

MINUTES OF THE BOARD OF ZONING APPEALS MEETING

June 26, 2017

The regular meeting of the City of Mission Board of Zoning Appeals was called to order by Chairman Jim Brown at 6:30 PM Monday, June 26, 2017. Members also present: Mike Lee, Robin Dukelow, Frank Bruce and Stuart Braden. Also in attendance: Danielle Sitzman, City Planner; and Nora Tripp, Secretary to the Board of Zoning Appeals.

[Mr. Brown read rules and procedures into the record.]

ELECTION OF OFFICERS FOR 2017

Mr. Braden moved and Mrs. Dukelow seconded a motion to elect Jim Brown as Chairman of the Board of Zoning Appeals. The vote was taken (4-0-1). The **motion carried**. Mr. Brown abstained from the vote.

Mr. Lee moved and Mrs. Dukelow seconded a motion to elect Stuart Braden as Vice Chairman of the Board of Zoning Appeals. The vote was taken (4-0-1). The **motion carried**. Mr. Braden abstained from the vote.

Mr. Braden moved and Mrs. Dukelow seconded a motion to elect Nora Tripp as Secretary to the Board of Zoning Appeals. The vote was taken (5-0-0). The **motion carried**.

APPROVAL OF MINUTES OF NOVEMBER 28, 2016

Mrs. Dukelow moved and Mr. Braden seconded a motion to approve the minutes of the November 28, 2016, meeting. The vote was taken (4-0-1). The **motion carried**. Mr. Bruce abstained from the vote.

APPLICATION BZA Case #17-01 VARIANCE – Rear setbacks - PUBLIC HEARING **5128 Riggs Street**

Ms. Sitzman: This is an application for a rear yard variance at 5128 Riggs Street. The subject property is one of the earliest-platted subdivisions in the city, dating back to 1913. As we were discussing informally earlier, this means that there are a lot of plats that were platted that are much narrower than our development standards are today. This particular property is comprised of lots 377-380. They also have driveway access off of Riggs Street through a separate lot.

According to AIMS data, the home was constructed in 1980, and in viewing it on AIMS, it appears the deck may have been original to the home. The deck was approximately 10 feet away from the rear property line. So, when the home owner applied for a building permit to replace their deck, we noticed that the rear yard setbacks were not being met. It appears that the total depth of the rear yard is about 25 feet. The deck would project 15 feet into the rear yard, leaving only about a 10-foot setback where a minimum 20-foot setback is required today. This lot is very unique in the fact that it's essentially a double-sided lot in the way it's been developed, particularly onto Riggs Street, but there's also undeveloped right-of-way that runs along the west side.

Included in the staff report there is an exhibit I've tried to color-code for you, the original plat map with the information for this lot. The existing property is in yellow. There are areas highlighted in green that show areas of dedicated right-of-way that has not been improved, so there is essentially no street built on them. There are areas in orange where the City has previously

vacated that right-of-way and turned it back over to the private property owners. In fact, this property owner did receive some property back as part of the vacation of the northern section along Raymond Street. So, if they were to pursue those vacations in the future, there are some areas that we've identified as probably no longer being necessary to the City. Those are in red.

To resolve the applicant's conundrum when they discovered their deck was not going to meet setbacks, they have the option of waiting for us to clean up the right-of-way issue and perhaps deed some land back to them; or, to pursue this variance request tonight. We advised them to pursue the variance because if we were going to, as a City, consider right-of-way vacation, we would do it for all of that right-of-way and involve all of those property owners, which would involve a much longer process. We didn't think they should have to wait for that decision to get a determination about their rear-yard setbacks. In either case, because they're kind of at the northern end of Morrison Avenue and adjacent to an area that's already been cut up by previous vacations, I would think there's a very strong case for the City eventually vacating the section that abuts their property anyway, regardless of what we do with the rest of the right-of-way. Like I said, they're kind of at the end of the spur there. Staff does not anticipate construction of streets in that right-of-way. In some areas, it's a substandard width; in some areas, it doesn't connect to anything. There are some real topography challenges from east to west. So, regardless of that, we advised them to consider our variance. If someday we did vacate that right-of-way, typically property owners on each side would get about half of that. They would gain about 20 additional feet to their rear yard, which is the required setback. So, there's this land waiting to eventually go back to them, which would give the required rear yard setback anyway. So, we are fairly comfortable in bringing this to you tonight, to consider that variance tonight, with the idea that eventually it would all kind of go back into compliance.

Included in the staff report is an excerpt of their survey. The way the staff report was written, the applicant had not asked for a specific number, and we didn't want to limit that to a specific rear-yard setback. We wrote it for any building with a portion of their rear yard up to that existing rear property line, with the understanding that eventually the vacation of Raymond would give them back the rear-yard setback. Therefore, it didn't really matter.

One of the board members has contacted me to say that they're not comfortable with that. Mr. Brown, can I put you to the group? *[Laughter.]* He said he would be more comfortable with a concrete number like we've done with other variances. So, I've spoken with the applicant to see if they had a specific number in mind. They've not proceeded yet to a building plan for the new deck, so it was a little up in the air. But, they believe that a 10-foot variance would be sufficient, which would be a 10-foot setback to the existing rear yard. That would leave them room to construct their deck. So, if you would like to make a motion tonight with a specific number, it sounds like a 10-foot variance would work for them. The applicant is here tonight; you can ask them, as well.

As with all variances, there are five conditions that need to be met in order to issue the variance. The applicant has provided their findings of facts in the application as to how they believe those findings were met. I will say that I believe this property is fairly unique in the city, being adjacent to undeveloped right-of-way; essentially being a double-loaded lot, which we don't have any regulations for in our ordinances to deal with how, if your lot has a street on the front and the back. We deal with corners, but we don't deal with double-loaded. So, not really a situation that they created. Like I said, I believe the eventual vacation of that right-of-way, or maybe not having

it developed, creates the same kind of conditions as having a 20-foot setback in the rear yard anyway. I'd be happy to answer any questions.

Mr. Brown: At this time, I'd like the applicant to come forward and express their position.

Sally Enervoldson, 5128 Riggs, appeared before the Board of Zoning Appeals and made the possible comments:

Ms. Enervoldson: We are requesting a variance on the rear setback for removing and replacing an existing deck. Right now, the existing deck is 10 feet away from the edge of our property, and if we had the road easement turned over to us, it would be 30 feet from the edge of our property, if that were to be vacated. It is our understanding that that will never be a road, and that it will be vacated. So, we're asking right now for the vacation of that road easement, for you to grant a variance so we can build that deck prior to the vacation.

Ms. Dukelow: Mr. Chairman, I have a clarification. I believe I'm seeing the answer here. It's my understanding that the existing deck is 10 feet deep from the house to the outer edge of the deck, and the proposed is 15. Is that correct? Or are they both -?

Ms. Sitzman: I think the drawing you're looking at is the former deck, the existing deck. Correct, Sally?

Ms. Enervoldson: Yes.

Ms. Sitzman: It sounds like the rebuilt deck would be more or less the same footprint as the existing deck.

Ms. Enervoldson: It would be. It will be the same size.

Mr. Brown: Would you be amenable to us basically granting a variance to allow the setback to be reduced to 10 foot from the current rear property line, and that it be an open deck?

Ms. Enervoldson: Okay, when you say "open deck," what -?

Mr. Brown: It doesn't have a roof over it. Or are you planning to put a roof over it?

Ms. Enervoldson: I don't think so. We did think about putting a temporary structure that would allow shade, like something you would buy at Home Depot or Lowe's.

Mr. Brown: But it wouldn't have sides on it.

Ms. Enervoldson: No.

Mr. Brown: My concern, and the reason I called staff today, was the way the staff report was written, they could put any structure right up to the property line. Once the vacation was done, I don't think that would be an issue. You'd be allowed to do that. So, until then, I just didn't think it would be appropriate to say, "Hey, you can build anything you want, all the way to the property line," not knowing what's going to happen with that in the future. I'm uncomfortable with just saying you can build your house right up to the property line.

Ms. Enervoldson: I'm fairly comfortable. The only concern I would have is what if it's 9.5 feet. I have not measured it myself, but if you require that it be 10 feet, we would do that. I wish my husband were here instead of me. *[Laughter.]*

Mr. Brown: Is staff anticipating requiring a survey here?

Ms. Sitzman: No.

Mr. Brown: So, it's [*inaudible*] judgment between 9.5 and 10 feet shouldn't concern you.

Ms. Sitzman: If it's a matter of inches, I don't think it matters.

Ms. Enervoldson: All right. I appreciate that.

Mr. Brown: That answers my questions. So, at this time, unless anyone has more questions for the applicant, I'll open it up to the public.

Deborah England, 5130 Riggs, Mission, appeared before the Board of Zoning Appeals and made the following comment:

Ms. England: I live next to the property. I just wanted to hear what they were going to say. If that road was ever going to be developed back there.

Mr. Brown: Okay. Seeing we have nobody from the public that wants to make any comments, I'll close the public hearing and open it up for panel discussion.

Mr. Bruce: I have a question for staff. Is it my understanding that the west half of the right-of-way for Morrison Avenue had already been vacated when they built Heritage Hills apartments?

Ms. Sitzman: If it's highlighted in orange, I'm not exactly sure where Heritage Hills is at, but yes, it's possible. If that's the orange area, then yes. That area has already been vacated.

Mr. Bruce: As I recall, attending meetings with Heritage Hills, was proposing their development up there, they asked for – and if I remember correctly – and got the west half of the right-of-way to Morrison Avenue vacated, from 53rd Street to 51st Street. So, what we're looking at is just half of the right-of-way. In that process, they [*inaudible*] all the back lots along the west side of Riggs Road from 53rd Street to 51st Street. And the people that developed the property that is in question built a private road, which obligates any need for right-of-way along that west side of that property. And to me, I think that's the most practical way to go. And in anticipation of that, it's the most logical solution.

Mr. Brown: Are you saying that that was an 80-foot right-of-way at one point?

Mr. Bruce: Well, again, half of that right-of-way was vacated when they developed Heritage Hills.

Ms. Sitzman: And I did not look that one up. It could very well be. I'm not looking at the plat.

Mr. Brown: That's what I'm questioning, Mr. Bruce. If they've already vacated it, was it 80 feet wide?

Ms. Sitzman: No, it was originally 40 feet wide. I just don't have a record of the vacation. It doesn't show up on AIMS. I should probably have clicked on Heritage Hills to see what their lot description is. It could be

Mr. Bruce: Whichever way [*inaudible*] the property lines. Along the back properties for the west side of Riggs. I mean, I know because my grandmother owned two lots back there. And they did not have that site vacated. The Heritage Hills developers got the other half of the right-of-way vacated. So, to my knowledge, there's no room to build a street up there unless you have rededication.

Ms. Sitzman: Right. It's possibly true either way. The right-of-way that is shown originally was only 40 feet wide, which is substandard for modern streets. So, even if it had never been partially vacated, it's still subsidy – They've taken away from unstubbed one. That would be a separate process for a variance. That would involve City Council and some other staff.

Mr. Brown: Well, the significance of that conversation here is, if half of it is already vacated, if they vacated the other half, are they going to give 10 feet and 10 feet again? Or are they going to give the full 20 to the -?

Ms. Sitzman: There's no record that this property has received anything from a vacation to their west. They received property vacation further north.

Mr. Brown: Any more questions?

Ms. Dukelow: Sorry, I'm not clear on where Heritage Hills is located. Mr. Bruce, were you saying it's between 54th and 53rd?

Mr. Bruce: Well, Heritage Hills – which it's no longer called that. The property [*inaudible*] manages. It starts at the centerline of 53rd Street and goes basically to the centerline of 55th Street, and it's just beyond what is shown here as Morrison Avenue.

Ms. Dukelow: So, it's south –

Mr. Bruce: No, it's west of this property, and it goes to Foxridge Drive, basically.

[*Overlapping dialog.*]

Ms. Dukelow: You can actually see the apartments --

Mr. Bruce: It would actually be more northwest of her property.

Ms. Dukelow: Okay, so, this is Heritage Hills -.

Ms. Sitzman: This is the subject property, and this is the bridges. So, the right-of-way we're talking about runs through here. When I look at the legal description of this parcel, I don't see any evidence in it. It would normally say "and the vacation of," etc. When we look at the subject property's description, it says, "...and the south 23 feet vacated street name here." So, I don't know if a vacation was actually conducted for the development of this property here.

Mr. Brown: But that property hasn't been –

[*Overlapping dialog.*]

Mr. Brown: Well, but Mr. Bruce's point was, if they've already vacated that, there's no way a road would ever go through there because you'd only have 20 feet to get through. But it looks like they vacated on the 51st Street side instead of the other side. Any more questions?

Ms. Dukelow: Mr. Chairman, I would like a clarification. Concerns were expressed earlier, and I understood that you were suggesting that we may say – We can reduce the depth of the distance required. The setback.

Mr. Brown: Yes. There's a 20-foot requirement; we can reduce that to 10.

Ms. Dukelow: To 10 feet. And then, you had a question that you asked the applicant regarding a roof structure over that deck. What was the basis for that?

Mr. Brown: You know, I always deal with fire, fire movement turns. There's nothing back there to catch on fire, though. So, if that's not a concern of anybody else's, it need not be placed on them. They're basically asking to replace the deck.

Ms. Dukelow: Right. And on the west side, I can see where a shade structure may be desirable on the deck. So, to clarify that. There weren't any other concerns related to that.

Mr. Brown: Anything else? [*None.*] I would entertain a motion.

Ms. Dukelow: I'll make a motion that we approve Application BZA Case No. 17-01, a variance for rear yard setback, and that we allow for the property to have a 10-foot setback in lieu of the 20 feet requirement.

Mr. Braden: I'll second that.

The vote was taken (5-0). The **motion passed unanimously.**

Mr. Brown: For the applicant, I would just like to state that your variance has been granted. You're now allowed to have a setback of 10 feet versus 20, and we did not place a restriction on whether it could have a roof or be enclosed.

ADJOURNMENT

With no other agenda items, **Mr. Braden** moved and **Mrs. Dukelow** seconded a motion to adjourn. The vote was unanimous. The motion carried. The meeting adjourned at 6:55 p.m.

Jim Brown, Chair

ATTEST:

Nora Tripp, Secretary