

ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
January 28, 2021

MEMBERS PRESENT

Chair John Coker
Vice Chair Brandon Mund
Cynthia Foster
Steve Quidley

STAFF PRESENT

Chris Looney, Planning & Development Services Director
Frank Onion, First Assistant City Attorney
Maddison O'Kelley, Assistant Planner

MEMBERS ABSENT

Bonnie Leitch

Chair Coker called the meeting to order at 6:01 p.m. Roll was called, and a quorum declared.

APPROVAL OF MINUTES

Motion by Vice Chair Mund, seconded by Member Quidley, to approve the minutes of the Zoning Board of Adjustment Regular Meeting of December 17, 2020. The motion carried (4-0-0).

PUBLIC HEARINGS

(A) Z-20-019 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed single-family home to encroach 10 feet into the required 25-foot corner side setback, addressed at 120 E. Edgewater Terrace. (Applicant: Melvin Nolte & Chad Nolte; Case Manager: Maddison O'Kelley)

Ms. O'Kelley 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 location of the proposed home has been designed to allow two heritage pecan trees to be preserved by encroaching into the corner side setback. The applicant further states the home would be constructed too close to the existing detached shed if the home is setback 25 feet from N. Union Ave. Staff acknowledges the location of one existing tree is within the buildable area of the lot.) ***and***
- 2) *That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary because the required setbacks limit the ability to build a reasonably sized one-story home. The applicant states a one-story home is necessary to preserve adequate sunlight for the existing trees. The applicant further states that, in order to construct a home within the required setbacks and preserve the existing trees, the home would have to be narrowly designed which would not fit in with the character of the neighborhood. Staff acknowledges the location of the existing trees on the property reduces the size of the buildable area of the lot if the trees are preserved, however, the 25-foot corner side setback requirement does not remove the substantial property right to construct a single-family home on the property. Building a single story vs. a multi-story home is not considered a property right nor a code requirement, however a single-story would likely provide more sunlight to facilitate tree growth and health.) ***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 others will not be negatively affected by the granting of the variance. The applicant further states the home that has been removed from the property encroached 10 feet into the required setback and there were not any issues with traffic, noise, or overall look. The applicant states the proposed home will fit in with the character of the neighborhood because the adjacent homes are all one-story in height.

Staff acknowledges the homes built on the shared block as the subject property are all one-story in height and that, if the variance is approved, the impact to the surrounding area with a setback encroachment is likely minimal.) **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 the variance should not prevent orderly use of other land nor set an unusual precedent. The applicant states the home will be one-story, rather than a two-story home that is much taller than the adjacent homes. Staff notes all neighboring properties are required to comply with the setback requirements for any new construction.) **and**
- 5) ***That an undue hardship exists;*** (The applicant states the two existing pecan trees can be harmed if a home is built within the required setbacks and that building a two-story home is not possible to ensure the trees receive adequate sunlight. The applicant further states that, between the 20-foot rear setback and the 25-foot front and corner side setbacks, there is not enough buildable area for a reasonably sized one-story home.) **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 and that the variance will provide reasonable use of the property without affecting any neighbor, traffic, safety, sight lines, noise, or the neighborhood as a whole. The applicant further states protecting the existing pecan trees and the single-story design of the home fit the character of the neighborhood. Staff notes the homes built along the north side of N. Union on the shared block as the subject property meet the minimum 25-foot setback and therefore, approval of the variance could disrupt the current visual setback from the street. Visual clearance or the sight distance triangle at the intersecting streets will still need to be maintained for motorist safety.)

Chair Coker asked if there were any questions for staff.

Discussion followed for clarification of what is being requested.

Chair Coker requested the applicant address the Board.

Chad Nolte, 963 N Houston Ave, stated he is the agent and provided further clarification and intent on the request.

Chair Coker asked if there were any questions for the applicant.

Discussion followed on what is needed to maintain the trees on the lot.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Motion by Vice Chair Mund, seconded by Member Foster, to approve the proposed request for a variance to Section 3.3-2(b)(1)(iii) to allow a proposed single-family home to encroach 10 feet into the required 25-foot corner side setback, addressed at 120 E. Edgewater Terrace. Motion carried (4-0-0).

(B) Z-20-022 Hold a public hearing and consider a request for a variance to Section 3.3-2(b)(1)(i) to allow the height of a single-family dwelling to exceed the maximum 35-foot height by

approximately 21 feet in the “R-2” Single and Two-Family District, addressed at 204 Rio Drive.
(Applicant: Jim Melsha; Case Manager: Maddison O’Kelley)

Ms. O’Kelley 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 structure must be elevated an additional 26 feet due to the property’s location within the floodway. Staff acknowledges the required 25-foot base flood elevation impacts the construction of a single-family dwelling which, therefore, can be compressed with the generally applicable height limits.) ***and***
- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the interior elevator needs to be extended to access the roof top deck, which will eliminate the secondary elevator and replace it with an emergency escape ladder. The applicant further states the plans originally approved with the first variance showed a secondary elevator, which would have required a support structure of the same height as the new elevator chase. Staff notes the additional height required to construct and access the proposed rooftop deck is not a substantial property right.) ***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 should not be detrimental to public health, safety or welfare. It is not anticipated the proposed structure will be detrimental to public health and safety if built to the appropriate standards.) ***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 believes the variance should not prevent orderly use of other land within the area and states the additional height of the elevator enclosure does not obstruct the view of the river from any existing properties. There does not appear to be a negative effect preventing orderly use of other land within the area, however, all neighboring properties will still be required to comply with the height limits and other zoning ordinance standards for any new construction on their properties, including property located within the floodplain.) ***and***
- 5) ***That an undue hardship exists;*** (The applicant states the standards to build two feet above the base flood elevation is an undue hardship. Staff acknowledges new construction of habitable space below the base flood elevation is prohibited and the construction of a new dwelling will be limited to having the elevation of the first habitable floor at a minimum elevation of 27 feet above the average adjacent grades. Staff notes that the variance granted in 2018 allowed an overall height of 20 feet for habitable area above the base flood elevation.) ***and***
- 6) ***That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*** (The applicant states granting of the variance will be in harmony with the spirit and purpose of the zoning ordinance as it will allow for a safety structure in the form of an emergency escape ladder to be added, protecting the occupants from being trapped in the event of a power failure.)

Chair Coker asked if there were any questions for staff.

Discussion followed on the context of the previous variance request in 2018.

Chair Coker requested the applicant address the Board.

Robert Allison, 106 La Luna, presented further clarification of the intent behind the request.

Chair Coker asked if there were any questions for the applicant.

Discussion followed on the potential hardship of the land, and further context of the previous request considered by the ZBA in 2018, code compliant alternatives, and the nature of the structure being built

without being included on the plans.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Discussion followed on if the request included a hardship applicable to the consideration of the board.

Motion by Chair Coker, seconded by Member Quidley, to approve the proposed request for a variance to Section 3.3-2(b)(1)(i) to allow the height of a single-family dwelling to exceed the maximum 35-foot height by approximately 21 feet in the "R-2" Single and Two-Family District, addressed at 204 Rio Drive. Motion failed (2-0-2) with Vice Chair Mund and Member Foster in opposition.

(C) Z-20-023 Hold a public hearing and consider a request for a variance to Section 3.3-9(b)(1)(v) to allow an existing commercial structure to encroach up to 15 feet into the required 20-foot residential setback, addressed at 177 E. Faust Street. (Applicant: HMT Engineering & Surveying; Case Manager: Maddison O'Kelley)

Ms. O'Kelley 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 building's current setback is approximately 5-6 feet from the property line. The applicant further states the entire block wherein the subject property is located is zoned commercial; however, the adjacent property is a residential use that required a 20-foot setback affecting the subject property. Staff acknowledges the commercial zoning of the neighborhood; the residential setback is intended to protect residential land uses from potential adverse effects of being located adjacent to commercial uses. Staff further acknowledges the provision requiring a residential setback was adopted after the existing commercial structure was built.) ***and***
- 2) ***That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant;*** (The applicant states the variance is necessary for the property owner to obtain permits for any future improvements to the property. Staff acknowledges the subject structure may not be enlarged or expanded due to its legal-nonconforming status; and the substantial property right to have a commercial use is not removed due to the residential setback requirement within the Zoning Ordinance.) ***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 there will be no detriment to the public's health, safety, or welfare if the variance is granted. Staff acknowledges the setback encroachment will likely have a minimal impact; the subject property must comply with all other development standards intended to protect adjacent residential uses from potential nuisances such as required lighting, noise, and buffering standards.) ***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 the variance should not prevent the orderly use of other land nor set an unusual precedent. Staff states the intent of the residential setback is to preserve the property right of adjacent residences to use

and enjoy their property. Furthermore, neighboring properties would still be required to comply with the residential setback requirement for any new commercial construction adjacent to property used or zoned for one- or two-family dwellings.) **and**

- 5) ***That an undue hardship exists;*** (The applicant states the building was existing in the current location at the time the current owner purchased the property. Staff acknowledges the allowable width of a commercial structure is limited due to the width of the lot and the residential setback from the adjacent property. Staff has not identified a physical hardship due to the nature of the land itself that is not shared by other commercial property adjacent to residential land uses; this is becoming a more mixed-use neighborhood, therefore impacts to surrounding residential properties and property owners should be considered when designing the form and scale of commercial construction, or when making improvements to existing structures.) **and**
- 6) ***That the granting of a variance will be in harmony with the spirit and purpose of these regulations.*** (The applicant states granting the variance will be in harmony with the spirit and purposes of these regulations.)

Chair Coker asked if there were any questions for staff.

Discussion followed for clarification of the nature of the request.

Chair Coker requested the applicant address the Board.

Chris Van Heerde, 290 S Castell Ave, elaborated the intent behind the request.

Chair Coker asked if there were any questions for the applicant.

Chair Coker opened the public hearing and asked if anyone wished to speak in favor.

No one spoke.

Chair Coker opened the public hearing and asked if anyone wished to speak in opposition.

No one spoke.

There being no further comment, Chair Coker closed the public hearing.

Chair Coker called for a motion or discussion from the Board.

Motion by Vice Chair Mund, seconded by Chair Coker, to approve the proposed request for a variance to Section 3.3-9(b)(1)(v) to allow an existing commercial structure to encroach up to 15 feet into the required 20-foot residential setback, addressed at 177 E. Faust Street to bring the existing structure into compliance and allow for code compliant expansions and no new structures or rebuilds.

Discussion followed for clarification of the motion and if the variance included any expansions to the existing building compliant with current code.

Motion carried (4-0-0).

ITEMS FOR INDIVIDUAL CONSIDERATION

- A) Updates regarding recommended code amendments made by the Zoning Board of Adjustment for the City Council's consideration.

Ms. O'Kelley presented on recommended code amendments as proposed by the Board to bring to City Council for consideration such as code regarding porches, carports, etc.

Ms. O'Kelley stated that staff is considering potential recommendations to City Council to have reduced

setbacks in Landa Park Estates.

Discussion followed on receiving information to attend future City Council meetings on these matters.

Member Foster asked if there could be information presented on how other cities handle floodplain height requirements.

Discussion followed.

Discussion followed on the Missing Middle Housing presentation attended by members of the Board and future training events.

ADJOURNMENT

Chair Coker adjourned the meeting at 6:58 pm.

Chair

Date

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