

MINUTES OF THE REGULAR PLANNING COMMISSION MEETING

**PLANNING COMMISSION/
BOARD OF ZONING APPEALS
September 18, 2007**

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

Others Present: Justin Givens, Amy Barenklau, Brian McCauley, Brent Hanf, Faye Gillogly, Carl Buchman, Leo & Margaret Hoehn, Harley Keeton, Herb Fickel and others.

Planner Givens and the Commissioners welcomed new commission member Tom Bonner to his first meeting.

Item 1: Consider minutes from the August 21, 2007 meeting

Chair Cowman called the meeting to order with the first order of business the consideration of the minutes from the August 21, 2007 meeting.

Commissioners Gage and Cowman made a motion to approve the minutes as submitted with all Commissioners voting in favor.

Item 2: Public Hearing - Consider a variance request from the minimum rear setback regulations for Brent Hanf – 1217 Heatherwood.

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

Planner Givens stated the applicant, Brent Hanf, was in attendance then presented the staff brief. Brent Hanf, owner of the property located at 1217 Heatherwood, has requested a variance from the minimum rear-building setback for a single-family residence. The property in question is located in the Heatherwood Sub-Division and is zoned Suburban. Suburban zoning requires a 35' rear building set back. Mr. Hanf's building plan proposes a house that has an extended master suite that would bring the rear of the building 32.5' from the rear property line. Only 15 square feet of the structure would exceed the 35' rear setback line. Mr. Hanf tried to adjust the house plan to accommodate the 35' setback but do to architectural and engineering constraints; the plan cannot be altered.

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.

The property is zoned Suburban and a single family residence is an allowed use.

- 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.

Not Applicable

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

The applicant has not had any actions that have contributed to this request

- 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.

Not Applicable

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

Not Applicable

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

Only a minimal amount of the proposed house will be beyond the 35' building setback line and at that only 2.5' will be encroached.

- 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.

The lots location abuts the retention pond for the Heatherwood sub-division and not other structures will be built on the property behind Mr. Hanf. In addition, any future structures to the east and the current structure to the west should not be adversely affected by this variance.

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

The variance that is requested is at such a minimum that the intent of the LDO is intact.

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

Not Applicable

Issue:

Does the Planning Commission wish to approve the variance from the minimum rear building setbacks for 1217 Heatherwood?

Actions:

The Planning Commission may:

Approve the Variance as submitted
Approve the Variance with conditions
Not Approve the Variance
Table the matter for further study

Recommendation:

As this variance is for a minimum request over the rear building line, a minimal amount of the structure will not be compliant with the setback, and that no other structures will be built in the rear of the property, staff would recommend that the Planning Commission approve the variance.

Brent explained that the encroachment of portion of the house into the setbacks was toward the retention area and should not affect any adjoining properties.

Commissioner Gage inquired about a deck and Mr. Hanf indicated that the plan shows a deck, and if added to their plan it would not exceed the footprint of the house as proposed.

There were no comments from those in attendance.

Commissioners Gage and McLean made a motion to close the public hearing.

Commissioners Smith and Gage made a motion to approve the variance in rear setback for 1217 Heatherwood. All Commissioners voted in favor.

Item 3: Public Hearing – Consider a variance request from the minimum rear setback regulations for Leo & Margaret Hoehn – 409 East Shawnee.

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

Planner Givens stated that Leo & Margaret Hoehn and their house designer Michelle Cowger were in attendance. Planner Givens then presented the staff brief. Leo and Margaret Hoehn have requested an application for a variance from the minimum rear-building setback for a new house to be located at 409 East Shawnee. Mr. and Mrs. Hoehn along with their designer had several meetings with staff in our office and on location to determine front and rear setbacks as the property is in the older part of town. Since the property is a corner lot and the houses in the area do not conform to the required front and side setbacks staff worked with the property owners on acceptable building lines. During these meetings, a garage for the property was discussed, but misunderstanding occurred on the required setback for a detached garage versus the required setback for an attached garage. The Hoehn's and their designer created a house plan that met the 25' setback for a single family home and the 5' setback for a garage in the NC district. The only problem is that attached garages are still required to meet the 25' rear-building setback. When Mr. and Mrs. Hoehn presented their house plan for approval the design error and misunderstanding was discovered. The Hoehn's were presented two options, the first being to

redesign the house, the second to request a variance. Having already completed the house design they chose to request a variance from the Planning Commission.

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.

The property is in the NC-R1 district and single-family homes are an allowed use in this zone.

- 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.

Most of the homes in existing neighborhoods do not meet current front setbacks and many of the detached garages in these areas do not conform as well.

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

Agreed, the applicants have owned the land for sometime, have not changed the lot dimensions, and have actually worked with staff to ensure that their building would comply with our regulations

- 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.

Not Applicable

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

Not Applicable

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

Not Applicable

- 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.

The building lines for the front and side have been predetermined to fit the existing conditions as is often the case in the older parts of town. The house is arranged on the property where the main living quarters meet the 25' rear setback and the garage meets the 5' setback. Staff feels that this plan would not have a detrimental effect on the neighboring properties and would enhance the overall character of the neighborhood.

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

As stated before the house has been designed where the living quarters meet the 25' rear setback and the garage meets the 5' setback. The only difference for this structure is the garage and living quarters are attached. A property owner could build a house and garage that is detached using the exact same building lines and provide a minimum separation and still meet the requirements of the LDO and building codes.

I. Granting the variance is not inconsistent with the Comprehensive Plan. *The Comprehensive Plan encourages infill in existing neighborhoods and as identified thru community surveys citizens have asked that more "traditional" homes be built like this proposed home.*

Issue:

Does the Planning Commission wish to approve the variance from the minimum rear-building setback for 409 East Shawnee?

Actions:

The Planning Commission may:

- Approve the Variance as submitted
- Approve the Variance with conditions attached
- Deny the Variance
- Table the matter for additional information

Recommendation:

As this type of house is encouraged in the Comprehensive Plan and was designed with the best of intentions to meet the requirements of the LDO, staff would recommend that the Planning Commission approve the variance request.

Mr. Hoehn stated that the lot is 55 foot wide and the house is 35 foot wide and the applicants wanted to ensure that the Commissioners approved the variance before building.

There were no other comments from those in attendance.

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

Commissioner Rhodes asked for clarification as to where the property in question was located. The commissioners felt that the new home would be an enhancement to the neighborhood.

Commissioners Bonner and Gage made a motion to approve the variance for 409 East Shawnee with all Commissioners voting in favor.

Item 4: Public Hearing – Consider a variance request from the required building materials in the Downtown District – Paola Senior Center – 121 West Wea

Commissioners Gage and Cowman made a motion to open the public hearing. All Commissioners voted in favor.

Planner Givens stated that members of the Paola Senior Center were in attendance, along with Carl Buchman who has been working with staff. Planner Givens then presented the staff brief. The Paola Senior Center located at 121 West Wea has requested a variance from the required building materials for a downtown building. The Senior Center would like to install a two bay metal garage on the rear of their property. According to Article 15 of the LDO, metal buildings may be expanded up to 15% of the original building footprint and in the past properties that would fall under this category have been allowed detached accessory structures as long as they did not exceed the 15% exception. In this case, the Senior Center’s proposed garage would be more than 15% of the original footprint of their building.

Division 15 of the LDO provides where metal building may be expressly used and where those types of buildings could be used with the approval of the Planning Commission. They are as follows:

DIVISION 15.100 PROHIBITED MATERIALS

Because they are out of character with the historic character of Paola, metal-sided or concrete-slab buildings are permitted only as indicated below:

- A. **Metal-Sided Buildings.** Permitted in the I District. Permitted in the BP and TA Districts provided that the street facades shall be constructed of decorative masonry materials, except when an overlay district has higher standards (e.g. the City Entrance Area Standards). The façade of any building in the BP and TA district, which is located within 200’ of any street right-of-way, including any highway right-of-way, shall be considered a street façade and constructed of decorative masonry materials (Ordinance 2799, 06/11/02). Metal buildings existing at the time of adoption of this ordinance may be expanded up to 15% of the original building footprint (Ordinance 2772, 03/21/01).
- B. **Concrete-Slab Buildings.** These buildings are permitted only in the I District. Permitted in the BP district provided that the street facades shall be constructed of decorative masonry materials. Prohibited in all other districts.
- C. **Design Review.** In all other locations, these materials shall be permitted only where the development submits architectural, landscaping, and sign reviews and receives Planning Commission approval.

Additionally, the Downtown District does have design standards that are specific to the area. They are as follows:

SECTION 15.210 DOWNTOWN DISTRICT STANDARDS

The Downtown District contains the City Square, Court House Square, City Hall, and Library. The standards of this district are to maintain the historic image and character of the downtown area and to ensure that new buildings fit into that character. All buildings shall be reviewed during site plan approval by the planning commission for adherence to the following:

- A. **Building Material.** Red brick masonry is the preferred building fascia. Stone and other brick masonry may be approved, provided the building fits into the context of its neighbors and is not a sharp contrast to existing buildings.
- B. **Building Height.** All buildings shall be at least two stories in height. If the use proposed is such that two stories are impractical, then the architecture and street facade(s) should be such that the two-story character of the streets is maintained.
- C. **Architectural Style.** There is no single style that is mandated for the downtown area. However, building elevations should be sensitive to the scale and style of neighboring buildings. Overall window placement, window size, decorative trim or material, and colors should be consistent with the general street face.
- D. **General.** In looking at neighboring structures it should be understood that some older buildings have been degraded with applications of more modern materials over the original building facade. In these cases the Planning Commission may insist on a facade that more closely resembles the original styles, or is in keeping with buildings further down the same street that have preserved their historic character.

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.

This property is in the Downtown District and accessory uses such as this are allowed

- 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.

Not Applicable

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

The Senior Center is a pre-existing structure and would be allowed to expand up to 15% of its original footprint without prior approval.

- 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.

This public institution could build a compliant structure at an increased cost that may not be proportionate for the limited use and funding that the Senior Center has available

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

Depending on the district and lot size, this building would be allowed. The Downtown District has higher standards than other districts throughout the city

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

As this is a design standard it is difficult to gauge what minimum relief would be.

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.

There is no detriment to the public welfare and the structure should not have a negative impact on the surrounding land.

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

The Senior Center could expand up to 15% of their size and are requesting a larger building than that. The building will meet all other conditions of the LDO

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

As this is a design related variance, staff does not feel that the Comprehensive Plan addressed items of this nature.

Issue:

Does the Planning Commission wish to approve the Senior Centers request for a variance from the required building materials in the downtown area?

Actions:

Based on information provided at the meeting The Planning Commission may:

- Approve the variance request as submitted
- Approve the variance request with conditions or modifications
- Deny the variance request
- Table the motion for further information

Commissioner Cowman inquired how much in excess of the allowed 15% the proposed garage would be. Mr. Buchman explained that the allowed 15% was not big enough for 1 vehicle.

Commissioner Smith inquired about number of vehicles that would be stored in the proposed building and Mr. Buchman indicated two, one of which is a bus.

Commissioner Cowman asked about the color of the proposed metal building and Mr. Buchman stated their intentions were to be as close as possible to the color of the existing building.

There were no additional comments from those in attendance.

Commissioners Gage and Cowman made a motion to close the public hearing. All Commissioners voted in favor.

Commissioners Gage and Rhodes made a motion to approve the variance. All Commissioners voted in favor.

Mr. Buchman thanked the Commissioners.

Item 5: Public Hearing – Consider a text amendment to the Paola Land Development Ordinance – Table 3.110A. General Use Table and other affected sections.

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

Planner Givens presented the staff brief. After several lengthy discussions of inconsistencies within the LDO and the application of those inconsistencies to specific projects, a decision was reached to rectify the discrepancies in the NC-R districts with a proposed text amendment. Staff met with Jim Kaup and this method was suggested as the best way to meet the intent of the LDO and to implement some of the goals and objectives of the recently adopted Comprehensive Plan.

In the NC-R district, there are three separate sub-divisions. According to Sections 2 and 4 the NC-R1 is provide for Single Family homes only. NC-R2 and NC-R3 allow for more intense uses such as Single Family-Attached, Duplex and Multi-Family dwellings. Section 3 and the General Use Table of the LDO only allows for Single Family homes creating an inconsistency and difficulties for staff to administer the LDO in the NC Districts.

In previous discussions, there was concern about balancing these districts to much for attached and multi-family housing and the current types of housing within the NC-R zones. It was determined that to meet the intent of the LDO, and the goals of the Comprehensive plan, a Conditional Use Permit would be the best approach to determine if a project would be viable for any location within the NC-R2 and NC-R3 districts.

As submitted, a footnote has been inserted into Table 3.110 A. General Use Table. This footnote directs users to a separate table, Table 3.110 A1, which provides separation for each subsection within the NC districts. In the NC-R1 district, no change has been made. In the NC-R2, a provision has been made for conditional use of single-family attached housing. While in the NC-R3 district a change has been made allowing conditional uses for Single-Family Attached and Multi-Family uses.

Table 3.110 A. General Use Table – Limited and Conditional Uses Standards has been modified to reflect the allowances for conditional uses for these types of projects. In addition, Sections

03.313 Single Family Residential and Section 03.321 Multi-Family have added text to accommodate the text amendments.

Analysis:

The LDO provides standards for text amendments that the Planning Commission shall consider when acting upon an amendment. Those standards are as follows with staff commentary in *italics*

A. Would implement a new portion of the Comprehensive Plan or amendment.

The following information is taken from Chapter 3 Housing Action Plan of the 2006 Comprehensive Plan. While owner-occupied housing comprises the large majority of residential units in Paola, attention may need to increasingly turn to the supply and cost of rental units.

GOAL 1. SUPPORT THE AVAILABILITY OF HOUSING IN PAOLA AND THE COMMUNITY GROWTH AREA FOR ALL AGES AND INCOME GROUPS.

Action:

1. Direct the Planning Office and Planning Commission to identify "opportunity sites" for infill development/redevelopment of new housing of varied types and costs, throughout the City and Growth Area. Develop and maintain a map showing these opportunity sites and make it available to developers and others.

2. Consider approaches such as density bonuses and transfer of development rights to provide more lots for housing, and to encourage higher density housing where such is appropriate.

Staff feels that this text amendment would help to promote affordable market based housing in the city.

B. Would implement and better achieve the Comprehensive Plan's goals and objectives that have proved difficult to achieve under the Ordinance's existing provisions.

Not Applicable yet, but down the road as housing markets change this text amendment could allow for projects that would have been difficult under current regulations

C. This Ordinance's provisions were inconsistent or unreasonable in light of standards for similar uses.

Agreed, the inconsistencies within three chapters of the LDO will be modified to provide consistent application of the LDO's regulations

D. Is necessary to respond to State and/or federal legislation.

Not Applicable

E. Provides additional flexibility in meeting this Ordinance's objectives without lowering the Ordinance's general standards.

Agreed, by using the Conditional Use process, the City has the ability to control projects and ensure the standards so that new projects are a better fit for the existing neighborhoods that they may go in.

F. Addresses a new use(s), changing conditions, and/or clarifies existing language.
Agreed, as stated earlier, two sections of the LDO allowing a certain use and another section not allowing it is very inconsistent and confusing for the application of the LDO's regulations

G. Clarifies the Ordinance or makes adjustments to account for interpretations.
Actually, with the text amendment and the conditional use permit, interpretations are limited and a process is set in place to determine the viability and suitability of a project.

Issue:

Does the Planning Commission wish to recommend the proposed text amendment to the City Council for adoption?

Actions:

The Planning Commission may:

Recommend the Text Amendment as submitted to the City Council for approval

Modify the Text Amendment for approval by the City Council

Table the matter for further discussion

Recommendation:

It is staff's recommendation that the Planning Commission recommend the text amendment for approval by the City Council

Commissioner Rhodes inquired about group homes in the use table, as read it allows for group homes anywhere except in Business Park and Industrial zoning. He said he felt uncomfortable with any type of group home being allowed in most zoning districts without some types of conditions.

Commissioner Smith inquired about a definition of a group home. Commissioner Cowman felt that a variance or Conditional Use Permit might be feasible. The Commissioners expressed concern for the future without some regulations for group homes.

Commissioners Rhodes and Gage made a motion to table the public hearing until the October 16, 2007 planning commission meeting. All Commissioners voted in favor.

The Commissioners asked staff to clarify types of group homes and to see if Lakemary homes were considered group homes. Commissioner Cowman stated he wanted to give the public an opportunity to voice any concerns.

Item 6: Items from Staff

Planner Givens stated that BOW Properties was in and indicated that they are close to bringing a final plan to the commission. He inquired if Commissioners would be interested in a special meeting to discuss and address their final plan.

Commissioners felt that they were opposed to a special meeting as it would set precedence, they felt staff would review for compliancy. Planner Givens stated that the Commissioners still have color, design and a few other items to approve.

All Commissioners stated that the final plan should go through the normal process.

Planner Givens told the Commissioners that there are some property owners in the southern part of the Paola Growth Area that are possibly looking to re-zone from Business Park to Suburban.

Staff indicated that the individual having the 'sign' painted on the Cactus Jack's building on North Silver Street would probably be on the agenda for the October meeting.

Commissioner Gage asked if they had been instructed to stop. Planner Givens indicated he had told them to stop and had understood work had stopped until notified working again today. He stated that they had been told specifically in a previous conversation that it would need to come to the Planning Commission and City Council.

Item 7: Items from Commissioners

Commissioner Rhodes shared pictures of a new sign for the Assembly of God to commission members and indicated that he felt it would fit within the LDO requirements. He stated he would like clarification on public message and that he needed to know setbacks.

Commissioner Smith inquired about site work going on adjacent to the hotel and if they had the appropriate permit? Staff indicated that they had received a grading permit and the plans were being sent off for plan review.

Item 8: Adjournment

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