



The City of West University Place

A Neighborhood City

ZONING BOARD OF ADJUSTMENT
MUNICIPAL BUILDING
 3800 UNIVERSITY BOULEVARD
REGULAR MEETING MINUTES
January 28, 2016
6:30 pm

I.	MEMBERS PRESENT:	Sandy Hellums (voting), Ed Sobash (voting), Robert Grossman (voting Item 1 and 3), Janet Parisi (voting), Dave Miller (voting), Don Yurewicz (voting Item 2), Neil Martin and Chris Heard
II.	MEMBERS ABSENT:	Edward Nikonowicz
III.	STAFF PRESENT:	Alan Petrov and Shelly Eversole, Legal Counsel; Clay Chew, Building Official; Craig Koehl, Urban Forester; and Debbie Scarcella, City Planner
IV.	CALL TO ORDER:	6:31 pm.

Agenda Item

Discussion

Action

Agenda Item	Discussion	Action
1	<p>Call the meeting to order. Notices, Rules, Etc.</p> <p>Sandy Hellums called the meeting to order at 6:31 p.m. Sandy Hellums asked each member to briefly introduce themselves and state if they are voting or nonvoting. Robert Grossman state that he would not be participating in the discussion and voting regarding Item 2 because as a witness he could not be impartial. Debbie Scarcella, City Planner, stated that all notices were posted in accordance with state and local requirements. Sandy Hellums then described the hearing procedures. Swearing in of witnesses. Sandy Hellums suggested that the agenda be reordered and Docket 2016-02 be heard before Docket 2015-18.</p>	<p>Ed Sobash moved to accept that all notices were properly posted and distributed for this meeting. Second by Janet Parisi. Ayes: Sandy Hellums, Ed Sobash, Robert Grossman, Janet Parisi and Dave Miller. Motion carried.</p> <p>Sandy Hellums administered the oath to all witnesses.</p> <p>Sandy Hellums moved to reorder the agenda and hear Docket 2016-02 before Docket 2015-18. Second by Dave Miller. Ayes: Sandy Hellums, Ed Sobash, Robert Grossman, Janet Parisi and Dave Miller. Motion carried.</p>
3	<p>Docket No. 2016-02, Property at 4116 Case, West University Place, Texas 77005 (Variance).</p> <p>The applicants, Catherine Perry and Steve Kane, presented the application. Benjamin Perry, architect for the applicant, also aided in the presentation. The applicants propose to</p>	<p>Dave Miller moved to close the evidentiary portion of the hearing. Second by Janet Parisi. Ayes: Sandy Hellums, Ed Sobash, Robert Grossman,</p>





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<p>a. Public hearing regarding a request for a variance.</p> <p>b. Deliberation, decisions, other action, etc. regarding the preceding matters.</p>	<p>demolish an existing rear garage in order to construct a new garage located closer to the front property line with new living space at the rear. This proposed new construction will be attached to the principal structure. Prior to submitting plans for construction, the applicant took advantage of meeting with the Building Official to get feedback on the project. This is a normal service in order to assist interested parties with the permitting process. Any comments from this preliminary meeting are not intended as nor should they be construed as, any type of approval or disapproval of the proposed project. The service is intended to point out any deficiencies or "red flags" that might need attention before formal submittal of the plans. The plans that were brought in were very preliminary and did not contain a survey or site plan sufficient enough to determine location of the proposed construction on site. When the formal application was made, again the first submittal documents were not adequate enough and the plans were incomplete. The second formal submittal did show that the encroachment into the rear yard did not meet the criteria in Table 7-6, Note 3. The applicant spoke in length regarding preservation of a tree. The Building Official, Clay Chew, and the Urban Forester, Craig Koehl, both answered questions regard</p> <p>No one spoke in opposition or in favor of the request.</p> <p>Staff Response Generally, a principal structure may not project (encroach) into a rear yard (setback). Note 3 of Table 7-6 establishes an exception to this provision as long as the criteria listed are met. In this application, subsection (d) is not being met since there is not 51% garage space located in the proposed addition that is located in the rear 20'. No part of the 341 square foot proposed addition in the 20' rear yard setback is garage space. The</p>	<p>Janet Parisi and Dave Miller. Motion carried.</p> <p>After deliberations Dave Miller moved to deny the request for a variance to exceed the allowable framed area ratio by 4.5% (total 84.5% instead of 80%). Second by Janet Parisi. Ayes: Sandy Hellums, Ed Sobash, Robert Grossman, Janet Parisi and Dave Miller. Motion carried.</p>
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		<p>applicant believes that preservation of a tree at the rear might be considered a hardship per Section 82 of the Code of Ordinances. The city’s urban forester does not concur with the applicant or the applicant’s arborist. A statement from the urban forester is attached.</p> <p>Section 11-102 of the zoning regulations requires that the ZBA may not issue or modify a variance unless all of the following circumstances are present:</p> <p>(1)The ZBA has made all findings and determinations required by state law for the granting of a variance;</p> <p>(2)The ZBA has made any additional findings and determinations required by a specific provision of this ordinance which relates to the variance.</p> <p>(3)The variance has been reduced to writing and includes any conditions prescribed by the ZBA or required by this ordinance for the variance in question.</p> <p>State law and city ordinance further require the ZBA to make the following findings and determinations: (i) due to special conditions, a literal enforcement of the Zoning Ordinance provision would result in unnecessary hardship, (ii) by granting the variance, the spirit of the ordinance is observed and substantial justice is done, and (iii) the variance is not contrary to public interest. Conditions necessary to support any findings may be attached to the variance decision.</p>	
2	<p>Docket No. 15-18, Property at 4068 Bellaire Blvd, 6707 Academy, and “0” Ruskin, West University Place, Texas 77005 (Appeal) (Special Exception) (Variance)</p> <p>a. Public hearing</p>	<p>Mr. Grossman again formally announced that he would recuse himself from the hearing, deliberation and voting regarding this matter. Mr. Grossman then asked that evidence be heard to designate him as a party in this matter. Mr. Grossman lives directly across the street on the corner of Academy and Ruskin and feels he is affected more than any other resident. Mr. David Cole, who resides</p>	<p>Motion to designate Mr. Grossman as a party to the application due to the proximity of his residence to the property involved in the matter by Sandy Hellums. Second by Ed Sobash. Ayes: Sandy Hellums, Ed Sobash, Dave Miller, Janet Parisi, and Donald Yurewicz. Motion Carried.</p>





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regarding a request for an appeal, special exception and a variance.

b. Deliberation, decisions, other action, etc. regarding the preceding matters.

at the Corner of Cason and Academy, also directly across the street from the property, also requested designation as a party to the application.

The applicant, AT&T, represented by legal counsel, Reid Wilson and by Delores Hernandez, Area Maintenance Manager and Karen Jones, Facility Maintenance Manager, gave their presentation. The AT&T site is an L-shaped property located at the corner of Bellaire Boulevard and Academy Street and extending to the corner of Academy and Ruskin Streets (see attached decision). A portion of the site is zoned Light Commercial (C), another portion Single Family (Detached) Third District (SF-3), and the remainder Planned Development District Single Family Second (PDD SF-2). The property was developed initially on the south portion in 1940 with subsequent additions, including a major one in 1956, which extended the building almost the entire length of the lot fronting on Bellaire Blvd. In 1970 and 1975, the City Council enacted rezoning ordinances for six adjacent rear lots along Ruskin for parking of company owned and employee owned vehicles. The use of the structures on the site have basically remained as a switching station for telephone service, but has also housed multiple company related activities throughout the years. At times there have been a large number of occupants and at other times a small number of occupants. Recently the activity levels increased and concerns were expressed that the business activities occurring on site did not comply with the ordinance restrictions on the use of the rear lots for parking. Staff researched and wrote a decision on November 9, 2015 regarding the activities taking place on the site. The decision stated that the activity related to the dumpster/recycle storage bins and the access for delivery vehicles were not allowed on those lots zoned for parking and located within the SF-3 and PDD SF-2 districts. Those activities that are categorized as Medium Commercial such as vehicle

Motion to designate Mr. Cole as a party to the application due to the proximity of his residence to the property involved in the matter by Sandy Hellums. Second by Dave Miller. Ayes: Sandy Hellums, Ed Sobash, Dave Miller, Janet Parisi, and Donald Yurewicz. **Motion Carried.**

Motion to close the evidentiary portion of the hearing was made by Janet Parisi. Second by Ed Sobash. Ayes: Sandy Hellums, Ed Sobash, Dave Miller, Janet Parisi, and Donald Yurewicz. **Motion Carried.**

After deliberations a motion to affirm the AO decision regarding the waste storage area was made by Dave Miller. Second by Ed Sobash. Ayes: Sandy Hellums, Ed Sobash, Dave Miller, Janet Parisi, and Donald Yurewicz. **Motion Carried.**

A motion affirming the AO decision regarding the access through the parking area and partial parking by vehicles in order to utilize the loading dock was made by Janet Parisi and second by Dave Miller. Ayes: Sandy Hellums, Dave Miller, Janet Parisi, and Donald Yurewicz. Noes: Ed Sobash. **Motion Carried (4-1).**

A motion to deny the special exception request for operation of the waste receptacle in the parking area was made by Ed Sobash. Second by Dave Miller. Ayes: Sandy Hellums, Ed Sobash, Dave Miller, Janet Parisi, and Donald Yurewicz. **Motion Carried.**

A motion to deny the variance request was made by Sandy Hellums. Second by Dave Miller. Ayes: Sandy Hellums, Ed Sobash, Dave Miller, Janet Parisi, and Donald Yurewicz. **Motion Carried.**





	<p>maintenance or auto intensive uses are also not allowed. Normal operational activities such as vehicle loading and vehicle inventory are allowed.</p> <p>Mr. Grossman handed out several documents in his presentation, including judicial case law rulings and photographs of the activities questioned in the AO decision being appealed. Mr. Grossman believes that there should be only parking of vehicles in the parking area. Mr. Cole also presented photos and past board and city council minutes from the 70's. He also believes that no activities other than parking should take place on the site.</p> <p>No one in attendance spoke against the application and Dorothy Zink spoke in favor of the application.</p> <p><u>Staff Response</u></p> <p><i><u>The Appeal.</u></i></p> <p>The applicant is appealing the decision of the Administrative Official and asking that the activities be allowed to continue based on their belief that the activities have acquired Prior Non-Conforming (PNC) Status. The burden is on the applicant to prove that PNC status has been acquired for those activities in question. There are different ways to acquire PNC status. If a structure is in compliance with all regulations and the ordinance changes so that the structure no longer complies; if the ZBA grants a special exception extending or reinstating PNC status; if there is work in progress or plans approved at the time of an ordinance change; and there is special PNC status for yard encroachments due to various conditions. Staff could not find evidence that the activities in question were ever in compliance with the regulations or acquired PNC status.</p> <p>The ZBA has the authority to affirm, reverse or modify the decision. When there is an appeal, the board assumes the responsibility</p>	
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for interpretation of the ordinances. There are no other findings that guide the board in determining the outcome of an appeal.

Special Exception

The applicant is requesting a special exception if the appeal is affirmed, under Sections 7-101, Note 3 and Note 5. Note 3 authorizes a special exception in the indicated districts for additional uses and structures if the use and structure are (1) accessory to a lawful primary use and, (2) compatible with nearby sites and their uses. Table 7-1 indicates the special exception for one use category in Table 7-1. Note 5 authorizes a special exception for parking of motor vehicles in a PDD SF-2 district. Only Lots 5 and 6 are actually located in this district. Lots 1-4 are located in the SF-3 district. Further Note 5 does not specifically state that additional business activities other than parking are authorized.

The ZBA has the authority per Section 11-102 of the zoning regulations to authorize a special exception where it is expressly indicated in the regulations. In order to grant the special exception the ZBA must determine that the special exception will not cause: (i) any increase in on-street parking, (ii) any substantial traffic congestion or (iii) any substantial increase in traffic or an unreasonable burden on utility systems or any other public facility or public service. The ZBA must also determine that the special exception will be in harmony with the general purpose and intent of the Zoning Ordinance.

Variance Request

The applicant requests a variance to authorize the continuation of the uses and structures as existing. Specifically the request asks to be allowed to use the dumpster and recycling bins, and the access to the loading dock at the rear of the building abutting the parking lot. ZBA may authorize the uses if they are consistent with SF-3 and PDD SF-2 zoning





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		<p>district requirements. Further, both the waste storage area(s) and the loading dock(s) are required to be screened from public view. If the uses are allowed to continue, the variance would have to except the screening as well.</p> <p>Section 11-102 of the zoning regulations requires that the ZBA may not issue or modify a variance unless all of the following circumstances are present:</p> <p>(1)The ZBA has made all findings and determinations required by state law for the granting of a variance;</p> <p>(2)The ZBA has made any additional findings and determinations required by a specific provision of this ordinance which relates to the variance.</p> <p>(3)The variance has been reduced to writing and includes any conditions prescribed by the ZBA or required by this ordinance for the variance in question.</p> <p>State law and city ordinance further require the ZBA to make the following findings and determinations: (i) due to special conditions, a literal enforcement of the Zoning Ordinance provision would result in unnecessary hardship, (ii) by granting the variance, the spirit of the ordinance is observed and substantial justice is done, and (iii) the variance is not contrary to public interest. Conditions necessary to support any findings may be attached to the variance decision.</p>	
4	Meeting Minutes.	Approval of meeting minutes of December 17, 2015	Motion to approve the meeting minutes of December 17, 2015 by Sandy Hellums. Second by Janet Parisi. Ayes: Sandy Hellums, Ed Sobash, Don Yurewicz, Janet Parisi and Dave Miller. Motion carried.
	Adjournment.		Ed Sobash moved to adjourn the meeting. Second by Ed Nikonowicz. Ayes: Sandy Hellums, Ed Sobash, Don Yurewicz, Janet Parisi and Dave Miller. Motion carried. The meeting was adjourned at 11:45 pm.





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APPROVED THIS 26 DAY OF May 2016.


Sandy Hellums, Presiding Officer

ATTEST: 

Debbie Scarcella, City Planner

