

AGENDA

Board of Adjustment

Monday, September 22, 2008
City Hall Council Chambers
5:30 p.m.

1. Call to Order
2. Approval of Board of Adjustment Minutes:
February 25, 2008
3. Public Hearing: William Dennstaedt
Application for Variance
4. Adjournment

*If you will be unable to attend this meeting, please contact Susan at the Planning Department office at 498-9240 no later than noon on the meeting date.
(Responses may be e-mailed to sbeeman@cityofcheney.org)*

BOARD OF ADJUSTMENT MINUTES
February 28, 2008

BOARD MEMBERS PRESENT: John Boots, Vincent Barthels and John Matthews.

BOARD MEMBERS ABSENT: Clark Messex, Tom Davis.

STAFF PRESENT: Tom Richardson, Elisa Rodriguez and Susan Beeman.

CALL TO ORDER: Chairman Boots called the meeting to order at 5:35 p.m.

APPROVAL OF MINUTES: Mr. Matthews made a motion to accept the minutes of the November 26, 2007 Board of Adjustment meeting as distributed. Seconded by Mr. Barthels; motion carried unanimously.

PUBLIC HEARING: FELLOWSHIP BAPTIST CHURCH PARKING REQUIREMENTS – APPEAL OF ZONING CODE INTERPRETATION:

Chairman Boots opened the public hearing at 5:35 p.m.

Ms. Rodriguez explained that the question before the Board of Adjustment was all about code language. The decision to be made tonight is not specific to Fellowship Baptist Church, but will be applied to any future development.

Ms. Rodriguez explained that there is a conflict in the zoning code between the landscaping chapter and the parking chapter. The landscaping chapter says that you need 6' of perimeter landscaping, which creates a boundary of trees and bushes. The other half of the question is the parking code, which says that the public right-of-way may be used for off-street parking. The conflict is that the landscaping has to be met on-site, not on the public right-of-way. She referred to the proposed landscaping diagram provided by Fellowship Baptist Church.

Ms. Rodriguez noted that the reason there is a conflict is most likely that the parking chapter was written prior to the landscaping chapter. When the landscaping code was adopted, nobody went back to the parking code to check for compatibility.

Chairman Boots asked if potentially, the state highway could be widened to the point of the property line. Ms. Rodriguez said that yes, at any time, the state could do that.

Under the landscaping code, the trees shown on the landscape plan will have to be moved, because they must be located on private property.

Chairman Boots asked about the apartment complex that is located adjacent to this site. Mr. Richardson explained that this is now located on a separate parcel. Chairman Boots asked if the church could get their required number of parking spaces by doing a shared parking agreement with the apartments. Ms. Rodriguez said that was a possibility; they would need to show that the parking spaces would be needed at different times of day.

Mr. Matthews said that as far as the conflict in the codes, one says 'shall' and the other says 'may.' He would think that 'shall' overrides 'may.' Also, the fact that it is a more recent code change should carry weight. In CMC 21.42.030, "...the planting strip shall be provided." And in CMC 21.60.030 (d), "...the public right-of-way may be used with the approval of the public works director when..." It tends to infer that the landscaping is still a requirement.

Ms. Rodriguez stated that the applicant was present to speak to the situation.

Don Coumbs, 1115 Moyer, representing Fellowship Baptist Church, explained that they did not realize until tonight that they were asking for a code interpretation. They had tried to speak to the Planning Commission and were told that the Board of Adjustment was the appropriate body to hear the situation. He explained that they had met with people from the City prior to the design phase of their project and were told that it was a zero-lot-line lot, that their parking could be located on the City's right-of-way. They spent about \$20,000 on an architect, and when they applied for a building permit, were told that they could not build because they do not have sufficient parking provided.

Mr. Coumbs said that the old car wash across from Gatto's is being converted to office space, and they have been allowed to put their required parking on the city right-of-way. With their proposed plan, the worst case scenario would be that if SR-904 were widened, they will not have the requisite number of parking spots. If the church were allowed to build using the current landscaping plan and SR-904 were widened, they would lose their landscaping, but the required parking would still be available.

Ms. Rodriguez said that the landscaping ordinance was adopted in 2005, and most, if not all of the businesses along 1st Street (SR-904) have parking or some form of development in the public right-of-way.

Mr. Matthews noted that the same case would apply to the Baptist church on the north end of town; the right-of-way would extend quite a distance into their parking lot.

Mr. Richardson explained that the landscaping ordinance was written with the idea that normally you have a public right-of-way of 4-5 feet behind the sidewalk. With SR-904,

it is 125' of right-of-way, so it's a little different. You've got a lot more land behind the sidewalk.

Mr. Barthels asked what percentage of the land would be covered by landscaping. Mr. Richardson said that it was just under the 15% maximum coverage required by the code.

Ms. Rodriguez said that if you just take the 6' of perimeter, plus the interior strip which has 2.5' on either side of the property line for landscaping, it is right around 15%. The code says they don't have to landscape more than 15%, but it is vague about specific requirements.

Mr. Matthews asked if the church already has an approved conditional use permit. Ms. Rodriguez said that they do, and they have two more years before that permit expires.

Mr. Barthels suggested this lot would be a good candidate for a variance, in that it has three street frontages. Are there any other lots in Cheney in that situation? Ms. Rodriguez said that possibly the lot where Del's Feed Store is located would fit that description, and there may be others. Mr. Barthels asked if those other lots are already developed. Ms. Rodriguez said that they probably are.

Mr. Matthews made a motion to recommend that the City review CMC 21.60.030, Landscaping, to bring it into conformance with the requirements in 21.42.030, Off-Street Parking Requirements.

Discussion followed. Chairman Boots confirmed that this motion is affirming the interpretation of the code which requires the 6' landscaping width. He explained to the applicant that the Board is constrained to not show favoritism; there may be other alternatives that would get them by.

Mr. Coumbs said that he would be interested to know what those alternatives would be. He explained that his expectation in coming to tonight's meeting was that they were requesting a variance of requirements specific to their situation. It was not clear to him that the purpose of this hearing was for a code interpretation.

Mr. Matthews suggested that relief may be through the variance process. Ms. Rodriguez explained that our code has a very traditional approach to the variance issue:

- (1) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located;
- (2) That the variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and zone in which the subject property is located; and

(3) That the granting of the variance shall not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated. (CMC 21.60.040(b))

Ms. Rodriguez said that she was not aware of variances previously granted in this regard, because it is so restrictive.

Mr. Matthews said that the shape of the lot could be an argument for a variance. There are some variances that have been granted because of lot shape and topography; the intent is to make the lots able to be built on. With roads on four sides of the lot, including existing structures, there may be a valid argument there. The applicant would have to address that.

Chairman Boots noted that there was a motion on the floor. Mr. Barthels clarified that the motion is to affirm that the landscaping ordinance takes precedence, and the issue of the conflict be sent back to the City Planning Commission for corrections to the off-street parking code to bring it into compliance with the landscaping ordinance.

Motion seconded by Mr. Barthels, and carried unanimously.

Mr. Richardson asked if a variance application was submitted, would there be a problem attaining a quorum on March 24? He added that the applicant could also seek relief by requesting a change to the zoning code.

Rick Hugenin, 518 Salnave Road, representing Fellowship Baptist church, said that they are confused, thinking that what they were applying for tonight was a variance. They have been before the Planning Commission on this matter twice, and now before this Board, and they are now being told they have to do something else in order to get an answer. They tried to use due diligence; they met with City staff before they proceeded with these plans. There is frustration at the misunderstanding about how their request was being treated tonight. This is their third meeting before a City board, and now they are being told they must do something else in order to get an answer.

Ms. Rodriguez explained the variance process, and explained that she had never encouraged the variance process as an option because she did not expect a lot with three street frontages to be considered a candidate for a variance under our code's criteria. She offered to meet with Mr. Hugenin to answer questions about the variance application.

Mr. Matthews stated that he did not want to infer that the Board was sympathetic to a variance, either. A variance, if granted, must be based on the merits of the case, as presented by the applicant.

Chairman Boots added that the idea of citing similar situations where a variance was granted is key.

Mr. Hugenin said that there are really no other C-2 zoned lots on that end of town with new construction. The building activity has all been to the north, and as you get more toward the center of town, what you have are existing buildings.

Doug Nixon, 322 N. 5th Street, said that he has watched this case unfold, having been a member of the Planning Commission that heard their initial inquiries. He knows these people, and it seems that the rules have been changed on them people halfway through. They have spent a lot of money, and now all their plans are null and void. If we are going to interpret the code this way, we'd better be willing to apply the school of hard knocks to everybody that comes along after them. At this meeting it seems that we have punished them; he cannot say whether it is fair or unfair, but he thinks it is wrong.

Mr. Richardson offered clarification that they have been acting as the Board of Adjustment in this action, and their role was to determine whether City staff have correctly interpreted the zoning code. If they were considering an interpretation of Title 19, the building code, then they would be acting as the Board of Appeals.

There being no further business for the Board of Adjustment, Chairman Boots adjourned the meeting at 6:21 p.m.

John Boots, Chairman

Susan Beeman, Secretary