

BOARD OF ADJUSTMENT

MINUTES

September 1, 2022 @ 5:00 p.m.

The Board of Adjustment held a meeting on Thursday September 1, 2022 at 5:00 p.m.

Members Present

Chairman Blake Tarpley
Vice-Chairman Don Jacimore
Secretary Justin Cothren
Wayne Cummings
Wendell Miller

Members Absent

NONE

Visitors Present: Mayor Richard Harris, City Planner Sara Jondahl, Planner I Victoria Marchant, Jim Lynch of City Corporation, Zayne Bryson of City Corporation, City Councilor Mark Tripp, David Garza with Barrett & Associates, Penelope Fischer, Robert Bewley and Fred Teague.

Welcome Visitors

The First Order of Business is a request to review and approve the minutes of the Board of Adjustment June 2, 2022.

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

The Second Order of Business is a Special Exception to allow a 5.4' side yard setback for a new addition and to allow an addition to a non-conforming structure, located at 328 S Denver. Submitted by Barrett & Associates on behalf of Kent McCoy. (VARI-0822-000259)

Planner I Marchant stated the request was for an addition to a non-conforming structure and a special exception at 338 S. Denver Avenue. She stated that the existing conditions were located within the Old Town Neighborhood, it is an existing single family home. The property is zoned R-3 and it is surrounded by R-3 and C-2 zoned properties. Surrounding properties include single family homes and a church. Planner I Marchant stated that staff has found that special conditions exist as the home was built well before the current zoning went into effect. She stated it is not the intent of the zoning code to prohibit property owners to make additions to their homes. In Article 9.3.3 there is specific instruction regarding special exceptions, and article 5 under that says that you can vary the requirements contained in the area requirements table in article 12 by no more than ten percent of the numerical standard when it can be demonstrated that such action will not be harmful to the public welfare. Such actions will not be deemed variances as described in article 9.3.2. Planner I Marchant stated the proposed addition is 5.4' away from the side property

line where the area requirements require 6'. They are varying by no more than 10%, and therefore the addition is considered a special exception. The addition will not be any closer to the side property line than the existing carport.

Staff recommends approval of this application as a result of the findings below:

1. The house is built over lot lines; and
2. The home was built before current Zoning Code went into effect; and
3. The proposed additions to the home vary from the area requirements by 10%; and
4. The applicant has met all of the other variance requirements.

Planner I Marchant asked for the condition that they submit an incidental subdivision application prior to building permit issuance and that be finalized prior to certificate of occupancy because it is built over lot lines.

David Garza with Barrett & Associates stated when they had started the project, HTW architects worked on it, and the covered patio was going to be put in line with the back of the carport, but as you project it out, the house not being square with the property, was at an angle. He stated it put it way too close to the property line even though there was some separation. Mr. Garza stated he decided to pull it back to where they could ask for the 10%. He stated he did not feel comfortable that they would get a variance for anything greater than that, but a 10% would work. Mr. Garza stated that they would pull the roofline back and that the grill would be left exposed on the other side.

Chairman Tarpley asked Mr. Garza if they were comfortable with the other requirement the staff had suggested. Mr. Garza stated yes, that is okay.

Mr. Garza stated one thing they wanted to add is when Mr. McCoy remodels the garage itself, it does not meet the setback code. He stated that Mr. McCoy wants to match the roofline of the house. Mr. Garza stated as it comes out the breezeway is going to come out from the house, and it is going to have a roofline that is going to match that and will turn and match with the garage that is there. He stated it is going to be higher, and then that will be storage space underneath. Mr. Garza stated that to do that they would have to have permission from the board of adjustments to make a modification to a non-conforming structure. He stated that they are adding that if possible. Planner I Marchant stated the staff has no objection with it.

Member Cummings made the motion to approve as presented. The motion was seconded by Member Miller and passed unanimously.

The Third Order of Business is a variance from Article 3.6 to allow a 5' fence in the front yard despite the 3 ½' limit, located at 2303 Timberwood Lane. Submitted by Robert Bewley.
(VARI-0822-000252)

Planner I Marchant stated the request was for a variance from the fence height requirement located at 2303 Timberwood Lane. She stated that existing conditions were that it was located within the Oakland Neighborhood. It is an existing single family home. The property is zoned R-3 and it is surrounded by R-3 zoned properties. Surrounding properties include single family

homes and a cemetery. Planner I Marchant stated the application is to allow an existing 5' fence in the front yard. The fence was constructed in 2020 without a building permit. She stated the applicant indicated that the company they hired said they were going to pull a permit and did not end up pulling a permit. Planner I Marchant stated in July of this year the City of Russellville Code Enforcement received a complaint regarding the fence. She stated at that point in time the applicant was asked to apply for a building permit for a fence and the height issue was brought to staff's attention. Planner I Marchant stated since the variance application was applied for staff has received an additional complaint citing the fence as an "eye sore". She stated the applicant has cited their reason for their special conditions were their two dogs and they stated the fence height is to ensure the dogs cannot easily be stolen as they are expensive dogs and to insure that the dogs cannot easily jump over the fence. Planner I Marchant stated staff has not found that the applicant has demonstrated that special conditions exist as there is room in the backyard for a 6' fence and from what we can tell there is already a 6' privacy fence closing off that back yard portion that would allow for a 6' fence. She stated this concern for dog safety is not just for their property that this could be applicable to other lands. Planner I Marchant stated the granting of the variance is not a variance allowing reasonable use of land. She stated reasonable use of the land would be development of the property where a residential structure has already been built. Planner I Marchant stated the granting of this variance is not in harmony with the purpose and intent of the code. She stated it is not the intent of the code to allow a 5' fence fence within the front yard setback. Planner I Marchant stated this is for issues of vision clearance, aesthetic reasons, and safety issues.

Staff recommends denial of this application as a result of the findings below:

1. The applicant has not demonstrated special conditions exist; and
2. The granting of this variance is not in harmony with the purpose and intent of the code;
3. The granting of the variance is not a variance allowing reasonable use of land.

Ms. Fischer stated that they do have a privacy fence in their backyard. She stated that she cannot put her English bulldog back there because he eats the house. Ms. Fischer stated that they have spots on their house where the dog has eaten the siding. She stated that the siding is wood and her dog likes to chew. Ms. Fischer stated the English bulldog was part of the reason they put up the fence up front. She stated they also have a french bulldog that can jump over 43" high which she stated was the city limit. Ms. Fischer stated she had read several articles that state that from a standing start they can jump that high. She stated that she had had her french bulldog in her yard while she was talking to someone across the fence, and he jumped right up to the height of the 5' fence. Ms. Fischer stated her dogs are a part of her family and they do not want them to get out and get run over or hurt someone. She stated they would not hurt someone intentionally, but they are big dogs and could run into a little kid and knock down as they had nearly knocked her down several times just running. Ms. Fischer stated that they want to keep their dogs for as long as they possibly can, so they want to try to protect them.

She stated the breeder they had gotten their dogs from did say that the french bulldog needed a higher fence and what is limited by the City of Russellville. Ms. Fischer stated the board should have a letter from the breeder. Planner I Marchant stated the letter was in the file.

Ms. Fischer stated there are several other neighbors that have fences as high or higher than theirs in Russellville that they had seen.

Chairperson Tarpley asked Ms. Fischer if these fences were in the front yard. Ms. Fischer confirmed down the street from them there is a big german shepherd and the fence is just as high as theirs in the front yard.

Ms. Fischer stated that they did not know that the fencing company did not get the permit. She stated that when she put in the fence she asked the fencing company if she needed to get a variance or a permit. Ms. Fischer stated that the fencing company told her they will take care of that. She stated it was B and B fencing company and she assumed that he would do what he said he would do because they paid him to put the fence up.

Member Cummings asked Ms. Fischer who was the fencing installer and she clarified that it was B and B.

Member Cummings stated that he understood that there had been a couple of complaints or filings with Code Enforcement about the fence. Planner I Marchant clarified that there was the original complaint which brought this in to get a building permit originally, and then when notice was sent out as part of the variance request, they did receive an additional call and at that time was when they got the "eye sore" complaint. She stated that they did not receive another response besides those two.

Ms. Fischer stated that they live on a dead end street. She stated there is only one house behind them and there is no one living in that house.

Member Jacimore asked Planner I Marchant what was the required setback for that type of fence. Planner I Marchant stated the required setback for a 6' fence or higher than 3 ½ ' is 25' back from your property line. She stated if it was 3 ½ ' which is the allotted height in a front yard it has to be 10' back from the back of the curb. Member Jacamore asked Planner I Marchant if it was not either. Planner I Marchant stated she did not believe it was.

Member Cothren asked Planner I Marchant if he could see a picture of the yard again.

Ms. Fischer stated that she forgot to add that the older code enforcement officer said that the setback was not a part of the thing and that all they needed was to get the height allowed.

Member Cummings stated he understands that there may be other fences that do not meet the height requirement. He stated his concern is that this is the one that is in front of the board.

Chairperson Tarpley asked Member Cummings if that was a motion to deny. Member Cummings stated no, it was a statement of fact.

Chairperson Tarpley asked if they had any motions.

Member Cummings asked Ms. Fischer if she had contacted the fencing company and told them that she was having this issue with the city over the fact that they did not get a permit. She stated that she had not talked to the fencing company as she had not been able to get in contact with them.

Member Jacimore made the motion to deny the application. The motion was seconded by Member Miller and passed unanimously.

The Fourth Order of Business is a Variance from Article 2.18.4 to allow a 9' ceiling height despite the 12' minimum in the College Hill Zone located at 112-114 West H Street. Submitted by Barrett & Associates on behalf of Richard Rogers. (VARI-0822-000262)

Planner I Marchant stated the request was a variance from the ceiling height requirement at 112-114 W H Street. She stated the existing conditions were the property is located within the El Paso Mixed Use District. The property contains two older homes. The property is zoned College Hill Zone. It is surrounded by College Hill Zones and C-2 zoned properties. Surrounding properties include a mix of residential and commercial uses such as a gas station, bank, and the police department. Planner I Marchant stated the property owner is proposing to build a three unit townhouse development. The applicant is requesting a three foot variance to the first floor ceiling height requirement. She stated staff has found that the applicant has demonstrated that special conditions exist as the intent of this regulation was meant for mixed use or commercial development. Planner I Marchant stated this regulation is being addressed as part of the updates to the Russellville Zoning Code that the Planning Commission will be hearing tonight. Under the recommended new Zoning Code the allowance for first floor height would be 9' for residential uses. Therefore, the proposed development would be in compliance under the proposed new code.

Staff recommends approval of this application as a result of the findings below:

1. The intent of this regulation was meant for mixed use or commercial development; and
2. The proposed development would be in compliance under the proposed new code; and
3. The applicant has met all of the other variance requirements.

Member Miller made the motion to approve as presented. The motion was seconded by Member Cummings and passed unanimously.

Meeting Adjourned
