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

The Third Order of Business is a Variance request from Article 12 allowing an 8.7' side yard setback despite the 10' requirement, located at 1708 S El Paso. Submitted by Brewer Restoration on behalf of Dalyn Mauck.

Planner I Marchant stated that this is a variance request at 1708 S El Paso. The application is to allow a side yard setback variance of 1.3 feet for a house that does not meet the area requirements for an R1 zone. This is located in the Glenwood Neighborhood, and this is a single family residence. It is a R1 zoned property surrounded by other residential zoned properties.

Planner I Marchant reiterated that the application is to allow an 8.7 foot side yard setback in an R1 zone despite the 10 foot side yard setback requirement.

In Article 9.3.2 the Board of Adjustment has been given specific guidelines in order to grant a variance. Staff has found the applicant has demonstrated special conditions exist, because this house was constructed in the 1960's before current zoning code went into effect. The applicant also showed special conditions exist because the literal interpretation of the provisions of this code would deprive the applicant of rights commonly enjoyed by others by the applicant not being able to renovate their home due to them not meeting the setbacks. All of the other variance requirements were met.

Because of that it is the staff's recommendation that the Board of Adjustment approves this Variance request based on the findings: 1. This house was built before the current zoning code was in effect and therefore before the setback requirements were as they are now. 2. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by others, and 3. The application meets all other variance requirements.

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

The Fourth Order of Business is a variance from Article 7.2 or 5.2.13 (A) allowing a 621.54 square foot and 85' tall sign despite the 300 square foot limit and 50' height limit, located at 215 SE 331. Submitted by Texas Republic Signs on behalf of Pilot Travel Centers, LLC #430.

Planner I Marchant stated that this is a sign variance. This application is to allow replacement of an existing sign facing I-40 in a C2 zone which exceeds the allowable square footable and the allowable

height. This is located in the East Main Commercial District, Pilot Travel Center is an existing Travel Center that has been in operation for many years. It is a C2 zoned property surrounded by other C2 zoned properties which include a variety of commercial uses.

Planner I Marchant reiterated that the application is allow the replacement of a non-conforming sign in a C2 zone.

In Article 9.3.2 the Board of Adjustment has been given specific guidelines in order to grant a variance.

Planner I Marchant stated that the applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands. Staff has found the applicant has demonstrated that special conditions exist due to the fact that the sign was constructed and permitted before the current zoning code went into effect and thus before the sign requirements were as they are now. The applicant is not making significant changes to the sign and is not making it any larger or taller than it currently is, thus meaning they are not going any further out of compliance. The applicant does meet criteria 2-5 as listed in the agenda. The Board of Adjustment may not grant a variance to allow a use not permissible in the zone code. A special use permit is needed but they have already shown that they are meeting that requirement and they are on the agenda for the Planning Commission this evening in order to come into compliance in that aspect.

It is staff's recommendation that the Board of Adjustments approve this variance request based on the findings: 1. The sign was erected before the current zoning code went into effect; and 2. The applicant has met all of the other variance requirements.

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

The Fifth Order of Business is a variance from Article 12 allowing a 7,100 square foot lot despite the 7,200 square foot minimum, located at 1129 N Greenwich. Submitted by Todd Barnett.

Planner I Marchant stated that this application is to allow a variance in the area requirements for an R2 district. The applicant is requesting an approximately 100 square foot variance in the lot area requirements. This is located in the Parker Neighborhood, and this is currently an empty lot where a single family home was previously located. It is a R2 zoned property surrounded by other residential zoned properties.

The applicant is proposing to build a single family home on a lot that has previously had a single family home. The lot is approximately 7,100 square feet where the lot area requirement for an R2 is 7,200 square feet.. The applicant's proposed plans for the single family home meet all other area requirements, such as the setbacks. Because the applicant is varying from the area requirements by less than 10%, this application can be considered a special exception and therefore does not have to meet the strict requirements of a variance. During review of the application, staff did discover that the proposed structure would be built over lot lines, therefore the property will need to go through the incidental subdivision process. As previously stated, the applicant does not have to meet all of

the requirements laid out for a variance, so it is staff's recommendation that the Board of Adjustment does approve this variance request with the following conditions: 1. The applicant must submit an incidental subdivision application prior to the building permit issuance, and 2. The incidental subdivision must be completed prior to the Certificate of Occupancy being issued on that single family home. This is based on the findings below: 1. The proposed house will be built over lot lines; and 2. The applicant is varying from the area requirements by less than 10%; and 3. The application meets all other variance requirements.

Member Choate made the motion to approve the variance request as presented with the restrictions that Planner I Marchant listed. The motion was seconded by Member Jacimore and passed unanimously.

The Sixth Order of Business is a variance from Article 12 allowing a 21.3' front yard setback despite the 25' requirement located at 308 E 11th Street. Submitted by Kirk & Dana Warren.

Planner I Marchant stated that the application is to allow a front yard setback variance of 9.6 feet for a daycare that does not meet the area requirements for an R2 zone. They are currently at a 21 foot front yard setback and the applicant is proposing to build further into that set back. This is located in the Oakland Neighborhood. This is an existing daycare facility. It is a R2 zoned property surrounded by other residential zoned properties.

The application is to allow a 15.4 foot front yard setback in an R2 despite the 25 foot front yard setback requirement. The applicant is going through the variance because they are wanting to add a foyer area as a response to new regulations that came with the COVID-19 pandemic. This area would serve as a screening area before children were able to enter the building. Their existing structure does not meet the front yard setback requirement and the addition would be going further into the front yard setback. During review of the application, staff did discover that the existing structure is built over lot lines. The incidental subdivision process will be needed.

Planner I Marchant said that in Article 9.3.2 the Board of Adjustment has been given specific guidelines in order to grant a variance. Staff has found the applicant has demonstrated special conditions exist because this facility was constructed before current zoning code went into effect. The applicant also showed special conditions exist because the literal interpretation of the provisions of this zoning code would deprive the applicant of rights commonly enjoyed by others by the applicant being unable to make this addition due to them not meeting the setbacks. All other variance requirements were met. It is staff's recommendation that the Board of Adjustment approve this variance request with the following conditions: 1. The applicant must submit an Incidental Subdivision application prior to building permit issuance; and 2. The Incidental Subdivision process must be completed prior to Certificate of Occupancy being issued. This is based on the findings that: 1. The existing structure is built over lot lines; and 2. This structure was built before the current zoning code went into effect; and therefore before the setback requirements were as they are now; and 3. The literal interpretation of the provisions of this Code would deprive the applicant of rights commonly enjoyed by others; and 4. The applicant meets all other variance requirements.

Applicant Dana Warren said that with COVID-19 the parents have to perform a screening at one entrance of the facility and then they are having to travel thru one classroom to get to another

classroom and with this foyer area, it would allow the parents to be screened and then enter into the appropriate classroom and the traffic would not have to mix. It would also clean up the front of the building giving it a more commercial look in the R2 zone with the Special Use Permit.

Member Jacimore asked to clarify if the addition would be located off of 308 11th street. Applicant Dana Warren confirmed that this was their location that is located across from the Oakland Cemetery.

Member Jacimore made the motion to approve the variance request as presented with the restrictions that Planner I Marchant listed. The motion was seconded by Member Cothren and passed unanimously.

Meeting adjourned.

Chairman Wendell Miller