



**ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
City Hall, Council Chambers
550 Landa Street
Thursday, March 28, 2019
6:00 P.M.**

AGENDA

At any time during the meeting, the Zoning Board of Adjustment may meet in executive session for attorney-client consultation regarding any of the matters posted on this agenda in compliance with the Texas Open Meetings Act.

1. **CALL TO ORDER**
2. **REQUEST ALL PHONES AND OTHER DEVICES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL.**
3. **ROLL CALL: PLANNING TECHNICIAN**
4. **APPROVAL OF MINUTES**
February 28, 2018 Regular Meeting
5. **PUBLIC HEARINGS**
None.
6. **ITEMS FOR INDIVIDUAL CONSIDERATION**
 - (A) Discuss and consider a recommendation to City Council regarding Zoning Ordinance development standards related to porches, carports, and accessory buildings. (*Chair Barrett*)
 - (B) Identify code sections or topics the Board may want to discuss on a future agenda to consider a recommendation to City Council to initiate process to amend or revise.
7. **ADJOURNMENT**

CERTIFICATION

I hereby certify that the above Notice of Meeting was posted on the Bulletin Board at the New Braunfels City Hall, on this the ____ day of March, 2019, at _____ a.m.

Patrick Aten, City Secretary

NOTE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's Office at 221-4010 at least two work days prior to the meeting so that appropriate arrangements can be made.

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CANCELLED

ZONING BOARD OF ADJUSTMENT
Regular Meeting Minutes
February 28, 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

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.

Vice Chair Foster inquired about the construction of the facility on a residentially zoned property.

Mr. Greene stated the applicant was available to answer any questions about why that location was chosen.

Member Leitch inquired about the adjacent property.

Mr. Greene clarified a large portion of the adjacent property was located outside of city limits, but that they were notified of the public hearing because a portion of the property was within city limits. He clarified they were represented as property owner 9 on the notice of public hearing map.

Discussion followed.

Vice Chair Foster invited the applicant to speak.

Shawn Schorn, a representative from New Braunfels Utilities, stated he was there to represent the applicant. He described the existing water supply issues in the area and explained how the proposed facility will resolve the water supply issues.

Member Leitch inquired about the acquisition of the land.

Mr. Schorn clarified the property was purchased from the previous owner.

Member Mund requested clarification regarding the proposed service area.

Discussion followed regarding the proposed service area.

Vice Chair Foster inquired if existing trees would be preserved.

Mr. Schorn stated they were attempting to preserve as many as possible.

Discussion followed regarding the previous property owner.

Member Mund expressed concerns regarding the proposed fence material along FM 306.

Discussion followed regarding materials that met TCEQ requirements.

Member Leitch inquired about the equipment and structures that would be visible from FM 306.

Mr. Schorn described the proposed equipment and structures that may be visible.

Vice Chair Foster inquired if the residential zoning district permitted the construction of the public utility facility.

Mr. Looney clarified utility facilities are permitted in all zoning districts.

Member Mund restated his concerns regarding the proposed fence material along FM 306, as it is a major roadway between Canyon Lake and New Braunfels.

Discussion followed regarding alternative materials that met TCEQ requirements.

Vice Chair Foster asked if anyone wished to speak in favor.

No one spoke.

Vice Chair Foster asked if anyone wished to speak in opposition.

No one spoke.

Vice Chair Foster closed the public hearing.

Motion by Member Mund, seconded by Member Sindelar, to grant the 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, with the requirement that the security fence be composed of materials resulting in a good looking fence. The motion carried (4-0-0).

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.

Member Mund inquired if the multiple requests would be considered together or separately.

Mrs. Mullis stated they could be considered together or separately, but noted the requests were dependent.

Vice Chair Foster requested clarification regarding the proposed requests.

Mrs. Mullins clarified.

Vice Chair Foster invited the applicant to speak.

Shawn Jurica, 435 Ogden Lane, described the existing conditions. He described the requests and the proposed updates to the properties. He stated that he believes it aligns with goals identified in the Comprehensive Plan. He provided an example of homes that could be constructed on the properties.

Vice Chair Foster inquired about the undue hardship to the land.

Mr. Jurica stated the lot was oversized in comparison to other existing lots.

Member Mund expressed support of the request.

Member Leitch expressed support of the request and the proposed affordable housing.

Member Mund inquired if the existing house would remain.

Mr. Jurica stated it would.

Vice Chair Foster inquired if the existing home had setback issues.

Mr. Jurica stated it did not.

Vice Chair Foster request clarification regarding the proposed encroachment.

Mr. Jurica clarified.

Discussion followed regarding the rear setback.

Member Sindelar expressed concerns regarding the space available for off-street parking.

Mr. Jurica clarified the properties would meet the minimum off-street parking requirements.

Mrs. Mullins illustrated and explained that the orientation of the lot is what caused the need for the variance request. She explained should the lot be orientated 90 degrees it would meet the minimum requirements.

Mr. Looney explained the size and orientation of the lots could be considered an undue hardship to the land.

Vice Chair Foster asked if anyone wished to speak in favor.

No one spoke.

Vice Chair Foster asked if anyone wished to speak in opposition.

No one spoke.

Vice Chair Foster closed the public hearing.

Motion by Member Mund, seconded by Member Leitch, to grant the 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. The motion carried (4-0-0).

ITEMS FOR INDIVIDUAL CONSIDERATION

Discussion regarding permission for site visits.

(Requested by Board Member Sindelar)

Mr. Onion described the limitations and restrictions regarding site visits.

Discussion followed.

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 Leitch requested to table her previous request regarding unintended consequences of approved variances.

ADJOURNMENT

Vice Chair Foster adjourned the meeting 6:57 p.m.

Chair

Date

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Request for consideration for City Council from ZBA

After reviewing Variance Analysis regarding past requests made to the ZBA, through discussion on the Board, we submit the following request for consideration of the City Council.

1. Request consideration to amend code for accessory buildings in residential districts from a current limited number of 2 buildings no taller than the main structure to a preset square foot amount with a preset height. With the rapid growth in our city, there is a high risk of increased accessory building as homeowners attempt to use every foot of their land. A regulated height rather than following the height of the main structure will provide a more cohesive neighborhood. Also, with the current code, there is a limit to 2 accessory buildings not to exceed 30 percent of the rear yard. We recommend a preset square foot per residence in city limits also not to exceed 30 percent of the rear yard.
2. Request consideration to amend code for carports in residential districts to allow a reduced setback in front or rear to accommodate a single or double carport with 4 open sides or 3 if attached to home. Side setbacks must be maintained. There is a growing number of unapproved carports in New Braunfels which will also be at risk of increasing as the city grows. If a standard was set with consideration of carports, then there is a better opportunity to encourage compliance with homeowners. Example: allow carport to extend within a 10' front or rear setback and then only those exceeding that would require an exception from the ZBA. Also, some unapproved carports would become compliant, helping keep conformity within our neighborhoods. Possibly setting some criteria for building materials of carport.

3. Request consideration to increase the square footage on front porch currently allowed under “5.21-3 Yard and setback exceptions” without a current exception: for example, increase from 60 square feet to 100 square feet with an increase from 6-foot to 8-foot projection into front 25 foot setback. The number of porches before the Board in the past have exceeded the 60 square feet requiring exceptions from the Board. This will help the homeowner to have a reasonable size front porch without getting an exception.

4. Request consideration to allow all four Historic Districts, (Downtown Historic District, Mill Street Historic District, Sophienburg Historic District and the Stock Historic District as outlined on the provided map) and the Landa Park Estates (see provided map) to reduce the front and rear setbacks. These areas consistently have issues with the setbacks because of the age of these areas and building were built prior to many of the current setbacks. By easing the front and rear setbacks or possibly considering the current footprint as the standard for repairs or replacing buildings, we are encouraging the integrity of the neighborhood and seeing values increase. Upkeep of properties will improve, bringing fewer repeat request for exception before the ZBA. Example: front setback 15 feet instead of 25 feet and rear setback 10 feet instead of 20 feet.

Thank you for your consideration on the above matters.

Susie Barrett
Chairman of ZBA