

## **ZONING BOARD OF APPEALS MINUTES OF AUGUST 2, 2011**

Meeting called to order by Chairperson Gerl at 5:04 p.m. in the Executive Conference Room, City Hall Plaza.

**PRESENT:** Kenneth Bargender, Ed Gerl, Richard Kenyon and Robert Lewerenz

**EXCUSED:** Dean Markwardt

**ALSO PRESENT:** Planner/Zoning Administrator Miller, Deputy Clerk Panzer, Jeremy Faber, Bob Lemke, Alan Struble and Beki Lemke

**ZB11-08** Motion by Kenyon, second by Lewerenz to approve the minutes of May 24, 2011 as submitted.

### **Motion carried**

Deputy Clerk read the variance request from Jeremy Faber for property located at 2403 S Palmetto Ave, zoned "R-3" Standard Single Family Residential District to construct an 8-foot fence. Section 18-04 (11)(b)(1) of the Municipal Code limits the height of residential fences to 6 feet for side and rear yard boundary fences. Section 18-04 (11)(g) allows the Zoning Board of Appeals to grant an exception to the fence requirements with the approval of a variance application. The Applicant is requesting a 2-foot height variance for a boundary fence along the north, east, and south property lines.

### **Background**

The Applicant is requesting to construct an 8 foot boundary fence along the rear and side yards of the property. The south east corner rear yard of the property abuts the north soccer field at Griese Park. According to the Applicant, there is a significant deer population nearby and they have become a nuisance to their family by eating many of the plants, shrubs, and landscaping throughout the property. Additionally, the rear yard is on a grade so that the house and deck are at a noticeably higher elevation than the property boundary, limiting the amount of privacy that a 6 foot fence can provide. Due to the location of the park, grade of the yard, and deer population, the Applicant does not feel that a 6 foot fence provides enough security or privacy for their family and would not adequately keep out the deer.

Boundary fences in residential areas are limited to 6 feet in height by the Municipal Code.

Planner/Zoning Administrator's statement of facts regarding the variance request:

1. The property is located at 2403 South Palmetto Avenue.
2. The Lot is an interior lot with an area of 13,050 square feet and dimensions of 87 feet wide and 150 feet long.
3. The property is zoned 'R-3' Standard Single Family Residential district where the minimum lot size is 10,000 sq. ft. and the minimum lot width is 80 ft.
4. The Lot does meet the minimum lot dimension requirements of the 'R-3' Standard Single Family Residential district.
5. This home was built in 2008.
6. Rear yard property line abuts proposed soccer field area.
7. Section 18-04 (11)(b)(1) of the Municipal Code limits the height of residential fences to 6 feet for side and rear yard boundary fences.
8. Section 18-04 (11)(g) allows the Zoning Board of Appeals to grant an exception to the fence requirements with the approval of a variance application.

### **Summary Responses from Applicant**

**(Unnecessary Hardship)** "The proximity of the new soccer field presents new privacy issues since it is public use and not only people, but soccer balls and trash, etc. will be a problem. The property to the south is 6' from the lot line and is not only extremely close, but is also in bad repair and is an eyesore.

Lastly, the heavy deer population in the field behind our home has destroyed numerous trees, shrubs, perennials, and vegetables. We have tried other options to deter them from coming into the yard, but they continue to be a problem. We have 5 small children and we feel an 8' fence is absolutely necessary to be able to have a safe, private, clean and well-maintained yard."

**(Unique Property Circumstances)** "Southeast corner is adjacent to new soccer fields and due to slope of yard, 8' would be necessary for privacy. The property to the south is very close to the lot line (closer than what would be permitted to build) and is a privacy issue as well. Third, is the large deer population in the field east of our home has become a nuisance."

**(No Harm to Public Interests)** "The fence would be in our backyard, bordering the east of the property and the rear north and south sides. It will not obstruct any views from the road or any other properties."

Kenyon said he spoke with the neighbor to the south and she spoke in favor of the variance request, because she has three dogs and kids as well. She expressed concerns though about Mr. Faber's pine trees. The roots from one of the trees are butting up against her foundation.

Kenyon asked Mr. Faber to work with his neighbor in regards to the trees.

Planner/Zoning Administrator Miller shared a map of the proposed soccer field with the board members.

Bargender agreed that Mr. Faber needed a fence, but he didn't think he needed an 8' fence. He felt this request only met one out of the three criteria. There are no slopes or wetlands. Deer will go where it is easy and a 6' fence will prevent the deer from coming into the yard.

Lewerenz said it is costly to add to a fence later and it would be hard to add onto a fence later without making it look bad.

Gerl said the fences on deer farms are 10' high.

**ZB11-09** Motion by Lewerenz, second by Kenyon to grant the variance request from Jeremy Faber for a 2-foot height variance to construct an 8-foot boundary fence along the north, east, and south property lines. Ayes – 3; Nay – 1 (Bargender)

**Motion carried**

Deputy Clerk read the variance request from Patricia Roberts for property located at 1615 South Roddis Avenue, zoned "B-4" General Commercial District to raze an existing non-conforming commercial structure and rebuild a taller structure on the same footprint. Section 18-33 (4)(c) of the Municipal Code prohibits reconstruction of a non-conforming structure, if destroyed by more than 50 percent of its replacement cost, except in conformity with the Municipal Code. Section 18-63 (5)(f) requires a minimum 20-ft front yard setback and a minimum 10-ft side yard setback for commercial buildings. The existing structure is only setback 8 feet from the front yard property line to the west and only setback 6.5 feet from the side yard property line to the south. The Applicant requests to reconstruct a new building on the existing foundation and add a 5-ft wide handicapped accessible ramp along the north side of the new building and requests a 12-ft front yard setback variance to the west and a 3.5-ft side yard setback variance to the south.

**Background**

The property has been vacant for a number of years. The Applicant has an interested party that has an offer to purchase the property, contingent on the variance being approved. The variance is needed to raze and reconstruct a new building on the existing foundation of the non-conforming structure. The new

building would match the original south and west elevation footprint. The existing structure is already within the required front yard and side yard setbacks. The Municipal Code prohibits reconstruction of a non-conforming structure, if destroyed by more than 50 percent of its replacement cost, except in conformity with the Municipal Code. The proposed project would tear down the existing structure except for the foundation and reconstruct a new building on the existing foundation. The Applicant is also requesting to construct a handicapped accessible ramp along the north side of the new building which would also be within the required front yard setback.

The required front yard setback in the 'B-4' General Commercial district is 20 feet. The required side yard setback is 10 feet.

Planner/Zoning Administrator Miller pointed out that there was a similar request back in May. The last time this was reviewed it was for a second story addition, keeping the same structure in tack. This time they are proposing to raze the structure, use the foundation and floor joists and just recreate the same footprint. The dimensions are the same, however when we wanted to do a second story addition we needed an additional 2' variance that we are not asking for at this time because the structure was going to be over 20'. This building will not be that high.

Planner/Zoning Administrator's statement of facts regarding the variance request:

1. The property is located at 1615 South Roddis Avenue.
2. The Lot is a corner lot with an area of 13,304 sq. ft. in size and an irregular shape with dimensions of 122-ft along Roddis Avenue, 58-ft along 16<sup>th</sup> Street, 157-ft along Central Avenue, and 138-ft along the side yard property line.
3. The property is zoned 'B-4' General Commercial district where the minimum lot size is 12,000 sq. ft. and the minimum lot width is 80 ft.
4. The Lot does meet the minimum lot dimension requirements of the 'B-4' General Commercial district.
5. This structure was built in 1954.
6. The existing structure predates the current code and is considered a 'nonconforming structure' and was not developed according to the current setback restrictions of the 'B-4' district.
7. The existing structure is a single story structure with 840 sq ft of usable area.
8. Section 18-63 (5)(f) requires a minimum 20-ft front yard setback in the 'B-4' General Commercial district.
9. The existing structure is only located 8 feet from the front yard property line to the west and only 6.5 feet from the side yard property line to the south.
10. Section 18-63 (5)(f) requires a minimum 10-ft side yard setback.
11. The adjacent property to the south, closest to the existing structure, is vacant. The other adjacent property to the south is Hardees located at 1618 S Central Ave. Hardee's parking lot provides a significant separation from the subject property and the restaurant itself.
12. Section 18-33 (4)(c) of the Municipal Code prohibits reconstruction of a non-conforming structure, if destroyed by more than 50 percent of its replacement cost, except in conformity with the Municipal Code.
13. The proposed project would raze the existing building and the replacement cost for the new structure would exceed over 50 percent of its replacement cost.
14. Three of the property's four sides are fronting street rights-of-way severely limiting the 'building envelope' of the property.
15. Central Avenue requires a major street setback of 50 feet, but with averaging, it may be reduced (Using GIS to estimate gave an average of a 40 foot setback).

**Summary Responses from Applicant**

**(Unnecessary Hardship)** “The lot size is small with an irregular shape. The lot has street frontage on three of the four sides making it difficult to develop outside the required setback. The setback to the north and west are 20' setbacks. The setback to the east on Central Avenue is a 50' major street setback. These required setbacks make the building envelope of the lot very small. The existing structure itself is small and some of it is within the required setbacks. Without a variance, reconstruction of any building on this site would be limited.”

**(Unique Property Circumstances)** “The existing building is currently vacant. Costs to move the building are substantial versus costs to rebuild on the existing location and foundation. Without a variance, the setbacks would leave minimal square footage for the constructing a new building on the first level in any direction would likely be limited by the required setbacks.”

**(No Harm to Public Interests)** “The request is to reconstruct existing building on the original footprint (within the required setbacks). The reconstruction would not cause an increase in the footprint (within the required setbacks) except for the accessible ramp and would utilize a site that has been abandoned for a number of years.”

Bob Lemke shared a proposed drawing with the board members.

The deck part of the proposed plan was discussed.

Planner/Zoning Administrator Miller said the deck would have to be outside the setback too. The only part that can be within the setback beyond the building is a ramp. The deck would have to be set outside the setback. You can't have a deck in the setback.

Bargender felt this variance request met all three of the variance criteria.

**ZB11-010** Motion by Bargender, second by Kenyon to grant the variance requests from Patricia Roberts for a 12-ft front yard setback variance to the west and a 3.5-ft side yard setback variance to the south to reconstruct a new building on the existing foundation and add a 5-ft wide handicapped accessible ramp along the north side of the new building.

**Motion carried**

Motion by Kenyon, second by Bargender to adjourn at 5:39 p.m.

**Motion carried**

Lori A. Panzer  
Deputy City Clerk