

**BOARD OF ADJUSTMENT  
MINUTES  
October 7, 2021 @ 5:30 p.m.**

The Board of Adjustment held a meeting on Thursday October 7, 2021 at 5:30 p.m. in City Hall Council Chambers.

**Commissioners Present**

Chairman Blake Tarpley  
Secretary Justin Cothren  
Vice-Chairman Don Jacimore  
Wendell Miller  
Paul Gray

**Commissioners Absent**

None

**Visitors Present:** City Attorney Trey Smith, City Planner Sara Jondahl, Public Works Director Kenneth Duvall, Planner I Victoria Marchant, Flood Manager Ben Gray, Engineering Tech Armando Diaz, City Engineer Glenn Newman, Jim Lynch of City Corporation, David Garza of Barrett & Associates, Randy Barefield, Jim Turner, Jorge Paz, Carole Clarke, John Clarke, and Dale Lindsey.

**Welcome Visitors**

**The First Order of Business** is a request to review and approve the minutes of the Board of Adjustment Meeting September 2, 2021.

Member Miller 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 Variance to allow an addition to a non-conforming structure located at 1404 S Utica Avenue. Submitted by Jorge Paz. (VARI-0821-000121)

City Planner Jondahl stated that this is an application to allow an addition to a non-conforming structure that does not meet the area requirements for the district, as the primary structure does not meet the front yard setback. 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. It is not the intent of the Zoning Code to prohibit property owners to make additions to their homes when those additions are in conformance with the Russellville Zoning Code. No other non-conforming uses in the area were considered in the granting of the Variance. The granting of the variance is the minimum variance allowing reasonable use of land. The granting of this variance is in harmony with the purpose and intent of the code. There are no additional safeguards required. The proposed use is in conformance with the Table of Permitted Uses.

It is staff's recommendation that the Board of Adjustment approve this variance request

based on the findings below:

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. It is not the intent of the Zoning Code to prohibit property owners to make additions to their homes when those additions are in conformance with the Russellville Zoning Code; and
4. The proposed additions to the home meet the setback requirements; and
5. The applicant has met all of the other variance requirements.

Member Gray made the motion to approve the item as presented by staff. The motion was seconded by and passed unanimously.

**The Third Order of Business** is a Variance to allow a reduction in the front yard setback from 20' to 12' and a reduction to the side yard setback from 15' to 2' located at 201 East G Street. Submitted by TJ Curtis on behalf of First Assembly of God Church. (VARI-0921-000133)

City Planner Jondahl stated this was a Variance request for Valley Christian School and they were requesting a 8' reduction to the front yard setback along East H Street going from 20' to 12' and a 14' reduction to the side yard setback along Cleveland Avenue from 15' to 1'. She stated that the existing conditions were Zoned as R3 – Medium High Density Residential. The district permits site-built housing, manufactured housing, and modular housing constructed on individual lots with uniform design guidelines imposed to maintain neighborhood harmony and consistency in appearance. In June of 2017 two Modular units were placed on the property, intended to be temporarily placed for 2 years. City Planner Jondahl said Parochial School is a Permitted Use. City Planner Jondahl then showed the Board of Adjustment an aerial image of the property showing the two modular units in 2019. She then showed a picture with the third modular unit on the property. City Planner Jondahl stated that staff received a call from a neighbor when the third building was placed on the property during the summer. She stated that at the time of the meeting the third building was 5' from the other two buildings which did not conform with the necessary distance between buildings and it would have to be moved in order to maintain the requirement of 10' between the buildings. She stated that this was not only a requirement of the manufacturer but also a requirement of the Russellville Zoning Code and the State Fire Code. City Planner Jondahl then shared a photo of surrounding properties to illustrate that this property was surrounded by a residential neighborhood. She stated that the intent of the R-3 Zone is to maintain the look and feel of a residential neighborhood. City Planner Jondahl stated that the three units as they sat at the time of the meeting did not retain a neighborhood aesthetic. City Planner Jondahl stated that it was initially understood by staff that there was a State Code requiring fourth and fifth graders to be separated from high school students, but the only requirement staff was able to find was that kindergarten and first graders could not be on the second floor of a building and there were no separation requirements.

As a result of No special conditions existing it is staff's recommendation to Deny the Variance Request. However staff did recognize that the Board of Adjustment was in a very difficult position with the application as the unit had already been placed on the property even though the applicant did not get a building permit prior to placing the structure. If the BOA chooses to approve please consider adding these conditions to maintain the aesthetics of the Residential Neighborhood:

A vacation of ROW application filed with Planning and Development prior to building

permit issuance

A site obscuring wooden fence is built along the N Cleveland Avenue frontage with a 3.5' ornamental fence to be built along the East H Street frontage; and

Landscaping shall be added including a minimum of one tree along the East H Street frontage and two trees along the N Cleveland frontage along with the addition of shrubs to both of the frontages to maintain the aesthetics of the residential zone; and

An Incidental Subdivision application is completed to combine the lots so that the structure is not built across lot lines.

Member Gray asked when the application was first brought up, it was about needing extra space to separate the elementary grades from high school students. City Planner Jondahl confirmed that was her understanding.

TJ Curtis spoke on behalf of Russellville First Assembly of God and Valley Christian School. He stated that he was a member of First Assembly of God church and was currently serving on the board for Valley Christian School.

Member Miller asked Mr. Curtis what the timeframe was for the school moving from that location as the structures were meant to be occupied temporarily. Mr. Curtis stated that the school had purchased a property on Hob Nob Road and that property ended up being across from property that may have ended up as a casino. He stated that as a result of that, they had been in limbo because they did not want the school to end up right beside a casino. Mr. Curtis stated that the evening before the Valley Christian School board had voted to proceed with building the school on the property they had purchased. He stated that the school had a set of plans that would likely be completed in the next few months, then they would have to fundraise. Member Miller clarified that if the variance were granted then the structure in question would likely only be occupied for the next few years. Mr. Curtis confirmed that.

Member Gray asked Mr. Curtis to clarify on the timeline, citing that Mr. Curtis said a few years but Mr. Gray stated he knew fundraising could be tough sometimes. Mr. Curtis agreed and stated that the timeline was still unknown and that the school had already planned to break ground but as soon as they unveiled the plan for the new school and tried to start fundraising, there was a lot of talk about the casino. Mr. Curtis said that as a result the school wanted to wait to see what was going to happen, he stated that now they were a few years down the road and nothing had happened yet. Mr. Curtis said that they moved the kindergarten and first grade classes from the upstairs area of the school per the Fire Marshall. He explained that previously kindergarten through sixth grade had been in the upstairs of their building and the rest of the grades (seventh through twelfth) were in the original two portable classrooms. Mr. Curtis stated that they had found out they were having to move the kindergarten and first graders during summer and stated they did not have much time to plan once the school found that out. He stated that once they pull the kindergarten and first grade students outside into the only structured bottom floor classrooms, all of the high school students had to be brought upstairs because there were certain grades that intermingled. He stated that bringing the high school students upstairs forced some of the other grades out of the upstairs area. Mr. Curtis stated that at the time of the meeting kindergarten through third grade classes were in the portable structures but fourth, fifth, and sixth grade were upstairs mingling with the high school students.

Chairman Tarpley asked if the fire code had changed or if they were in violation of the fire code. Fire Marshall Setian stated that the fire code did not change. Mr. Setian stated that when the

school first moved to their previous location he met with a man who was in charge of the school and the initial discussion at that time was that the school was wanting to put kindergarten and first grade on the second floor. Mr. Setian said the code requiring kindergarten and first graders to be on the first floor had been in effect for many years. He stated that he had a discussion with the school when they first moved to the location at First Assembly of God about the code requirement.

Member Jacimore asked Mr. Curtis if the school would be willing to put up the fences and landscaping as recommended by staff. Mr. Curtis stated that the school would be willing to do that.

Member Gray asked if the building needed to be moved to come into conformance. City Planner Jondahl confirmed that it would have to be moved to meet the 10' separation requirement and the applicant did show that on their plans and the applicant was prepared to move that building. Member Miller stated that the photograph shown by staff showed that it was currently a five and a half foot separation. City Planner Jondahl confirmed that it was currently five and a half feet but they had already remedied that issue with the applicant as they did intend to move the structure to meet the separation requirement. She stated that the variance request and ultimately the vacation of right-of-way request would make up for that difference so that they were in compliance with the front yard setback. Member Gray asked if the City had any teeth in the form of a Certificate of Occupancy or otherwise that if the Board of Adjustment approved the variance would ensure the conditions were followed. City Planner Jondahl stated that currently no building permit had been issued and the applicant had just submitted for that. She said that building permit approval was based on what was decided by the Board of Adjustment since the structure did not meet the setback requirements. She stated that staff would not be able to approve it unless the Board of Adjustment made the decision to approve, if the Board of Adjustment did not approve, staff would not be able to approve the building permit and the structure would have to be removed.

Member Miller made the motion to approve the item with the conditions as presented by staff. The motion was seconded by Member Jacimore and passed unanimously.

**The Fourth Order of Business** is an Appeal of a decision by an administrative official concerning their interpretation of Article 3.21 of the Russellville Zoning Code regarding the requirement to construct and subsequent assessing of an in-lieu fee for the multi-use trail located in the 3300 block of Bernice Ave. Submitted by Barrett & Associates on behalf of Randy Barefield. (VARI-0921-000126)

City Planner Jondahl stated that this application is to allow a variance from Article 3.21(E) of the Russellville Zoning Code to allow an in lieu fee for 5' sidewalk instead of the in lieu fee for a 10' multi-use trail required in this character area. She stated that the existing conditions were that Zoned M2 – Heavy Industrial / Arkansas River Industrial District. There was no Multi-Use Trail currently located within this section of Bernice Ave. There is commercial Development along the north side of the road. This site was historically the old Russellville landfill; this location was recently released for development. The Zoning Code Updated April 2020 to exclude a majority of the Arkansas River Industrial District from the requirement for sidewalks except “that the construction of the multi-use trail shall be required in accordance to the Russellville Connected Trail System Plan with any development meeting the requirements of 3.21.1(C)”. This Development meets the requirements of 3.21.1 (C) because it was new construction. City Planner Jondahl showed a photo of the Russellville Multi-Use Trail proposed location. She stated

that according to the Russellville Connected Trail System in the Master Trail Plan, the Russell Byway trail runs along the east side of Knoxville Avenue and the south side of Bernice Avenue, running along the frontage of this property. She stated that there was a section along Knoxville that the City was currently evaluating and considering a multi-use trail from Main Street to Ashley Drive on the east side of Knoxville. City Planner Jondahl stated that the City was also in discussions with the DNR Railroad to include a pedestrian crossing at the railroad tracks that intersected Bernice Avenue. She stated that although there is currently no multi-use trail at that location at the time of the meeting, the City was discussing and evaluating options that would bring the trail close to the property in question and the in lieu fee would be an acceptable way to offset that for this development.

It is staff's recommendation that the Board of Adjustment deny this variance request based on the findings below:

1. No special conditions exist; and
2. The granting of the variance is not the minimum variance allowing reasonable use of land; and
3. The granting of this variance is not in harmony with the purpose and intent of the recently updated regulations within the Russellville Zoning Code.

David Garza with Barrett & Associates stated that sometimes Ordinances and Codes are put into effect for a specific circumstance without thought for how they will affect future developments and potential issues they may cause. He stated that even if an Ordinance is created for a specific reason because something triggers it does not mean that it is a good Ordinance when you look at the whole picture. He cited two examples, the first being the restriction that did not allow building permits to be issued to metes and bounds properties and the second being the El Paso District requirements in the Russellville Zoning Code. He stated that people got variances for those developments because staff and applicants knew there were issues with the Code but it was still in effect. Mr. Garza stated that just because an Ordinance was in effect did not mean that it was a good one or working properly. Mr. Garza stated that some of the Board of Adjustment members may have remembered when the sidewalk ordinance was being updated and how it was a little volatile with some of the builders and contractors. He stated that they started working first with the driveways and then they started working with City Planner Jondahl on the sidewalks and they had come to what they thought was a really good agreement. He stated that when he was working with City Planner Jondahl they talked about the area around Americold and how they needed to do something different with the sidewalks and they updated the Zoning Code. Mr. Garza stated that he then talked to her about S. Arkansas and the Arkansas River Industrial District was identified as an area where sidewalks were not required. He stated that he did not know that when the sidewalk update to the Arkansas River Industrial District occurred that there was language added regarding the trail or he would have objected. Mr. Garza stated that this occurred in February of 2020 shortly before the first COVID-19 lockdown and meetings went virtual and he missed that language. Mr. Garza stated that the mini storage being developed along Bernice Avenue is within the Arkansas River Industrial District character zone and no sidewalks are required in that zone according to the Zoning Code. However, according to the Zoning Code it does say that trails are required. Mr. Garza said that in the ReImagine Russellville 2040 Comprehensive Plan this was identified as trail number 7 and was described as running north and south along the DNR Railroad then east to west along Lock and Dam Road via

Bernice Ave. Mr. Garza stated that if you take that description this property would not be affected but if you look at the map in the Comprehensive Plan it goes along Highway T, so it was hard to tell which is correct. He stated this is probably because the change was made because if you put a trail along a state highway then you can get grant funds and that was what the City had been doing. Mr. Garza stated that some of the grants were matching grants where the City had to pay for a portion of the trail and that the City gets those funds from the one cent sales tax that was passed. Mr. Garza stated that at this location as far as he knew the trail was not designed yet, they had identified the location but that did not mean they might not change. He asked that if the trail was being paid for by grants and the one cent sales tax, why should one developer have to pay for the construction of a trail that no one else is. Mr. Garza said that everyone else is getting their portion paid for by the City and Highway Department. He stated that it did not seem fair that one owner would have to pay for their portion of the trail just because they were developing. Mr. Garza stated that this topic was discussed at the opening meeting for the Zoning Code updates and at that meeting Mayor Harris had stated that the City needed to fix the sidewalk section of the Zoning Code. Mr. Garza stated the developer of this property has five businesses in the City and he is paying the one cent sales tax, so he is adding to the one cent sales tax fund. Mr. Garza stated that the developer was having to pay for the trail in the in lieu fee and in the one cent sales tax. He stated that the City hired a consulting firm to make recommendations for updates to the Russellville Zoning Code and this section needed further review in his opinion. He said that it should have been set up in a way that instead of having to build the trail since they did not the design or exact location of the trail, the property owners along the trails system should retain or leave a corridor on their property should a trail need to go on their property for a specific amount of feet. He stated that the setback requirements for the front yard are 25 feet so property owners would not be building anything in that space anyway and instead it could be a reserved strip on the plat for the trail and then the developers are not having to foot the bill for that. Mr. Garza stated that it feels like the developers are being robbed. He stated that sometimes people can make mistakes in the wording or what they put into Ordinances. Mr. Garza stated that he thought this was the first test of this section of the Zoning Code and they were the trial run, so whatever the Board of Adjustment decided it would set the precedent going forward. Mr. Garza said that as a compromise the applicant was willing to pay an in lieu fee for a 5' sidewalk. If they were not in the Arkansas River Industrial District, a 5' sidewalk would be the requirement.

Member Miller asked what kind of a price they were looking at for the in lieu fee. Mr. Garza stated that he did not know, it would depend on the size of the trail. Member Gray stated that he had consulted with the staff prior to the meeting and the cost for the 10' trail would be approximately \$16,717.50. Member Gray asked Mr. Garza what the total cost of the development would be. Mr. Garza stated that it was approximately 2 million dollars. Mr. Garza stated that the applicant had his account look at his taxes and he had paid approximately \$15,000 a year in taxes and part of his business is going into the one cent sales tax. Member Gray stated that he understood that but everyone pays the one cent sales tax. Member Gray said in the long term Mr. Garza was implying that this would be the only business that would ever develop along that stretch and pay the in lieu fee. Member Gray said that long term there may actually be several businesses that develop out there and that may be what staff was trying to anticipate. Mr. Garza stated that was not necessarily the case because when you are building a trail, you are building it from one connecting point to another, and knowing that you would have grant funds and the City fund to build that trail then why would the City tax anybody else. Mr. Garza asked

if they would be asking anyone along the corridor to pay a portion of that. Member Gray asked City Planner Jondahl if another developer came along with a similar development if they would be asked to do the same thing. City Planner Jondahl confirmed. Mr. Garza stated that would be true if they were developing, but what about the existing property owners. He said the existing property owners there would be paying nothing. Member Gray stated that when a development was existing there were a different set of circumstances, and the Board of Adjustment makes all kinds of adjustments based on developments that were already existing and had no liability, but when it was new construction it would be different.

Member Jacimore stated that he was afraid the Board of Adjustment would set a precedent if they did not allow the in lieu of fee and the land along that strip started developing then the City would never get money for it. He stated that there were trails that were approved for the Russellville area and he did not like spending money either but that money is in lieu of so when the trail was connected through the trails system, that property's portion would be paid for. Member Jacimore said that the matching funds from the state . Mr. Garza stated that it was very difficult for the developer to have to pay for a section of the trails system that you are unsure of when it will go in when most others are not and the developer is still paying in the one cent sales tax. Member Jacimore stated they all pay the sales tax. Mr. Garza reiterated that as a compromise the developer was willing to pay the in lieu fee for the 5' sidewalk because that was fair. Member Gray stated that later when the trail came through the taxpayers will pay for the other 5'. Member Gray asked City Planner Jondahl if the long range plan was for that section of highway to be turned into City street eventually. City Planner Jondahl clarified that the plan was to eventually swap Knoxville with Elmira, but the highway would still be along Bernice.

Member Gray stated that he worked at Russellville High School and it was not a great place for students to walk and that he thought the Board of Adjustment needed to be thinking long term and how that can connect. He stated that any school day after school you could see students walking up and down that highway and he was glad the City had a long range plan for a trails system. Mr. Garza stated that they like trails and they did not have any issues with the trail going through that corridor. He stated that it was most likely going to be on the Highway Department right-of-way against the property line because that is how the Highway Department did their funding.

Member Gray made a motion to deny based on the staff recommendations. Motion failed due to lack of a second.

Mr. Garza reiterated that the developer did not have a problem participating and doing the five foot in lieu fee and that would add to the future of that trail or another trail. He stated that he was not sure how they were doing the trail but it could be used for the trail running in front of the school because that section could definitely use a trail. Member Miller stated "that section" was the key word. Mr. Garza agreed. Member Miller stated that one size did not always fit all. Mr. Garza stated that the funding was not there to do the whole trail but the section in front of the school was the most important section and that is where he wanted his money to go.

Member Gray made another motion to deny based on the staff recommendations. Motion failed due to lack of a second.

Member Cothren stated that the Board of Adjustment would be hearing an application at the next meeting regarding a similar situation. He stated that if they were going to set a standard for something they may want to hear something extremely similar next month. Mr. Garza stated that they were fine with the application being tabled.

Member Miller made the motion to table the item. The motion was seconded by Member Jacimore and passed by a vote of 3-1.

Meeting adjourned.

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Chairman Blake Tarpley