

**BOARD OF ADJUSTMENT  
MINUTES  
January 7, 2021 @ 5:00 p.m.**

The Board of Adjustment held a virtual meeting on Monday January 7, 2021 at 5:00 p.m.

**Members Present**

Don Jacimore  
Justin Cothren  
John Choate  
Scott Sanders

**Members Absent**

Wendell Miller

**Visitors Present:** Mayor Richard Harris, City Planner Sara Jondahl, Planner I Victoria Marchant, Flood Manager Ben Gray, City Engineering Tech Armando Diaz, City Engineer Glenn Newman, Permitting Clerk Kelsey Dinkel, Building Official and Fire Marshall Richard Setian, Jim Lynch of City Corporation, Zane Bryson of City Corp, David Watkins, David Roberts, Tanya Malcolm, Cesar, Max Lawton, Alan Ward, David Garza, Cheryl Monfee, Luke Duffield, Cody Black

**Welcome Visitors**

**The First Order of Business** is a request to review and approve the minutes of the Board of Adjustment November 23rd, 2020 meeting.

Member Cothren 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 from Article 3.6 allowing a 2-foot setback for a fence, located along S Detroit Avenue at Oakland Cemetery. Submitted by Stephanie Warwick on behalf of the City of Russellville.

Planner I Marchant stated located in the Oakland Neighborhood, this is an existing cemetery. It is an R-2 zoned property surrounded by a variety of residential uses, including single family homes, duplexes, and a childcare facility.

Oakland cemetery needs to complete their fence project to protect the graves and headstones after multiple motor vehicle accidents have disrupted the site. To fully protect the graves, the fence must be 2' from the road instead of the 10' requirement laid out in the Russellville Zoning Code.

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

1. 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 that the applicant has demonstrated that special conditions exist because in order to build the fence 10' from the road and still serve the purpose of protecting the graves, 96 graves would have to be moved. It is not the intent of the zoning code to require a cemetery to exhume 96 graves in order to protect them.

2. Non-conforming uses in the area shall not be considered grounds for granting a variance.

No other non-conforming uses in the area were considered as grounds for granting this variance.

3. The application demonstrates reasons that justify a variance and the variance is the minimum to make reasonable use of the land.

The granting of the variance is the minimum variance allowing reasonable use of land.

4. Make a finding that granting the variance will be in harmony with the general purpose and intent of the zoning code.

The granting of this variance is in harmony with the purpose and intent of the code. 5. The board of Adjustment may prescribe appropriate conditions and safeguards. There are no additional safeguards required.

6. The Board of Adjustment may not grant a variance to allow a use not permissible in the zone code.

The proposed use is in conformance with the Table of Permitted Uses.

Planner I Marchant stated that staff recommends approval of this application as a result of the findings below:

1. To serve its purpose the fence must be in its proposed location; and 2. It is not the intent of the Zoning Code to require a cemetery to exhume graves to protect them; and 3. The applicant has met all other variance guidelines

Member Cothorn asked what the fence would look like. He was directed to the available documents give to the Board of Adjustment Members.

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

**The Third Order of Business** is a variance from Article 12 allowing a front yard setback of 19 feet despite the 25-foot requirement, located at 2011 E Parkway Drive. Submitted by Max Lawton. This item was tabled by applicant at the September, October, November, and December meetings.

Planner I Marchant stated that the application is to allow a variance from the front yard setback requirements for a food truck and carport. Located in the East Main Commercial District, this is an existing food truck located next to an existing mattress store. It is a C2 zoned property surrounded by other commercially zoned properties including a variety of uses such as a salon and spa, restaurant, and a strip mall.

Planner I Marchant added that staff was working on a building permit for the applicant and it was discovered that the food truck and carport did not meet the front yard setback requirements.

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

1. 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 not demonstrated that special conditions exist.

2. Non-conforming uses in the area shall not be considered grounds for granting a variance.

No other non-conforming uses in the area were considered as grounds for granting this variance.

3. The application demonstrates reasons that justify a variance and the variance is the minimum to make reasonable use of the land.

The granting of the variance is not the minimum variance allowing reasonable use of land. The primary structure on this parcel meets the setback requirements, therefore the accessory building should be able to be relocated back 6 feet to meet the area requirements.

4. Make a finding that granting the variance will be in harmony with the general purpose and intent of the zoning code.

The granting of this variance is not harmony with the purpose and intent of the code. This is a main commercial corridor and should be maintained in a way that aligns with the zoning code.

5. The board of Adjustment may prescribe appropriate conditions and safeguards.

There are no additional safeguards required.

6. The Board of Adjustment may not grant a variance to allow a use not permissible in the zone code.

The proposed use is in conformance with the Table of Permitted Uses.

Planner I Marchant concluded that 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. There is ample property for this structure to meet the setbacks and still be visible from the Right-of-Way; and
3. The granting of the variance is not the minimum variance allowing reasonable use of land; and
4. The granting of this variance is not in harmony with the purpose and intent of the zoning code.

Mr. Lawton stated that he was not originally informed that all he had to do was move his food truck and carport back 6 feet to be behind the set back. He also asked if there has been any known complaints about his structure.

City Planner Jondahl stated that there were not any complaints to her knowledge.

Mr. Lawton stated that he wanted to wait on the BOA meetings to be in person so that he could present his supporting photos and answer questions. Mr. Lawton shared a power point with several properties in town that he wanted to compare his structure to.

Planner I Marchant reminded Mr. Lawton and the members that this application was for a variance regarding the setback.

Mr. Lawton stated that he would like to pull his application and move his food truck and carport to meet the setback requirement.

**The Fourth Order of Business** is a variance from Article 3.6.1 allowing a 14' fence despite the 6' height limit, located at 1102 McKenzie Drive. Submitted by Alejandro Fuentes.

Planner I Marchant stated that this application is to allow a 14' fence where the height limit is 6'. Located in the Marina Heights District, this is an existing single-family home. It is an R-1 zoned property surrounded by other single-family homes.

Planner I Marchant added that in reviewing this application it was discovered there is also a 50' easement which according to the recorded plat, the easement must be free and clear of all encumbrances. According to the Bill of Assurance for this subdivision—Heartland Phase II—no improvements, trees, fences, or other hindrances shall be placed upon easement areas that will interfere with the operation and maintenance of such utility services.

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

1. 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 that the applicant has not demonstrated that special conditions exist. No conditions were demonstrated that were peculiar to the land, or structure involved, and which are not applicable to other lands.

2. Non-conforming uses in the area shall not be considered grounds for granting a variance.

No other non-conforming uses in the area were considered as grounds for granting this variance.

3. The application demonstrates reasons that justify a variance and the variance is the minimum to make reasonable use of the land.

The granting of the variance is not the minimum variance allowing reasonable use of land.

4. Make a finding that granting the variance will be in harmony with the general purpose and intent of the zoning code.

The granting of this variance is not in harmony with the purpose and intent of the code.

5. The board of Adjustment may prescribe appropriate conditions and safeguards. There are no additional safeguards required.

6. The Board of Adjustment may not grant a variance to allow a use not permissible in the zone code.

The proposed use is in conformance with the Table of Permitted Uses.

Planner I Marchant stated that staff recommends denial of this application as a result of the findings below:

1. No special conditions exist; and
2. There is a 50' easement which according to the recorded plat and Bill of Assurance for the subdivision shall be built in; and
3. The granting of the variance is not the minimum variance allowing reasonable use of land; and
4. The granting of this variance is not in harmony with the purpose and intent of the zoning code.

Mayor Harris stated that he does not see any issue with this fence and he lives in the neighborhood.

Member Choate made a motion to approve the item. Member Sanders seconded the approval and passed unanimously.

Meeting Adjourned.

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