

ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
January 24, 2019

MEMBERS PRESENT

Vice Chair Cynthia Foster
Bonnie Leitch
Tody Sindelar
Brandon Mund

STAFF PRESENT

Chris Looney, Director of Community and Planning Development
Frank Onion, Assistant City Attorney
Holly Mullins, Senior Planner
Matt Greene, Planner
Katherine Crowe, Planning Technician

MEMBERS ABSENT

Chair Susie Barrett

Vice Chair Foster called the meeting to order at 6:21 p.m. in the New Braunfels City Hall, City Council Chambers. Roll was called, and a quorum declared.

APPROVAL OF MINUTES

Motion by Member Leitch, seconded by Member Mund, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of January 24, 2019. The motion carried (4-0-0).

PUBLIC HEARINGS

None.

ITEMS FOR INDIVIDUAL CONSIDERATION

Z-19-001 Hold a public hearing and consider a request for a variance to Section 5.3-2(b) to allow a proposed 8-foot tall security fence where the front yard maximum is 4 feet 6 inches, addressed at 2661 FM 306.

(Applicant: New Braunfels Utilities; Case Manager: Matt Greene)

Mr. Greene presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- (1) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;*
The applicant states the New Braunfels Utilities (NBU) Bretzke Water Pump Station is required by the Texas Commission on Environmental Quality (TCEQ) to be enclosed by an intruder resistant fence, defined as a fence 6 feet in height with three strands of barbed wire at the top, or alternatively a fence 8 feet in height. They explain if the fence was set back 25 feet to allow the 8 foot tall fence, NBU would not be able to fit the required water quality area and other necessary parts of their water facility within the site. And;
- (2) *That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*
The applicant states TCEQ will not approve operation of a facility that is not enclosed by an intruder resistant fence. The facility is required for NBU to deliver water at the required pressure to the Bretzke Lane neighborhood distribution system. They explain the site is laid out in a particular configuration to allow the proposed tank overflow at a certain elevation, so the site plan cannot be adjusted. Staff recognizes the current "R-1" Single Family District zoning does not typically have development that is overseen by TCEQ, nor was the fence height requirement in residential districts intended to apply to utility infrastructure. And;
- (3) *That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;*
The applicant states the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area. They state if the variance is

not granted that it would present a public health, safety and welfare issue to residents that rely on delivery of safe drinking water. And;

- (4) *Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;*

The applicant states granting of the variance will not have the effect of preventing the orderly use of other land within the area, stating the proposed fence would be entirely within the NBU property and will not affect surrounding properties. And;

- (5) *That an undue hardship exists;*

The applicant states several factors contributed to the site design needing to be as shown on the site plan. They explained the site was specifically chosen because of the elevation requirement for the future 2.5-million-gallon storage tank that will be constructed in the future, and the tank will be 30 feet tall and must be centered on the existing 764 foot contour on the site to maintain the required elevation for NBU's water distribution system. They clarified that for the ultimate buildout of the project, all the current space in the site plan is required to fit the water pump station, piping and water quality pond. They explained that City of New Braunfels and TxDOT requirements for drainage and water quality for the site require that the detention pond be built where it is on the site plan to prevent un-treated water from entering the TxDOT right of way. The detention pond, piping and a portion of the pump station are within 8.5 feet of the front property line, so the requirement to have the TCEQ-required, intruder resistant fence 25 feet back from the front property line is not possible. And;

- (6) *That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*

The applicant states the variance will be in harmony with the spirit and purpose of the city's regulations. They explain the current zoning of the property is a residential district, and they understand the safety/aesthetic concern with tall fences close to the property lines of residential lots, however the pump station site is not a place of residence and therefore the safety and aesthetic concern with a fence greater than 4.5 feet is not acceptable, especially with the frontage on FM 306. Staff notes some non-residential zoning districts within the City do not have a front setback requirement for non-residential use, therefore allowing the fences to be built up to 8 feet tall in the front.

Mr. Greene stated a variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

Z-19-003 Hold a public hearing and consider a request for variances to Section 3.3-2(b)(1) to allow: 1) lot depth of less than 100 feet; and 2) a front setback encroachment of 5 feet, for two new residential lots at 1008 Dunlap Drive.

(Applicant: William Shawn Jurica; Case Manager: Holly Mullins)

Mrs. Mullins presented the staff report and stated the ZBA may authorize a variance from the zoning regulations only upon finding the following facts:

- (1) *That there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of this Chapter would deprive the applicant of the reasonable use of land;*

The applicant states the existing lot is oversized, resulting in a large amount of unused land with frontage along Lake Front Avenue. Staff notes the need to create opportunities for more housing in under-utilized areas. And;

- (2) *That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*

The applicant states that without the variances, a substantial amount of land would remain vacant and not used for its highest and best use. Note: "highest and best use" is a real estate term and not a land use or zoning term. And;

- (3) *That the granting of the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area;*
The applicant states the variance will not be detrimental to the public or other property, as the new lots will exceed the minimum area requirement and will allow new construction that will ultimately enhance the neighborhood. And;
- (4) *Granting of the variance will not have the effect of preventing the orderly use of other land within the area in accordance with the provisions of this Chapter;*
Granting the variance should not prevent orderly use of other property in the area. And;
- (5) *That an undue hardship exists;*
The applicant states granting the variance will produce lot sizes more consistent with the neighborhood and allow the construction of more affordable housing. Staff notes this is a community goal, identified in the Comprehensive Plan Envision New Braunfels. And;
- (6) *That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*
Minimum lot size requirements are intended to ensure air, light and open space between properties, prevent overcrowding, and ensure proper fire separation. Front building setbacks are intended to provide separation between living space and the street, maintain a consistent streetscape, and allow for vehicle parking. The applicant believes the intent of the regulation can be satisfied by meeting or exceeding the minimum lot width and area requirements, and that providing a reduced lot depth and front setback will allow compatible development of otherwise unusable land. Staff notes several strategies of Envision New Braunfels recommend providing a range of housing types in areas with existing infrastructure as a way to offer workforce housing and discourage sprawl.

Mrs. Mullins stated a variance shall not be granted to relieve a self-created or personal hardship, nor shall it be based solely on economic gain or loss, nor shall it permit any person the privilege in developing a parcel of land not permitted by Chapter 144 to other parcels of land in the particular zoning district. No variance may be granted which results in undue hardship upon another parcel of land.

Identify code sections or topics the Board may want to discuss on a future agenda to consider a recommendation to City Council to direct Staff to initiate process to amend or revise.

Member Sindelar requested to discuss permissions the Board has for site visits for variance cases.

Mr. Onion stated he would review the authorizations of the Board.

Discussion followed.

Member Leitch inquired if there was a way to discuss or review unintended consequences of approved variances.

Mr. Looney asked Member Leitch if an example could be provided at the next meeting to guide the discussion.

Member Leitch stated yes.

ADJOURNMENT

Chair Barrett adjourned the meeting 6:52 p.m.

Chair

Date