

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS**

July 17, 2007

Commissioners Present: Cowman, Gage, Rhodes, McLean, L. Smith, Wrischnik

Others Present: Justin Givens, Amy Barenklau, Jeremy Smail, Rick Schoenberger

Item 1: Consider minutes from the June 17, 2007 meeting

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the June 17, 2007 meeting.

Commissioners Gage and Smith made a motion to approve the minutes as submitted with Commissioners Rhodes, McLean, Smith and Wrischnik voting in favor. Commissioner Cowman abstained.

Item 2: Public Hearing (continued) – Consider a variance application for Jeremy Smail of 509 East Peoria from the minimum setbacks for an accessory structure.

Commissioners Gage and McLean made a motion to re-open the public hearing for the variance in minimum setbacks. All Commissioners voted in favor.

Planner Givens stated that Jeremy Smail was in attendance then presented the staff brief. Jeremy Smail has applied for a variance from the minimum setback requirement for an accessory structure. According to the LDO, accessory structures on lots less than 10,000 square feet are required to have a setback of 5' from each side and the rear property line. Mr. Smail is asking for a variance from this requirement in order to save a mature Magnolia tree in his yard while building an accessory structure that is adequate in size for his needs.

Analysis:

To approve a variance, the Board of Zoning Appeals shall apply the following standards with staff commentary in *italics*:

- A. Under no conditions shall a variance permit a use that is not otherwise permitted in the district. The applicant shall be instructed to submit a zoning change request (Section 21.210) or a beneficial use appeal (Division 21.400), which are the only ways such a change of use may occur.

An accessory shed is a permitted use in this district

- B. Special circumstances or conditions exist peculiar to the land or building for which the variance is sought that do not apply generally to lots, land, or buildings in the neighborhood.

The applicant feels that the mature trees, which are encouraged throughout the community, would be damaged if he were required to build the structure at the minimum setback. This is a smaller lot with lots of mature trees on it. Many lots have open spaces where accessory structures can be placed without issue.

- C. The special circumstances and conditions have not resulted from any act of the applicant subsequent to this Ordinance's adoption.

Being that these are mature trees planted before the applicant owned the property and before the LDO was adopted he has not contributed to the conditions or circumstances.

- D. The special circumstances and conditions are such that strict application of this Ordinance's provisions would deprive the applicant of the reasonable use of the land or building.

Strict application of the minimum setback would cause harm to the existing trees that the applicant is trying to work around

- E. Granting the variance is necessary to relieve the applicant of an unnecessary hardship imposed by the regulations.

The necessity of the relief from the minimum setbacks stems from the mature growth and other site conditions such as utility structures.

- F. The variance granted is the minimum necessary to relieve the unnecessary hardship and permit a reasonable use of the land.

Based on the proposed location the building will not be any larger than what can fit safely onto the property and remain a functional garage.

- G. Granting the variance will not be injurious to the neighborhood surrounding the land where the variance is proposed, and is otherwise not detrimental to the public welfare.

At the time of writing staff has heard of no objections from neighboring property owners, and in fact, the comments received from staff have in support of the applicant. Additionally, many of the accessory structures in the older parts of town do not meet the current requirements.

- H. Granting the variance is in harmony with this Ordinance's purposes and intent.

The variance if granted will protect natural resources that are encouraged throughout the LDO, also the applicant will meet all other requirements in the LDO. The applicant will not exceed our coverage requirements.

- I. Granting the variance is not inconsistent with the Comprehensive Plan.

The LDO encourages the protection of natural resources as well as other city policies including our status in the Tree City USA program.

Issue:

Does the Planning Commission wish to recommend approval of this variance to the City Council?

Actions:

The Planning Commission may:
Approve the application as submitted
Approve the application with conditions or restrictions
Deny the application
Table the matter for further study

Recommendation:

Based on the information provided it is staff's recommendation that the Planning Commission approve the application for the variance.

Commissioner Cowman asked if they would be replacing the existing garage. Mr. Smail stated that the existing garage has alley access and the only workable location is where he is proposing the new garage.

Commissioner Smith inquired about location of doors. Mr. Smail indicated they would be located on the East side as utilities make alley access impossible. Commissioner Gage asked how close the structure would be to the existing sidewalk and Mr. Smail indicated it would probably be right at the walk to stay out of the canopy and root system of the tree.

Planner Givens stated that cars would need to be parked inside the garage or so as not to interfere with the sidewalk as it is heavily used.

There were no comments from those in attendance.

Commissioners Gage and Cowman made a motion to close the public hearing with all Commissioners voting in favor.

Commissioners Gage and Smith made a motion to recommend approval of the variance for reduction in minimum setbacks at 509 East Peoria. All Commissioners voted in favor.

Item 3: Sign Deviation – Consider and application from The BBQ Shack for a deviation from Article 7 Signs – 705 N. Pearl.

Planner Givens stated that applicant Rick Schoenberger was in attendance, then presented the staff brief. Rick Schoenberger, operator of The BBQ Shack at 705 N. Pearl has applied for a Sign Deviation. When Mr. Schoenberger began operations at the building, he did not intend on using the sign. Since that time, Mr. Schoenberger has acquired a concrete pig, which he would like to place on top of the pole sign. The majority of the site is non-compliant with current regulations. When the property became vacant, it was suggested that the most logical use after

El Tapatio left was for the property to continue as a restaurant. With no change in use, a majority of the non-compliant items found on this property would not have to be changed.

Analysis:

Pole signs are allowed for Commercial Retail in the Thoroughfare Access District. The pole is 12 ft. high, which is 3 ft. less than the maximum 15 ft. The sign itself will be roughly 8 sq. ft., which is considerably less than the maximum of 50 sq. ft. for a pole sign. The main issue is the required setback. All signs in this district must be setback 15' off the right of way. The extended right of way of Pearl and Silver streets hampers this property.

Section 21.245 provides criteria for the Planning Commission to consider when acting upon a request for deviation. They are as follows with staff commentary in *italics*.

Purpose And Intent Of Code: Is granting of the deviation in compliance with the general purpose and intent of the City's signage regulations?

A. **Impacts On Adjacent Properties:** Will granting of the deviation adversely affect neighboring property owners or residents? Is the image presented by the sign or attention-attracting device consistent or compatible with that in the area as a whole?

Staff feels that there would be no adverse impact to the neighboring properties. The sign will compliment the character of the BBQ Shack. The pole, with or without a sign has been in place for some time. Staff is aware of no complaints about its current location, and specifically has not received any from neighboring property owners.

B. **Safety:** Will granting of the deviation adversely affect safety? For freestanding signs, a safe sight-distance setback is required, and the sign location must not encroach upon potential future right-of-way needs. The use of signs or attention-attracting devices should not significantly distract traffic on adjacent streets.

As stated above the sign is located within the right-of-way, but the right of way in this area is extremely wide as it is at the confluence of three roads, two of which are running north and south. The sign has been used in the past without any distractions to traffic. At the point in time when the ROW is utilized, the applicant understands that the sign would be abandoned at that time. If the deviation is approved, it would be a minimal loss for the applicant.

C. **Visual Clutter:** Will granting of the proposed deviation significantly clutter the visual landscape of the area? The proposed deviation, in addition to all existing or potential future signs on nearby tracts, should be reviewed for their impact on cluttering the visual landscape. Reductions in the total number of signs or their size may be needed, or setbacks increased, to compensate for other signs and attention-attracting devices in the area.

This sign will provide minimal visual clutter to the area as well as it is currently the only sign on that side of the street. Granting this deviation should not affect the visual landscape of the area in a negative fashion.

D. **Site Constraints:** In some situations, topography, landscaping, existing buildings, or unusual building design may substantially block visibility of the applicant's existing or proposed signs from multiple directions. While visibility of a sign or attention-attracting device is not to be guaranteed from all directions, deviations may be appropriate to provide reasonable visibility of a business's main sign.

If this sign were to be placed at the required setback, it would be very difficult to view going north. The numerous trees, power poles and other site constraints would obstruct the view of the sign as potential customers are traveling north.

E. **Lighting:** Sign or attention-attracting device lighting should not disturb residents of nearby residential land uses or adversely affect traffic on adjacent streets.

Lighting has been proposed for the sign and staff will work with the applicant to ensure that no spillover will adversely affect traffic or neighboring residential properties.

F. **Promotion Of High Quality - Unique Design:** The proposed sign(s) should be of high quality and must be compatible and integrate aesthetically with daytime/nighttime color, lighting and signs of the development and adjacent buildings. Facade signs may include unique copy design including painting of walls or integration into canopies/awnings, shapes, materials, lighting and other design features compatible with the architecture of the development of surrounding area. Attention-attracting devices should be of a unique, high quality design, which accentuates the architecture of the building(s) served, versus functioning solely to draw attention to it.

A pig on a pole in front of a BBQ Shack, what could be more complimentary of each other. As stated earlier, much of this building is non-compliant with current standards, but those non-compliances enhance the atmosphere of the building and this addition would continue that theme.

Issue:

Does the Planning Commission wish to approve a sign deviation for The BBQ SHACK?

Actions:

Approve the Sign Deviation

Not Approve the Sign Deviation

Table the Matter for further discussion

Recommendation:

Based on the information provided staff would recommend approval of the sign deviation.

Commissioners Rhodes and Smith inquired about how the pig would be fastened to the pole. Mr. Schoenberger indicated that there is a base on the pig, but would possibly fabricate a plate or use the existing one on the pole and then bolt it down.

Commissioner Gage inquired about how the pole was secured to the ground. Mr. Schoenberger indicated that there were 1” bolts securing it to the ground, as well as it was cemented. There is power that runs up through the pole and it did not appear that there was any deterioration.

Commissioners Cowman and Gage made a motion to recommend the sign deviation for 705 North Pearl. All Commissioners voted in favor.

Item 4: Discussion Item – Single Family Attached and Multi-Family Housing in the NC Districts.

Planner Givens presented the staff brief. Table 3.110 A. the general use table for the LDO states that Single Family Attached and Multi Family housing options are not allowed in the Neighborhood Conservation Districts. Table 4.110 A. the use and lot standards for the LDO provides minimums for Site, Lot, and Building Standards. This is an inherent conflict within the LDO.

Analysis:

Why have building minimums for types of construction that is not allowed within the district? To that end there are several areas in NC Districts single family attached and multi family housing units would be beneficial as well encouraged through the comprehensive plan.

In these situations, variances cannot be granted because the use is not allowed. Re-zoning should not be used because in most cases this would lead to spot zoning which is not encouraged in either performance based zoning or traditional zoning. That leaves several options under the LDO to approach this matter.

1. The Beneficial Use Application – this is an application from the property owner when he feels that the zoning regulations of the city have created a negative economic impact on his property and have hindered the use of his land to such an egregious level that he is for all intents and purposes suing the city to use his property.

Staff could encourage the use of this approach in a less confrontational way especially with property owners whose lands would make good uses of single family attached and multi family housing.

2. A Text Amendment – by amending the LDO specifically Table 3.110 to allow for either Limited Review or Conditional Use for Single Family Attached or Multi Family housing, property owners, staff, the planning commission and the city council could work through these issues in a logical case by case manner by looking at existing land use, adjacent land use and land use trends in the subject areas to determine if this type of housing would be an appropriate use.

Issue:

Staff feels that there are several issues for discussion

1. Is this an issue at all – should staff and the commission review any potential changes to the LDO?

2. What method of dealing with this issue should be encouraged?
 - Beneficial Use Application
 - Text Amendment
 - Other Method

Actions:

No Action is required at this time.

Recommendation:

Staff feels that this is something that should be addressed based on existing trends in land use, current demand, and housing recommendations of the Comprehensive Plan.

Commissioner Cowman expressed his concern that if the LDO is changed, then all NC zoning districts could be open to this type of housing. He stated concern for no control going forward if the LDO is changed.

Commissioner Rhodes stated that there are consequences to neighboring property owners, and that may be why it was not in the LDO. He inquired about where multi-family is allowed. Planner Givens stated that multi-family is an allowed use in the Thoroughfare Access zoning district.

It was clarified that Mr. Zoller had purchased the property, rezoned it to NC-R2 as he planned to build single family homes, then sold to current owner.

Most Commissioners voiced that they did not have a problem with multi-family housing in the area in question, but did not want to change the LDO.

Commissioner Rhodes stated it might make more sense to spot re-zone, or pursue beneficial use as necessary in some instances; rather than change the LDO. Commissioner Wrischnik agreed that it would be better to look at individual cases, somehow. Commissioner Cowman agreed that spot zoning might be acceptable in certain areas.

The Commissioners felt at this time beneficial use might be the best bet for this particular piece of ground and property owner.

Item 5: Items from Staff

Planner Givens updated the Commissioners on the BOW Properties project on the Square. Staff had received an update from the property owners that 2 of the 2-bedroom units have been sold and one of the commercial units leased. So they will be moving forward with plans for the property.

Planner Givens stated that the owners of Paola Crossing had indicated that they would be in with architectural drawings in the next week.

Item 6: Items from Commissioners

Commissioner McLean inquired about the horse and corral issue in the Growth Area. Staff indicated that they had been told by a neighbor that the horse is gone, but they did not have any additional information. Commissioner McLean stated that fence requirements dealing with animals and livestock should be looked at in the LDO as this will be a continuing problem as the Growth Area becomes more populated.

The Commissioners wished to pass along congratulations to Jack Rowlett, Jr. on his award and picture in the Government Journal.

Item 7: Adjournment

Commissioners Rhodes and Cowman made a motion to adjourn with all Commissioners voting in favor.