

Board of Adjustment Meeting Minutes

The City of Bastrop Board of Adjustment met Wednesday, September 7, 2016 at 6:00 p. m. in the Bastrop City Council Chambers, located at 1311 Chestnut Street, Bastrop, Texas.

1. Call to Order.

At 6:03 p.m. Dan Hays-Clark called the meeting to order.

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

Blas Coy	Present
Dan Hays-Clark	Present
Matthew Lassen	Present
Herb Goldsmith	Present
Bob Rogers	Present

3. Citizen comments.

There were no citizen comments.

4. Property owner presentation and update on 1305 Wilson Street project.

Mrs. Judith Hoover gave a timeline of her negative experience with the City of Bastrop Planning and Development Department, regarding her property located, at 1305 Wilson Street. Mrs. Hoover stated that she would like some action items to rectify some issues. Dan Hays-Clark would like to address said items in a future workshop. Mrs. Hoover requested that she be notified of the date the workshop would be held.

Dan Hays-Clark thanked Mrs. Hoover for her time, and that she would be notified of the future workshop date.

5. Consideration and approval of the June 1, 2016, Board of Adjustment meeting minutes.

Herb Goldsmith made a motion to approve the meeting minutes of June 1, 2016. Seconded by Blas Coy and the motion passed unanimously.

6. Alternate, Bob Rogers, to move into Place 4.

Melissa McCollum announced Bob Rogers is no longer an alternate and has moved into Place 4 on the Board.

7. Election of Chair and Vice Chair

Blas Coy made a motion to nominate Dan Hays-Clark for Chair. Seconded by Bob Rogers and the motion passed unanimously.

Herb Goldsmith made a motion to nominate Blas Coy for Vice Chair. Seconded by Matthew Lassen and the motion passed unanimously.

8. BOAV16-07: Public Hearing: The Board of Adjustment will convene a public hearing on the variance request as follows:

Variance to Zoning Ordinance, Section 32.3 E, Planned Development requirements to allow a planned development to be less the three (3) acre minimum for Farm Lot 8 West of Main Street being +/- 1.666 acres and Farm Lot 8 West of Main Street being +/- 0.921 acres totaling +/-2.58 acres located between Main and Wilson Street in the city limits of Bastrop, Texas

- a. Presentation by City Staff.**
- b. Presentation by the Applicant.**
- c. Receive verbal/written comments from the public.**
- d. Response by Applicant and/or Staff.**
- e. Close the Public Hearing.**
- f. Board discussion and render decision.**

Melissa McCollum addressed the Board. Dan Hays-Clark inquired about a change to the acreage. Melissa addressed this by stating the acreage used to calculate total acres of both parcels was pulled from the Appraisal Districts website. The applicant has had a survey completed, stating that the total acreage is +/-2.754 acres for the two parcels. The lots in question are not a legal lot and will need to go through the platting process. The current configuration has one lot facing Main Street and the other facing Wilson Street. The property is shy of the 3-acre minimum to apply for a planned development that the owners would like the ability to apply for. They must receive a variance to the minimum acreage in order to do so. If approved for this variance the owners would be able to begin the zoning process, this does not approve the schematic or product type to be placed on the property. Staff notified surrounding property owners twice, because last month's meeting was canceled. Of the notifications received, 2 were no objection and 2 were opposed to the variance request.

At this time staff is recommending approval, with conditions that the applicants must come back within one year and submit the planned development request. This should be a onetime application request without returning repeatedly with changes and additions.

Dan Hays-Clark clarified that if this variance is approved, the planned development would still go through Planning and Zoning as well as City Council. Then if further variances are required they would then return to the Board of Adjustments. Melissa McCollum confirmed.

Herb Goldsmith questioned the lot sizes of the bordering properties along Magnolia. Melissa stated that they were roughly 8,000 square feet. Slightly wider at about 75' feet. Herb also asked whether or not there would be 4 lots in the planned development on the parcels in question. He stated the housing would be less dense than the adjacent properties.

Matthew Lassen questioned if the public frontage road access restrictions, of the current zoning (SF-7), is what would restrict this kind of idea. Melissa responded that the zoning is a function of not only lot size but also frontage to a dedicated public street. Herb Goldsmith inquired where the access is located, on Wilson. Melissa responded that this variance by no means is for approval of the planned development process.

Herb Goldsmith inquired where the access is located on Wilson. Melissa responded that this variance by no means is for approval of the planned development process.

Kari Blachley presented on behalf of property owners. This is a dream for this group of owners to build a community where they will have shared space and responsibilities for the property but be able to lead independent lives in their own individually owned cottages.

Bob Rogers questioned the hardship unique to this property. Building in SF-7 has no hardship preventing a building. This seems to be a proposed zoning change, and he wonders if this board has the authority to rule on this request. Feels that the ordinance with a 3-acre minimum threshold may not work with the City of Bastrop's future and the 3-acre may too high. More leeway should be given in this regard. He feels that this may be a Planning and Zoning Board issue instead of a Board of Adjustment.

Herb Goldsmith inquired if a legal opinion had been obtained for whether or not the Board could grant this variance request. Melissa stated that she had not obtained a legal opinion from the current City legal counsel, but that it is her understanding the acreage threshold of the zoning code makes this applicable and a variance could be applied.

Several discussions were held between Board members, Staff and the Applicant regarding the request and the hardships of this request and potential changes in the ordinance. There are no assurances that other boards will approve of the plans for this property.

Dan Hays-Clark opened the meeting to the public.

Council member Deborah Jones approached and stated that it is her opinion that the hardship is access, as several other properties in the City of Bastrop face the same access issues. She asked the Board to consider several items, thereby potentially setting a precedent for others. She recommends this not be developed as a condo regime, because of the financing difficulties home owners would face. She feels once roads have been constructed, to City standards, the City can take over maintenance. She also feels that accessory units on lots are typical of the City of Bastrop. Bob Rogers responded that they are only here to decide if a variance should be granted.

Mary Williams, property owner within 200 feet, was called to speak next. Mrs. Williams is against this project as she feels that this not suitable for the City of Bastrop. She is afraid this will be a "pop-up" community and who will move in, if these properties are sold.

Elvis Williams, property owner within 200 feet, was called next. He also spoke against this project. Stating that he would like to see a police station annex to go in here as this is an area that is needing more security.

Dan Hays-Clark closed the public hearing.

Herb Goldsmith mentioned that this request is for less than 10% change and that Form Based Code itself is structured to recommend looking at smaller buildings in the north end. Matthew Lassen stated that this is something the Board has seen before, in more of a straight forward way. He stated that if someone has a good idea then they should be able to approach the Planning and Zoning Commission and the Board of Adjustment should not block that option. Bob Rogers reiterated that the Planning and Zoning Commission would be making decisions on what the development would be. Blas Coy then made comment that issues on the north side of town are recognized and that this board has a role in

remedy/ relief from some of these issues. However, there is no assurance that another board will also approve the requests.

Herb Goldsmith mentioned that each decision made by the Board is an individual decision and is not influenced by other previous decisions. He also stated that a condition would be that if legal counsel reviewed this and determined that the minimum could not be changed the decision could be nullified.

Melissa stated the Interim City Manager seemed comfortable with the acreage discrepancy portion of the applicant's request.

The Board of Adjustment may authorize a variance from these 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 property currently does not meet "legal lot" status and the owners know that they will have to plat the property, and feel the PD application gives them the best opportunity to showcase their "cottage home" community. They do not feel the normal zoning districts allow them the opportunity to apply and build their unique housing type/community.
 2. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
The owners feel that the PD process allows them the opportunity to showcase their "cottage home" community and are willing to go through the PD process for consideration and possible recommendation and approval from Planning and Zoning Commission and City Council.
 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.
The variance if approved does NOT grant the PD. The PD must be submitted, reviewed by staff and heard by both the Planning and Zoning Commission and City Council. This only allows the application to be submitted.
 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 variance if approved does not affect the other property in surrounding area. This only allows the PD application to be submitted, and PD's are individual to each project/property.
 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.

The properties are somewhat irregular in shape and the owners hope to use a “cottage home” development on the combined two parcels. They are about a quarter of an acre shy of meeting the three (3) acre requirement.

- 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.
- 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.

Dan Hays-Clark stated that this Board must view the gray areas in looking at hardships to allow next steps. Dan also asked staff to encourage Planning and Zoning and Council to look at the acreage and that it is addressed in the North Form Based Code. He would feel comfortable with this portion of the process moving forward and entertained a motion.

Blas Coy made a motion to grant the variance in accordance for reasons stated in the hardships and with staff recommendation with conditions that the applicants must come back within one year and submit the planned development request. This should be a onetime application request without returning repeatedly with changes and additions. Seconded by Matthew Lassen. The motion passed 4 in favor with 1 abstaining.

Blas Coy- in favor
Dan Hays-Clark- in favor
Herb Goldsmith- in favor
Bob Rogers- abstained
Matt Lassen- in favor

9. BOAV16-08: Public Hearing: The Board of Adjustment will convene a public hearing on the variance request as follows:

Variance to the Zoning Ordinance, SF-20 Single Family Residential requirements, Section 14.4 E. to allow a minimum dwelling unit of 850 square feet where 1200 square feet is required for 111 Post Oak Rim, within the Piney Ridge Subdivision, Section 1, Replat of Block A, Lot 3B, being +/- 1.1580 acres within the city limits of Bastrop, Texas

- a. **Presentation by City Staff.**
- b. **Presentation by the Applicant.**
- c. **Receive verbal/written comments from the public.**
- d. **Response by Applicant and/or Staff.**
- e. **Close the Public Hearing.**
- f. **Board discussion and render decision.**

Melissa McCollum addressed the Board and explained that when this lot was platted the minimum dwelling square footage requirements were only 1200 square feet. The property owner is requesting to build an 850 square foot primary structure. Some of the unique characteristics of the property include existing utilities and topography. Staff recommends approval.

Dan Hays-Clark inquired whether the minimum square footage was determined by the home owner's association or the City. Melissa McCollum stated each zoning district has minimums determined. Minimum square footage for a dwelling in this area is now 1800 square feet. However, this lot is grandfathered at the 1200 square feet.

Edward Dickens, applicant, approached and addressed the Board. The proposed home will be on top of a hill with a carport and garage. The hill has steep sides and the terrain is difficult. They would like to keep their footprint as small as possible and preserve the natural environment.

Bob Rogers inquired whether there had been a house in this location before. Mr. Dickens responded that while there had been 5 known owners, no house had ever been built.

Dan Hays-Clark opened the meeting to the public.

Lucelia Davis approached and addressed the Board. She stated that she is the homeowner at the bottom of the hill and her concern is whether the water runoff will come down into her property. Dan Hays-Clark said that the watershed questions would be addressed in the Planning Department.

Dan Hays-Clark closed the public hearing.

Bob Rogers stated that he visited the site and does not see why a 1200 square foot house could not be built. He feels there are ways around Mr. Dickens objections. He stated that by allowing the smaller footprint, this could affect the property values for homes in the surrounding area. Mr. Dickens responded by showing the setbacks on the projection screen and that if he did not do the driveway the way it was designed, with a 1200 square foot dwelling he would lose access to the shed. Bob Rogers would sooner give a variance to the setback.

The Board of Adjustment may authorize a variance from these 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:
4. 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 owner is working within the unique topographical characteristics of the property and within the "buildable" area of the lot to build a home that meets the extenuating setback requirements placed on the lot.
 5. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant.
The owner is requesting that the requirement to meet "dwelling" size by adding a "second story" is not warranted/needed as there are only two individuals that will be residing within the premises

and do not need the additional square footage. They are also looking to have a smaller footprint to preserve existing trees on the property.

6. 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.

A smaller home will work with the unique topography of the site, and preserve existing trees, and have less impervious cover. Also, the owner will make sure that this property is compliant with the appropriate waste water collection system.

6. 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.

A smaller home will not affect adjacent property owners and will work with the unique topography of the site.

7. 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.

The existing topography and transmission lines make the "buildable" area of the lot limited.

- D. 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.

- E. 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.

Matthew Lassen made a motion to grant the variance in accordance for reasons stated in the hardships and with staff recommendation. Seconded by Herb Goldsmith. The motion passed 4 in favor with 1 against.

Blas Coy- in favor
Dan Hays-Clark- in favor
Herb Goldsmith- in favor
Bob Rogers- against
Matt Lassen- in favor

10. Director's Report:

a) Status update on actions taken/completed, to date for the Comprehensive Plan.

Continuing to work on Comprehensive Plan. Meeting scheduled for Monday 9/12/2016 to review the Parks and Recreation as well as the Arts and Tourism Chapters. Chapters that have been reviewed previously are online and can be viewed from the City's home page.

Bob Rogers has noticed a struggle about what Main Street should be. Melissa responded that the Comprehensive Plan is looking at that also.

b) Status update on actions taken/completed, to date for the Form Based Code Task Force for the North Area.

The task force has been meeting and will give a presentation report/ analysis to City Council. Looked at potentially changing the code to allow smaller lot sizes in the North area and/ or grandfathering different types of lots in the area.

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

Dan Hays-Clark would like to plan an hour and a half to two-hour workshop before the end of this year to address special issues, look at the Board's procedures and how they take information from staff.

Herb Goldsmith would like the attorney to review Mrs. Hoovers document. He is also concerned that current counsel is not as experienced in Municipal Government.

Blas Coy suggested that the special workshop includes the duties and responsibilities of the Board and what happens when items are appealed.

Dan Hays-Clark suggested that we have an experienced municipal attorney present to answer questions and give direction during the Special Workshop.

11. Adjourn.

At 7:39 p.m. Blas Coy made a motion to adjourn. The motion was seconded by Bob Rogers and the meeting adjourned.

Dan-Hays-Clark, Chair