

Board of Adjustment Meeting Minutes of September 2, 2015
6:00 pm
City Council Chambers
1311 Chestnut Street
Bastrop, Texas

1. Call to Order: Open the regular meeting of the Board of Adjustment and welcome visitors.

At 6:05 p.m. Dan Hays-Clark called the meeting to order.

2. Oath of office for new Board Alternate, Daniel Ducloux.

Daniel Ducloux (Alternate) was not present – no oath administered.

3. Roll call and confirmation of a quorum of Board members.

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| Dan Hays-Clark | Present |
| Michael Gibbons | Present |
| Herb Goldsmith | Present |
| Blas Coy | Present |
| Matthew Lassen | Present |
| Bob Rogers, Alternate | Present |
| Daniel Decloux, Alternate | Absent |

4. Citizen comments.

There were no citizen comments.

5. Consideration and approval of the July 1, 2015, Board of Adjustment meeting minutes.

Herb Goldsmith made a motion to approve the meeting minutes of July 1, 2015. Seconded by Blas Coy and the motion passed unanimously.

6. Public Hearing Case BOAV15:02: The Board of Adjustment will convene a public hearing on a variance request as follows:

Exhibit B, Downtown Form-Based Code, Section 6.7, Neighborhood, (b) building placement, (i) build-to zones and setbacks, (C) general frontage +/- 5 feet of the average front setback of the two structures on either side of the subject property on the same block face the average of setback. The variance request is to allow a front yard setback of 34 feet where 49 feet is required. The subject property consists of +/-0.165 acres, being Lot 2-A, Replat of Lo1, J&T /W-2 Subdivision and Lot 2A, Amended Plat of Morris Addition, known as 1500 Church Street, Neighborhood character zone in the city limits of Bastrop, Texas

- a. Presentation by Staff.
- b. Presentation by Applicant.
- c. Receive other verbal and written testimony, including public Input, if any.
- d. Response by Applicant and/or Staff.
- e. Close public hearing.
- f. Board discussion and render decision.

Dan Hays-Clark opened the public Hearing at 6:08 p.m.

Michael Gibbons announced from the dais that he had provided the staff liaison with the necessary paperwork to recuse himself from this agenda item, inasmuch as he is/has been one of the co-applicant's, i.e., Mr. Stringer's, landlord in the recent past, and therefore, felt that this relationship might be viewed as a conflict of interest. The Chair thanked him for this action and Mr. Gibbons left the dais and the Council Chambers. Alternate Bob Rogers stepped in as a board member, so that five (5) members would hear and decide the agenda item.

Melissa McCollum addressed the Board of Adjustment, providing the Staff's overview and presentation of the agenda item, recapping the numerous historical activities related to past platting and replatting of the Lot 2A, known as 1500 Church Street, which tracts are now owned by one of the co-applicants, Joe Grady Tuck.

Ms. McCollum went on to discuss the current agenda item request, i.e., for a variance to Zoning Ordinance, Form Based Code (FBC), as requested by co-applicant Joe Grady Tuck (property owner) and Terry Stringer (prospective purchaser/developer), for the general street front yard setback at 1500 Church Street located on the west side of Church Street. The co-applicants are requesting a variance to the general/front yard setback. In the FBC the general street/front setback is predicated on +/- 5 feet of the average general/front setback of the two structures on either side of the subject property on the same block face.

The 1500 Church Street property is 70 feet wide and 102.5 feet deep; being 0.165 acres/7,187 sq. ft.

Mrs. McCollum stated that there are only three properties on this block that can be used to calculate the required "general/front" setback for 1500 Church Street as per the FBC, and she presented to the Board the Staff's measurement of those three property setbacks as follows:

North of subject property - Morris House, 1508 Church – setback is +/- 61 feet

South of subject property - Bell House, 1408 Church - setback is +/- 68 feet

2nd South of subject property - Dougherty/Tankersley House, 1404 Church - setback is +/- 33 feet

Mrs. McCollum stated that the FBC Average Setback is 54 feet, less the +/- 5 feet set out in the FBC, which equals 49 feet, based on this formula: $(61+68+33=162 / 3 =\underline{54} -5)$

Staff measured these setbacks on Church Street by standing on the sidewalk and using a laser line/level. Staff also used a tape measure. These are approximate measurements, and do not represent surveys. Mrs. McCollum stated that the Staff's measurement was done not from the "property line", but from the west edge of the existing sidewalk, indicating that Staff 'did their best to measure the "setback" at the same location/place for each property'.

The Applicants would like a variance to the front yard/general setback of a reduction of an additional 10 feet (34 feet) from his average of 44 feet.

Co-Applicant, Mr. Stringer, had and presented different measurements and presented them to Staff. Mrs. McCollum stated that the Stringer's measured from the "property line" to the best of his abilities and measured the following setbacks on the 3 pertinent properties, coming up with a different Average setback figure than the staff arrived at, as follows:

North of subject property - Morris House, 1508 Church – setback is +/- 57 feet

South of subject property - Bell House, 1408 Church - setback is +/- 63 feet

2nd South of subject property - Dougherty/Tankersley House, 1404 Church - setback is +/- 28 feet

Mr. Stringer calculated the Average Setback as: $49 \pm 5 = 44$ feet, as per the following formula:
($57+63+28=148 / 3 = 49 - 5$)

Staff stated that the Co-Applicant, Mr. Stringer, has a home design that he would like to put on the property. The current home design structure is 50x54 feet, being approximately 2700 square feet. With the size of home the Stringers wants to build, if he acquires the property from co-applicant, Mr. Tuck, there would be a 10 foot side-setback from each side of the property line and approximately a 14.5 feet rear setback.

Mrs. McCollum told the Board that setbacks required in the FBC are +/-5 average of the general/front yard with a minimum 10 foot side property line and 5 foot rear. In accordance with the FBC, the buildable area for the lot is $50.5 \times 50 = \pm 2,487$ square feet. Mrs. McCollum indicated that this would not allow for Mr. Stringer's proposed house/design. Mrs. McCollum stated that under the City's prior zoning ordinance for this area, with minimum lot sizes, the building envelope would have been 50 x 70 or roughly, which would have allowed a structure of up to +/- 3,495 square feet.

Mr. Stringer has stated to Staff that if he acquires the tract from co-applicant, Mr. Tuck, he would like to build a home that meets the "compatible infill" requirements that are outlined in the Neighborhood designation in the FBC. With this in mind, Staff asked the Historic Landmark Commission (HLC) to work with Mr. Stringer to review the proposed design/elevations of the home. HLC met with Mr. Stringer on August 19, 2015 and suggested ideas/changes that could make his home more "compatible" between two national, state, and city historical designated structures. Staff realizes this is an important "infill" property and recommends Mr. Stringer continue to work with HLC on the compatibility. Staff will look to HLC to continue to work with the owner on the design/elevations of the new proposed structure.

Mrs. McCollum concluded her presentation by stating the Board of Adjustment may authorize a variance from the City's regulations when, in its opinion, undue hardship will result from requiring strict compliance. In granting a variance, the Board shall prescribe only those conditions that it deems necessary to or desirable in the public interest. In making the findings hereinafter required, the Board shall take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, the number of persons who reside or work in the proposed use, and the probable effect of such variance upon traffic conditions and upon the public health, safety, convenience and welfare in the vicinity.

Criteria for Findings

- A. In order to grant a variance from these zoning regulations, the Board of Adjustment must make written findings that undue hardship exists, using the following criteria:
1. Special circumstances or conditions exist which affect the land involved such that the strict application of the provisions of this ordinance would deprive the applicant of reasonable use of the land.

The vacant property had a previous structure at one time, with a setback of 25 feet. Staff recommends an additional 5' variance to the average setbacks. This proposed setback would still align between the existing homes, staff recommended 44' (measured from the sidewalk) or (42' as measured from the property line) although not at the average/required 49'

(measured from the sidewalk) as required. This would allow a more buildable space for a single family residence and would have a building envelope of roughly 55.5 x 50= +/- 2,775.

2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.

The owner proposes to build a single family residence on this vacant property where one was previously constructed.

3. Granting of the variance will not be detrimental to the public health, safety or welfare or Injurious to other property in the area, and the spirit of the ordinance will be observed. Variances may be granted only when in harmony with the general purpose and intent of this ordinance.

Recommend that the proposed home be reviewed/vetted by the Historic Landmark Commission, (HLC) for "compatible infill" to preserve the existing residential neighborhood scale and appropriate residential infill between two national, state, and local historic designations.

4. Granting of a variance will not have the effect of preventing the orderly use of other land in the area in accordance with the provisions of this ordinance.

The FBC is individual to each property. This property has been subdivided since 2008. The proposed single family residence will fill a gap that is there currently.

5. The Applicant's practical difficulties and/or unnecessary hardship arise from unusual conditions or circumstances pertaining only to the Property, which difficulties and/or hardship are not shared generally by other parcels in the neighborhood of the Property.

This property has a storied past since 2008, and prior to this zoning change would have been allowed a 25 setback. The new FBC however does preserve the neighborhood. A variance to allow an additional 5' (foot) reduction "general/front" setback will still meet the intent of the FBC.

- B. A variance is to be denied if conditions or circumstances relied on for a variance were created by a person having an interest in the property.

The owner/applicant although recently platted the property, there has been no significant change for the building envelope for the new lot. Existing pool deck/structures were already placed on the rear of the previous lot. The owner/applicant is applying for this variance prior to applying for a building permit.

- C. Financial hardship to the applicant, standing alone, shall not be deemed to constitute a hardship.

- D. The applicant bears the burden of proof in establishing the facts justifying a variance.

Nine (9) adjacent property owner notifications were mailed 8/12/2015. Two owner notifications in opposition to the variance request were received.

Staff recommended approval of a front yard setback of 44 where 54 less 5 feet = 49 feet is required, for a recommended 5 foot variance, and provided factual comments above in relation to the variance criteria for the Board's consideration.

Dan Hays-Clark asked if the Board had any questions for staff regarding the presentation.

Alternate, Bob Rogers questioned why an official 'survey' was not required with regards to verifying the setbacks of the structures at 1508 Church, 1408 Church and 1404 Church. He stated that he was concerned about the differences in measurements between the Staff and the co-applicant, Mr. Stringer. Mrs. McCollum stated that she, with the help of City Engineer, Wesley Brandon, used a laser distance measurer, which is very accurate. Dan Hays-Clark asked if the staff measurements were to the front porches of the structures listed above. Mrs. McCollum said that they were.

Discussions followed between the Board and Mrs. McCollum as to what were the requirements of the old zoning code for SF7, Single Family Residential versus the Form Based Code.

Dan Hays-Clark stated that Mr. Stringer attended the August 19th Historic Landmark Commission meeting to ask for guidance on a "design" of a suitable "compatible infill" look for a structure that he would build on the tract. The HLC offered numerous suggestions such as, window casings, raised foundation and garage, etc. Matt Lassen, Herb Goldsmith and Blas Coy asked what assurances, other than the 'good faith of Mr. Stringer', would the City and the BOA have that Mr. Stringer will be required to follow the HLC's recommendations and build something that will, indeed, compliment the historic neighborhood and surrounding homes. Dan Hays-Clark said, because the City does not have design standards, it can only rely on Mr. Stringer's good faith. There is no enforcement for design standards beyond size and scale.

Dan Hays-Clark also stated that he believed that the lot is a buildable lot, without requesting any variances, but that a 44' front setback is still much better than the previously allowed 25' front setback as set out in the prior code.

Mrs. McCollum read the definition of Neighborhood Character Zone. This Character Zone is intended to preserve, enhance, and encourage compatible residential infill within the fabric of the existing neighborhoods north and south of Chestnut Street. Development standards focus on preserving the existing residential neighborhood scale and to allow for appropriately scaled infill of single-family residential building types.

She also stated that she would look to the Historic Landmark Commission for guidance with any infill project that would be located between two historic designated structures.

There were no additional questions for staff.

Dan Hays-Clark acknowledged Joe Grady Tuck, the owner/co-applicant, who rose to address the Board. Mr. Tuck said he appreciated the fact that Mr. Gibbons recused himself from this agenda item, due to conflict, but he asked that Bob Rogers also 'step down' as he did feel that Mr. Rogers could be objective with regards to the variance request, due to personal animosity that Mr. Tuck believed existed between Mr. Tuck and Mr. Rogers. Mr. Rogers denied any existed.

Dan Hays-Clark asked the City Attorney for an opinion. Mrs. Brown said that if Mr. Rogers was recused, the Board would continue to have a quorum and thus, could hear the matter, but, in doing so, the decision by the Board on the matter would have to be unanimous, i.e., it would take all 4 four remaining members voting in favor of the variance request to approve. Mrs. Brown stated that alternatively, if the applicants

preferred to have the matter heard and decided by a 5 member body, the Applicants could request that the Board postpone the agenda item until the October 7, 2015 BOA meeting, and that staff could work to ensure that the second alternate was in attendance at that time.

Mr. Tuck asked the Board to table/postpone the item in hopes of the second alternate being available to hear the request at that meeting.

At 7:05 p.m., Chair tabled the item and asked for it to be posted at the next session, i.e., in October, if feasible.

7. Consideration of an Appeal to the Board by property owner on administrative determination of the Planning Director to deny an application for a building permit for new structure(s), to be located at 911 Farm Street.

In the Zoning Ordinance, the Zoning Board of Adjustment has the authority to hear appeals of staff decisions:

SECTION 9 ZONING BOARD OF ADJUSTMENT (ZBA)

9.3 AUTHORITY OF BOARD:

The Board of Adjustment shall have the authority, subject to the standards established in Sections 211.008 to 211.011 of the Texas Local Government Code and those established herein, to exercise the following powers and perform the following duties:

- A. Hear and decide an appeal that alleges error in an order, requirement, decision, or determination made by an administrative official in the enforcement of this ordinance;

Mrs. McCollum introduced the agenda item to the Board, noting that it was an appeal by Scottie and Rhonda Vandiver, of an administrative decision made by Mrs. McCollum related to a request for a building permit to construct a "sun room" on a structure located at 911 Farm Street, Bastrop, Texas.

The Board Chair asked Staff for additional information and direction, regarding what action and decision was being sought from the Board. Mrs. McCollum deferred. Mrs. Brown offered to provide some introduction. Mrs. Brown explained that the Vandivers had presented the Building Permit Application in the Board's packet to the Planning Department in July, seeking approval to construct a sun room and other buildings at the 911 Farm Street location. Brown stated that McCollum carefully evaluated the permit application using both the City's Code that was in existence at the time the Vandivers began construction of their original 911 Farm Street home, and the new FBC, and that as stated in Mrs. McCollum's Memorandum to the Vandivers, dated 7/30/2015, which is in the Board's packet. Mrs. McCollum determined that the Building Permit Application should be rejected for the reasons she stated in the memo, which included an analysis under both the old and the new Codes.

The Board Chair asked Mrs. Brown if the proposed sun room improvement was designed to connect the existing 911 home to what he understood to be the illegal garage/accessory building on the same lot. Mrs. Brown stated that it was the City's position that the garage/accessory structure was illegal, but that the Vandivers took a different position, but that issue was specifically not before the Board, rather, that was the subject of pending litigation between the City and Vandivers. Mrs. Brown cautioned that the Board was not to discuss or decide any matters at issue in the litigation, rather its only decision for the evening was whether to overturn Mrs. McCollum's decision to reject the Building Permit, based upon the reasons she set forth in her memo to the Vandivers related to her decision.

Mrs. Brown referred the Board to Mrs. McCollum's Memorandum in the Board packet to examine and understand Mrs. McCollum's decision on the rejection of the requested sun room building permit.

At that time, Mrs. Brown took her seat and the Vandiver's attorney, Mr. Sid Armer, rose and addressed the Board. Mr. Armer began by introducing himself as the attorney representing the Vandivers in the appeal and by handing out a letter from Coats/Rose. The subject matter of the letter dated August 13, 2015 was: Notice of Appeal from July 30, 2015 rejection of a building permit for 909/911 Farm Street, Bastrop.

Mr. Armer began his presentation to the Board by beginning to present historical background regarding the original home/structure built at 911 Farm Street and, detailed various circumstances related to the prior history of that earlier construction. Mr. Armer also introduced the Board to Ms. Vandiver, the applicant, and asked Ms. Vandiver a number of questions regarding the application and her previous interactions with the Board and Staff.

City Attorney addressed Mr. Armer and the Board stating the issues raised related to the 911 Farm Street platting, its effect etc., and the legality of the garage/accessory structure were all part of pending litigation between the City and the Vandivers and that, accordingly, those were not appropriate subjects for discussion. Rather, the subject to be presented and discussed was whether or not Mrs. McCollum had been wrong to reject the sun room application for the reasons given in her memorandum to the Vandivers. Thus, all presentation, information and discussion should be limited to that single issue. Board Chair, Dan Hays-Clark confirmed.

Mr. Armer began discussing his client's position that the prior Code was applicable to the review of the application, pursuant to Chapter 245 of the Local Government Code, rather than any evaluation under the new Form Based Code.

Chair, Dan Hays-Clark replied that he understood from Mrs. McCollum's memorandum that the sun room permit that was submitted by the Vandivers and rejected by Mrs. McCollum would not meet either the old code or the new Form Based Code.

Discussion ensued, and Mr. Armer continued with his assertion that LGC 245 should be referenced and that the existing Code should be applied by the City to the new structures. Mr. Armer further argued that a filed plat indicated that no setbacks were required in support of his position that the original structure was not illegal. Mr. Armer asserted that the pre-existing structure and the sun room were both the subject of the current application before the board.

Mrs. Brown spoke again, reminding both Mr. Armer and the Board that the agenda item before them was:

Consideration of an Appeal to the Board by property owner on administrative determination of the Planning Director to deny an application for a building permit for new structure(s), to be located at 911 Farm Street and that the existing structure was subject to pending litigation. Mrs. Brown advised that the Board could make a decision only on the permit before them and not the structures that are the subject matter of the current lawsuit.

Several Board members made comments to Mr. Armer related to the property in question, and stated that they had reviewed the matter with the Vandivers on several occasions, but that no satisfactory work had been done to address the problems with the property. The Chair stated that citizens in the community were unhappy that the property was "boarded up".

Chair Dan Hays-Clark repeatedly stated that he did not believe the Board could consider any issues related to the existing garage structure until the litigation was resolved, at which point the Vandivers would be welcome to bring any remaining issues back before the Board. Chair Dan Hays-Clark entertained a motion on the Appeal to the Board related to whether or not the Board would overturn or uphold the administrative decision of Mrs. McCollum in rejecting the Vandiver's requested Building Permit Application, considering the information presented by Mrs. McCollum in her memorandum

Blas Coy stated that he had carefully reviewed Mrs. McCollum's memorandum and had considered what Mr. Armer stated in his presentation. He continued by saying that it was clear to him, personally, that the Staff had evaluated the request for a permit to build the sun room onto the existing 911 Farm Street house under both the old code and the new FBC, and that the staff had identified numerous problems with the proposed permit under both scenarios. And, that accordingly, he believed the staff had done the correct thing by rejecting the requested permit. Then, Mr. Coy made a motion that the Board uphold and agree with Staff's decision to deny/reject the Vandivers' application for a building permit for new structure(s) to be located at 911 Farm Street. The motion was seconded by Michael Gibbons. Brief discussion was held. The vote was taken and the motion passed unanimously. Coy, Gibbons, Hays-Clark, Goldsmith and Lassen voting "yes" to uphold the staff's decision to reject the application.

8. Director's Report:

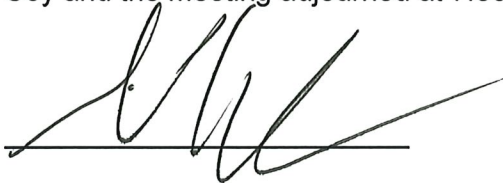
a) Comprehensive Plan update.

Open House to be held on Thursday, September 3, 2015 from 4-8pm at City Hall.

b) Direction from the Board of Adjustment on any items to be included on any future agendas.

9. Adjourn.

Michael Gibbons made a motion to adjourn the Board of Adjustment meeting. Seconded by Blas Coy and the meeting adjourned at 7:30 p.m.

A handwritten signature in black ink, appearing to be 'Dan Hays-Clark', written over a horizontal line.

Dan-Hays-Clark, Chairman