

ZONING BOARD OF ADJUSTMENT
Meeting Minutes
November 30, 2023

MEMBERS PRESENT

Bobby Avary
Cynthia Foster
Steve Quidley
Jenny Wilson

STAFF PRESENT

Frank Onion, Assistant City Attorney
Jean Drew, Assistant Director
Planning & Development Services
Matthew Simmont, Planning Manager
Mary Lovell, Senior Planner
Laure Middleton, Planner
Colton Barker, Assistant Planner

1. CALL TO ORDER

Member Quidley called the meeting to order at 6:22pm.

2. ROLL CALL

Roll was called, and a quorum declared.

Member Quidley stated any applicants who wished to continue with the public hearing of their request despite only having four members present to do so at this time.

James Bettersworth consented to continuing the public hearing with only four members present.

Peter Landerman consented to continuing the public hearing with only four members present.

3. APPROVAL OF MINUTES

Motion by Member Avary, seconded by Member Wilson, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of October 26, 2023. Motion carried (4-0-0).

4. INDIVIDUAL ITEMS FOR CONSIDERATION

A) Approval of the Zoning Board of Adjustment 2024 Calendars for Variance Applications.

Motion by Member Avary, seconded by Member Wilson, to approve the Zoning Board of Adjustment 2024 Calendars for Variance Applications as presented. Motion carried (4-0-0).

B) ZB23-0013 Hold a public hearing and consider a request for a variance to Section 144-3.3-9(b)(1)(v) to allow a commercial office building to be built within the required residential setback, and to Section 144-3.3-9(b)(1)(iv) to allow a commercial office building to be built within the required rear setback in the "C-3" Commercial District, addressed at 120 W. Faust Street. (Applicant/Owner: James S. Bettersworth / Bettersworth Law Firm, LLC; Case Manager: Laure Middleton)

Laure Middleton presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of 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 they wish to build a structure that will serve as a law office on the subject lot. The lot size is a special circumstance that is unique when taking into consideration the impact that Chapter 144-3.3-9(b)(1)(v) has on the highest and best use of the lot. The proposed structure is 28 feet tall. Per 3.3-9(b)(1)(v) the proposed structure would have to be 28 feet from the residential lot to the left. In order to comply with the fire code, the proposed building must be 10 feet from the right property line leaving only 23.42 feet to place a structure which is not possible. Staff acknowledges that the residential setback would be 28 feet in this case, but the required side setback to the right property line must be a minimum of 5 feet, leaving 33.42 feet of building footprint width; **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** The applicant states that the highest and best use of this lot is as a small

office building. The proposed plans are for an approximate 2000 square foot office building designed to fit with the character of the neighborhood. The applicant state that setback requirements in Chapter 144-3.3-9(b)(1)(v) are preventing the owner from doing this. The applicant states that a variance is necessary to allow the building to be placed on the lot as shown on the attached site plan; 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 that granting the variance will not be detrimental to the public health, safety or welfare, or injurious to other property within the area, the proposed structure is designed to fit into the neighborhood esthetics and intentionally excluded windows on the taller part of the structure that faces the residential neighbor to maintain privacy. The applicant states this is a professional office building and would generate the noise level similar to a residence. The applicant states that the addition of the building will have a positive impact on the neighboring properties and the property directly across the street is a parking lot for Adobe Cafe; and
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** The applicant states that the variance will not prevent the orderly use of other land within the area as the proposed structure is an office building designed to fit into the neighborhood, the neighboring residential property already faces all commercial properties, including Adobe Cafe, an auto parts store and Time Warner; the vast majority of the properties in this area are being used for commercial purposes; the granting of the requested variance will in not way prevent the orderly use of other properties within the area and will not prevent another property from complying with a regulation or ordinance; and
- 5) **That an undue hardship exists;** The applicant states that because of the lot's dimensions, the ordinance at issue creates an undue hardship to the land; this hardship was not self-created and is not personal or financial; the application of the ordinance to the land prevents the owner from using the land for most anticipated purposes; in order to build a commercial building on this lot, there are other codes that must be complied with which this ordinance makes impossible. Staff notes that the intent of the residential setback is to protect the character, privacy, enjoyment, and value of residential properties; and
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** The applicant states the purpose of the zoning ordinance is to ensure adopted development standards promote the health, safety, and the general welfare of the public; development standards have been established with reasonable consideration for the character of the zoning districts and impacts created by various land uses; variances may not conflict the intent of the zoning ordinance regulations or the goals of the Comprehensive Plan; granting of the variance will be in harmony with the spirit and purpose of the City's regulations; the neighbors have noted that the lack of outdoor storage has long been an issue at this location causing unsightly clutter and unsafe hazards as former owners have resorted to running extension cords over the open driveway to charge their golf carts; allowing residents to recreate and entertain friends and family is part of the cultural traditions of New Braunfels. Staff notes that the intent of the residential setback is to protect the character, privacy, enjoyment, and value of residential properties.

Member Quidley asked if there were any questions for staff.

No one spoke.

Member Quidley invited the applicant to speak.

James Betterworth, stated they were present to answer any questions and elaborated on the request.

Discussion followed on the potential impact on adjacent residential property, hardships of the subject property, commercial development standards, and the design of the proposed development.

Member Quidley opened the public hearing an asked if anyone would like to speak.

No one spoke.

Member Quidley closed the public hearing and asked if there was any discussion or a motion.

Motion by Member Wilson, seconded by Member Foster, to approve the request for a variance to Section 144-3.3-9(b)(1)(v) to allow a commercial office building to be built within the required residential setback, and to Section 144-3.3-9(b)(1)(iv) to allow a commercial office building to be built within the required rear setback in the "C-3" Commercial District, addressed at 120 W. Faust Street. Motion carried (4-0-0). Therefore, the granted variance is for a residential side yard setback of 17 feet 7.5 inches for an encroachment of 10 feet 4.5 inches at the front of the building and setback of 21 feet 2.25 inches for an encroachment of 6 feet 9.75 inches at the rear of the building. Further, the granted variance is for the rear building setback of 5 feet 9.75 inches for an encroachment of 14 feet 2.25 inches.

C) ZB23-0015 Hold a public hearing and consider a request for a variance to Section 144-5.1-3(c) to allow a reduction in the minimum required parking in the "M-1" Light Industrial District, addressed at 596 S. Castell Avenue. (Applicant/Owner: Peter Landerman; Case Manager: Laure Middleton)

Laure Middleton presented the staff report and stated Section 2.2-3(a) of the Zoning Ordinance states the ZBA may authorize a variance from the zoning regulations only upon finding all of 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 property in question is a corner lot with named roadways on three sides of the property. There are utility poles and heritage oak trees that would prevent the addition of parking spaces, and if said spaces were to be created, they would have to back into a right of way which is also not allowed."; **and**
- 2) **That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;** The applicant states: "The property is zoned M-1 and already has a built out commercial kitchen, complete with vent hood, fire suppression, make-up air, grease trap, and three compartment sink."; **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: "No."; **and**
- 4) **Granting of the variance will not have the effect of preventing the orderly use of other lands within the area in accordance with the provisions of this Chapter;** The applicant states: "No."; **and**
- 5) **That an undue hardship exists;** The applicant states: "The layout of the land coupled with the aforementioned special circumstances of the land prevent the creation of the now required parking spaces."; **and**
- 6) **That the granting of a variance will be in harmony with the spirit and purpose of these regulations.** The applicant states: "YES. We believe that our desire to have a restaurant tenant in the listed property is in alignment with the Castell Revitalization project, where it has our portion of Castell Street earmarked for "bungalow business district". We also believe that we are in alignment with the 2018 South Castell Ave Masterplan, which was created in partnership with the Envision New Braunfels group, the Downtown Association, the City Building and Planning Department, as well as the Chamber of Commerce, as a catalyst for downtown redevelopment. We also believe that we are in alignment with the TIRZ #3 Downtown district, as we are trying to preserve the character and charm of the 1938 house that sits on the edge of the proposed pedestrian corridor as highlighted in the 2010 Downtown Implementation Plan. We would be slated to be the gateway to downtown, representing the history and charm of New Braunfels, while lending to a bit of modernity with an historic building being repurposed for a better use. The 2021 action further bolsters our argument, siting the need to widen the scope of the downtown parking district (which would allow us to utilize street parking for our C/O) as well as lessening the parking requirement for downtown businesses. It is our understanding that the Planning Department is working on updating the Land Development Requirement (LDR) for downtown. As stands today, there are only a handful of properties on the entirety of Castell Street being used for residential housing. The rest, and might I add, the majority of the properties on Castell Ave are either businesses or vacant. From the many offices in the immediate vicinity of the property being discussed, we have only heard the excitement that a small restaurant in the area would bring."

Member Quidley asked if there were any questions for staff.

Discussion followed on existing parking spaces on the property.

Member Quidley invited the applicant to speak.

Peter Landerman, elaborated on the request with the aid of a presentation.

Discussion followed on parking requirements, operation of the proposed restaurant use, lot configuration, proposed revisions to parking requirements as part of the Land Development Ordinance draft, potential alternatives to a variance, existing parking and traffic challenges in the area, nonconforming structures and uses, opposition to the request by neighboring property owners.

Member Quidley opened the public hearing and asked if anyone would like to speak.

The following individuals spoke in opposition of the request: Melissa Snow

Member Quidley closed the public hearing and asked if there was any discussion or a motion.

The request for a variance to Section 144-5.1-3(c) to allow a reduction in the minimum required parking in the "M-1" Light Industrial District, addressed at 596 S. Castell Avenue was denied for lack of a motion.

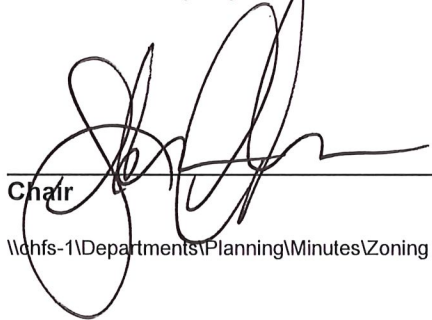
5. STAFF REPORT

Discussion of upcoming code amendments impacting the Zoning Board of Adjustment.

Matthew Simmont briefly discussed upcoming code amendment to adjust the name and duties of the Zoning Board of Adjustment and the need for a special meeting in December to prepare for those changes.

6. ADJOURNMENT

Member Quidley adjourned the meeting at 7:19pm.



Chair

12/21/23

Date

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