

MINUTES OF THE MEETING OF THE BOARD OF ADJUSTMENT HELD IN THE COUNCIL CHAMBERS, AT CITY HALL, 1212 AVENUE M, HUNTSVILLE, TEXAS ON THE 16TH DAY OF DECEMBER, 2016 AT 12:00 NOON.

Members present: Hannes; Grigsby; Montgomery; Cromer; Holland; Alternates Zuniga & Watkins

Members absent: None

Staff present: Kulhavy, Ridley

1. CALL TO ORDER

This meeting was called to order by Chairman Hannes. [12:02 PM]

2. ROLL CALL and selection of Alternate(s) if needed.

All members present. Alternates can participate but will not be allowed to vote.

3. ELECTION:

a. Chairman

b. Vice-Chairman

Board Member Grigsby made a motion to retain the current Chairman and Vice-Chairman for the Board. Second was by Board Member Cromer. The vote was unanimous.

4. PUBLIC HEARING for the variance request by property owner Sam Mathew and Bearkat Junction, applicant, for variance to *Table 5-1: Lot and Building Setback Regulations in Article 5: Lot and Setback Regulations of the Development Code* for reduced front/street setback to allow for the construction of a canopy for existing fuel pumps on property located at 2020 Sam Houston Avenue.

Chairman Hannes opened the public hearing. [12:04PM]

Aron Kulhavy gave an overview of the case as outlined in the staff discussion form making note that there previously was a canopy over the fuel pumps that encroached the 25' building setback which was totally destroyed by a storm.

Applicant and property owner representative, **Manager of Bearkat Junction**, presented his case for the variance noting that the canopy would provide additional lights making it safer for customers at night as well as protection in inclement weather.

Speakers in support of the variance request:

There were none.

Speakers in opposition of the variance request:

There were none.

Board members questioned the applicant regarding ownership of the property since the destruction of the previously existing canopy and possible sight issues. Applicant indicated that property ownership has been the same and that there would not be any sight issues. Staff concurred.

Chairman Hannes closed the public hearing. [12:10 PM]

5. **CONSIDER** the variance request by property owner Sam Mathew and Bearkat Junction, applicant, for variance to *Table 5-1: Lot and Building Setback Regulations* in *Article 5: Lot and Setback Regulations* of the Development Code for reduced front/street setback to allow for the construction of a canopy for existing fuel pumps on property located at 2020 Sam Houston Avenue.

Board Member Holland made a motion to approve the variance request. Second was by Board Member Grigsby. The vote was unanimous.

6. **PUBLIC HEARING** for the variance request by property owner John Adamick and Jerry Nemec, applicant, for a variance to *Section 10.500 Sidewalks* in *Article 10: Infrastructure and Public Improvements* of the Development Code to not construct the required sidewalk on property located at 154 SH 19.

Chairman Hannes opened the public hearing. [12:11 PM]

Aron Kulhavy began by stating that this case and the next case on the agenda are both for relief from the updated “new” Development Code requirement for sidewalk construction for new development. In the past the Board has heard numerous requests for sidewalk construction variances, however these were under the expired “old” Development Code. These will not be the last sidewalk variance case to come before the Board. The Board should expect to have additional cases brought before them. **Kulhavy** then gave a brief overview of the specifics of this case per the staff discussion form.

Jerry Nemec, applicant and project Civil Engineer, presented the case for the variance request. He stated that the construction of State Highway 19 is not completed. The ultimate plan for the highway is for frontage roads to be constructed adjacent to the main lanes in this location. Currently the driveway access is to the main lanes of the highway in this area. There is not an appropriate place to build the sidewalk. In addition, TxDOT, (Texas Department of Transportation), does not wish to have sidewalks constructed in their right-of-way. The near future expansion of IH 45 to 3 travel lanes in each direction will also have an impact of the right-of-way of State Highway 19 in this area also.

Speakers in support of the variance request:

Don Martinez, Designer/Draftsman for Mr. Nemec, spoke and presented an argument that per *Development Code Section 10.403 Street Cross-sections*, the Code requirement to construct a sidewalk only applies to street right-of-way that is owned and maintained by the City of Huntsville not TxDOT right-of-way. Upon which **Board Member Montgomery** asked for Staff clarification on this issue. **Kulhavy** responded that the variance request is for relief from the Code requirements of *Section 10.500 Sidewalks, Subsections 10.501 When Required* and *10.502 Location*. Additionally, the City has never represented ownership of all right-of-way located within the City Limits of Huntsville and there is an option per the Code to construct the sidewalk within a dedicated easement on the property in lieu of in the right-of-way. The section of the Code referred to by Mr. Martinez is not applicable to the variance request.

Mr. Martinez then continued to address the issue of maintenance, inability to comply with ADA requirements, and lighting.

Speakers in opposition of the variance request:

There were none.

Chairman Hannes closed the public hearing. [12:46 PM]

7. **CONSIDER** the variance request by property owner John Adamick and Jerry Nemec, applicant, for a variance to *Section 10.500 Sidewalks in Article 10: Infrastructure and Public Improvements* of the *Development Code* to not construct the required sidewalk on property located at 154 SH 19.

Aron Kulhavy informed the Board that Staff has provided copies of some of the previous sidewalk variance cases previously heard by the Board, but noting that these cases had entirely different review criteria under the “old” Code. One of the variance cases required, as a condition, that the sidewalk be constructed when it was practical to do so, as the adjacent road was soon to be under construction. To date the sidewalk has not been constructed, therefore it is impractical to grant a variance with such a condition. The intent of the Development Code, with clear direction having been given by the Planning Commission and City Council, is that sidewalks shall be constructed in conjunction with new development regardless of the location and proximity to existing sidewalks.

Chairman Hannes stated his disappointment with the Planning Commission and City Council for not heeding the Board’s recommendation regarding the sidewalk requirements for the updated Code to allow for deferment of the construction of sidewalks until a later, more appropriate time in areas where there is not any connectivity for the sidewalk. People’s time and money is going to be wasted requesting variances to not construct sidewalks in areas where it is not practical or appropriate to construct sidewalks.

Chairman Hannes made a motion to approve the variance request with the condition that construction of the sidewalk is deferred until such time that it is appropriate to construct the sidewalk.

Board Member Holland asked for clarification of the motion in regards to the deferment of the sidewalk. Chairman Hannes stated that the motion will require the construction of the sidewalk, but defers the construction of the sidewalk until such appropriate time when there will be connectivity. There was discussion regarding the deferment issue vs. just granting the variance to not build the sidewalk.

Board Member Montgomery seconded the motion.

The Board Members discussed the practicality of the tracking of the deferment of the sidewalk construction to a later date so that the sidewalk does in fact get built at such appropriate time.

Chairman Hannes called for a vote on the motion. The vote was unanimous.

8. **PUBLIC HEARING** for the variance request by property owner and applicant Robert Ballard for a variance to *Section 10.500 Sidewalks in Article 10: Infrastructure and Public Improvements* of the *Development Code* to not construct the required sidewalk on property located at 1090 Fish Hatchery Road.

Chairman Hannes opened the public hearing. [12:58 PM]

Aron Kulhavy gave an overview of the specifics of the case per the staff discussion form.

Robert Ballard, property owner and applicant, presented his case for the granting of the variance. He stated that he feels that it will be 100 years before a sidewalk would ever have any connectivity to/with State Highway 30 E as most of the property between his home and SH 30 E is currently developed.

Speakers in support of the variance request:

There were none.

Speakers in opposition of the variance request:

There were none.

Mr. Ballard stated in closing that he would not be opposed to constructing the sidewalk at a later date when it would be appropriate to do so.

Chairman Hannes closed the public hearing. [1:02 PM]

- 9. CONSIDER** the variance request by property owner and applicant Robert Ballard for a variance to *Section 10.500 Sidewalks* in *Article 10: Infrastructure and Public Improvements* of the *Development Code* to not construct the required sidewalk on property located at 1090 Fish Hatchery Road.

Board Member Montgomery made a motion to approve the variance request with the condition that construction of the sidewalk is deferred until such time that it is appropriate to construct the sidewalk. Second was by Board Member Holland. The vote was unanimous.

- 10. CONSIDER** the FY 2016-2017 Meeting Schedule & Submission Deadlines.

Board Member Holland made a motion to approve the FY 2016-2017 Meeting Schedule and Submission Deadlines. Second was by Board Member Cromer. The vote was unanimous.

- 11. CONSIDER the minutes of June 24, 2016.**

Board Member Holland made a motion to accept the minutes. Second was by Board Member Cromer. The vote was unanimous.

12. ADJOURNMENT

Chairman Hannes wished to make a motion, prior to adjournment, to present a recommendation to City Council that deferment to the code requirement construct sidewalks in areas where there is no connectivity be granted without a variance. Aron Kulhavy stated that such motion could not be made since it was not on the meeting agenda. Staff will be happy to place such recommendation on the January meeting agenda.

The meeting was adjourned. [1:08 PM]