

CITY BOARD OF ADJUSTMENT

MINUTES: November 6, 2008

Troy Boucher, Chairman Pro Tem called the meeting to order at 6:00 p.m. The City Board of Adjustment met in the City Council Chambers.

Name	Title	01/03/08	02/06/08	03/06/08	04/02/08	05/02/08	06/04/08	07/02/08	08/06/08	09/03/08	10/08/08	11/06/08	12/03/08
Leon Pattyn (resigned 10/26/08)	Chairman	Cancelled	1	A	1	1	1	Cancelled	1	A	1	V	
Barbara Walborn	Boardmember		1	A	1	1	A		1	1	1	1	
Lyn McKinney	Boardmember		1	A	1	A	1		1	1	1	1	
Troy Boucher	Chairman Pro Tem		1	1	1	1	A		A	1	1	1	
Daniel Eggen	Boardmember		A	1	1	1	1		A	1	1	1	
Brent Nelson	Boardmember		1	1	A	A	1		A	1	A	1	
Paul Cox	Boardmember		1	1	1	A	1		1	1	A	1	

TOTAL NUMBER OF APPLICATIONS 2008	01/03/08	02/06/08	03/06/08	04/02/08	05/02/08	06/04/08	07/02/08	08/06/08	09/03/08	10/08/08	11/06/08	12/03/08	TOTAL
Variance	0	2	2	2	2	2	3	3	5	2	2		

Chairman Boucher asked Nicole Cromwell, Zoning Coordinator to introduce the City Board of Adjustment Members and Planning Department Staff. The following staff was in attendance:

- Nicole Cromwell, Planner II/Zoning Coordinator
- Candi Beaudry, Director
- Elizabeth Allen, Planning Clerk

Public Comment:

There were none.

Approval of minutes:

On a motion Boardmember Eggen, seconded by Boardmember McKinney and approved by a 6-0 voice vote the minutes of October 1, 2008 were approved.

The board decided to change the order of the agenda and hear Variance #1038 first and Variance #1035 second.

PUBLIC HEARINGS:

Chairman Boucher asked Ms. Cromwell to read the determinations for granting a variance as well as review the rules for the procedure by which the public hearings will be conducted.

Ms. Cromwell reviewed the procedures by which the meeting is conducted. She read the determinations for granting a variance.

Public Hearings:

Item #2: City Variance #1038 – 42, 44, 48, and 50 Rhea Lane – A variance from BMCC 27-308 requiring a minimum lot size of 12,000 square feet, for two single family homes on a single lot, to 10,519 square feet, in a Residential 6000 (R-60) zone. On Lots 9 and 10 of the Amended Plat of the east half of Lot 2, Flanagan Subdivision, Tax ID's: A06975, A06976. Darrell and Betty Frederick owners and agents.

Ms. Cromwell read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of conditional approval.

Discussion:

There was none.

Applicant:

Darrell Frederick, 3911 LeeAnn Blvd, they would like to have this variance so that they would be able to replace the homes if anything should happen to them.

Boardmember Cox asked the location of the nearest fire plug.

Darrell said there is a fire plug across the street from this property.

Proponents:

There were none.

Opponents:

There were none.

Rebuttal:

The public hearing closed at 6:41 p.m.

Motion:

On a motion by Boardmember Cox, seconded by Boardmember Walborn and approved with a 6-0 voice vote Variance #1038 was approved with the following conditions:

1. Any future rebuilds or remodel of the subject structures will need to be done in compliance with the City's adopted building code and other City regulations at that time.

Discussion:

There was none.

Motion:

Boardmember	Yes	No	Abstain	Not Present
Leon Pattyn				X
Barbara Walborn	X			
Lyn McKinney	X			
Troy Boucher	X			
Daniel Eggen	X			
Brent Nelson	X			
Paul Cox	X			

Boardmember Walborn recused herself from discussion and voting on Variance #1035.

Return Item # 1: City Variance #1035 – 3014 Shady Lane - A variance from BMCC 27-308 requiring a maximum lot coverage of 30% to allow a maximum lot coverage of 50%; from BMCC 27-308 requiring a minimum front yard setback of 20 feet to allow a minimum front yard setback of 15 feet; and from BMCC 27-404 (a) and 27-404(b) requiring no alteration of a nonconforming structure unless it increases the conformity of the structure and allowing no remodeling or reconstruction of a nonconforming structure that exceeds 50% of a structure’s replacement value to allow the reconstruction and expansion of an existing nonconforming structure on a 8,223 square foot parcel of land in a Residential 9,600 (R-96) zone, on Lot 5, Shady Lane Subdivision. Tax ID: A13881. Genia Demis, owner and Robert L. Stephens, agent.

Ms. Cromwell read the legal description and reviewed the staff report with an overhead PowerPoint presentation for the audience and reviewed the surrounding properties while explaining the existing zoning of the subject property. She said staff is forwarding a recommendation of conditional approval.

Discussion:

Boardmember Cox asked if staff has reviewed the newly submitted conditions and if they have any issues with those conditions.

Ms. Cromwell stated that she doesn’t agree with the condition to allow a 2 car garage to be built. She feels that some of the other conditions can be reworded, including the conditions regarding street repair and cove ditch culvert.

Boardmember Cox asked if there have been any other variances for 50% lot coverage in this area.

Ms. Cromwell state that there has been one previously, it was for a lot much smaller than this and it was for a temporary pool bubble. That has been removed at this time and so no longer has a variance.

Boardmember Eggen asked if there is a time line in regards to condition 8. **Ms. Cromwell** stated that street and right of way work depends on the availability of private contractors and that should probably not be completed before all major landscaping is done.

Boardmember Nelson asked if a pre-existing condition of the high slope of the garage could be considered a hardship. **Ms. Cromwell** stated that she is unsure.

Boardmember Boucher asked what bearing the culvert has on this project. **Ms. Cromwell** stated that it is not connected to the structure but it would have been running under a paved area if the new garage had been approved and because they may not have wanted to pave over the old culvert.

Applicant:

Robert Stephens, 2910 Minnesota, representing the applicant, his applicant has tried to address the concerns of lot coverage and has made some changes to the site plan. Lot coverage is an aesthetic value, not a safety function. They want to move the garage from the north to the south because of the dangers the road in the winter. Shady Lane has been encroached upon old growth trees and it narrows to one lane at some places. The topography of the lot really prohibits the garage being at the north of the lot. The plan is to have a rooftop garden on the proposed garage to help landscape the lot, in the style of European/Mediterranean garden. They extended the culvert because it was leaking. The applicant believed that her contractor had permission to change the culvert. The new culvert that was placed cost around \$10,000 dollars in 2002. He would like to see negotiation between his client and the ditch company. He would also like to see the landscape plan/erosion plan removed as a condition because they have someone working on that at this time. He understands that there are some hard feelings between the neighbors and his client but he wants to assure everyone that if this variance is approved this will be a beautiful house that will be an asset to the neighborhood.

Boardmember Cox asked if they have any written permission from the ditch company. **Robert Stephens** stated that they do not have any written permission but a ditch company employee was present when the work was done.

Boardmember Eggen asked what the appearance of the home will be when it is complete. **Robert Stephens** stated that he has the schematics that the board has received. He doesn't know the specific materials that will be used.

Boardmember Boucher stated that when he visited the property quite a bit had been excavated out. Is erosion a problem? **Robert Stephens** stated that they haven't had any problems with that right now but they do have an engineering firm to address run off and they will be putting in a temporary barrier until the landscaping is complete.

Boardmember Boucher asked if the erosion was part of the code enforcement complaint. **Robert Stephens** stated that it was and they understand and are sensitive to the complaints of the neighbors.

Boardmember Nelson asked if the engineering firm has drawn up any plans to control runoff.

Boardmember Eggen asked if there was some movement in the original home. **Robert Stephens** stated that there was some movement in the original home because of the soil conditions. They do have an engineering firm addressing this problem.

Proponents:

There were none.

Opponents:

Dale Vermillion, 3020 Shady Lane, he also wrote a letter to the board and he hopes that they have had a chance to read that letter. The front setback for his home is 30', the side is 30', and the rear is about 100'. He feels that this sets a terrible precedence for the city because it says that if you just start working on something with no permission then you can do what ever you want and just ask for forgiveness. However, he is willing to see the variance granted just because it has been going on so long and he wants to see this completed. He doesn't have a problem with the home being reconstructed at more than 50% of its current value. He wants to see a date certain that the project must be complete and real consequences if it is not. The trench that they have dug is starting to collapse and it is undermining their trees. The trench is also encroaching on their property and makes it difficult to get vehicles on to part of their property. He has lived near this property for 35 years and has never seen any problem getting in garage. They had trouble with fire truck which got stuck because of all mud and debris in the street from this project. They would like to sell their home because it is more space than they need but in speaking with realtors he has found out that his home

has been devalued due to this project and has a letter from one realtor stating that his home is not marketable because of this on going construction.

Boardmember McKinney asked for clarification on **Dale Vermillion's** comments. He clarified that he has no problem with them spending more than 50% of the value to finish the completion but he wants to see the footprint remain the same.

Boardmember Cox asked if he has noticed problems with people trying to use the original garage.

Dale Vermillion stated that he never has any problems with getting into his garage and he also has never seen anyone have any trouble with the original garage.

Pat Sheehy, 2920 Shady Lane, clarified the properties and the owners of the properties on Shady Lane. He is at the very bottom of Shady Lane and there have been two rain storms that have caused flooding in his home in the 17 years he has lived there. He is concerned that with the new site plan and the culvert over the ditch there will be a lot more runoff that previously. Landscaping is very important because of runoff. Since this project has started he has to dig buckets of silt off of his driveway. There is also a lot of dust in the summer. He doesn't have a problem with 50% value but he doesn't want to see 50% lot coverage.

Bart Middleton, 3927 Rimview, he has lived at this property for 17 years. This property is an eye sore and needs to be rebuilt. This should have been brought to the attention of the Board years ago before they started building. They are against them building more than the 43% recommended by staff. The original garage had served fine since 1967. He really feels that they should be able to complete this project under staffs recommended timeline. He has not heard from any contractor that this could not be completed under this time line. He has no problem with the staff recommendation.

Brian Bishop, 3020 Rimview, he passed out some pictures to the board and gave a power point presentation. He has no faith that what they are planning to build will have ascetic value. He sited Section 27-404 regarding non-conforming structures which would have allowed for remodeling of the home, as long as it does not increase the non-conformity. He feels that she is building a new house from the inside out. The first plan was to dig out a underground garage under the culvert. He showed some pictures to the board of the construction that has happened to this home. He feels that the home that was built in 1967 has been destroyed by this construction. He stated that the owner is claiming that she is building this for her retirement, but she told him that she is planning to remodel it to sell it to a rich doctor. This should not be granted because it does not have a hardship. He stated that the board does not have the ability to grant lot size variances. This is a very serious issue and it has very serious problems regarding its effects on the neighbors. This lot size does not meet the minimum requirements of zoning. This project needs to done and it needs to be done in a timely fashion but if it not completed in a timely fashion then the applicant should be fined retroactively from the date the variance was granted, the city should take possession of the property and there should be both fines and jail time assessed against the owner.

Tom Thigpen, 2940 Shady Lane, he and his wife are very concerned about this project. He has been in contact with the director of the Big Ditch Company and there is a major leak thru the retaining wall at the north of their property. The ditch, before it was covered with a culvert, was a big help in keeping runoff under control. If the garage is built and paving put in place run off will be much worse.

Harvey Fox, President of High Ditch Company, now that the ditch has been covered it will no longer collect runoff and rain water. This pipe was laid without permission and the board had no idea that this was happening until they received a complaint from the Thigpen's. They would like to see something drawn up to protect the High Ditch Company.

Boardmember Nelson asked if the ditch company would be averse to having the rainwater runoff directed with a pipe into the culvert. **Harvey Fox** stated that the company might allow that if they were absolved of any liability. **Boardmember Cox** asked who Roy Zahm is and if he would have had authority to allow a culvert to be placed. **Harvey Fox** stated that he was their superintendent until his retirement 2 years ago. He would not have had authority give permission to cover a ditch. He would have had to come before the High Ditch Board to receive permission.

Rebuttal:

Robert Stephens said that there is a lot of anger about this project and everyone is in agreement that this needs to be resolved. The garage will not affect the runoff water because they could place a concrete slab in that area without any variance.

Boardmember Nelson asked if he would be adverse to a performance bond to complete the entire project.

Robert Stephens stated that he would not be adverse to that but he does have a problem with mandatory conditions because some of the wording is harsh and could be interpreted many ways.

The public hearing closed at 8:15 p.m.

Motion:

On a motion by Boardmember Cox, seconded by Boardmember McKinney to approve the variance with the 11 conditions that staff has recommended became moot when the Board approved a substitute motion.

Boardmember Cox made a substitute motion to allow only 35% lot coverage that failed without a second.

On a substitute motion by Boardmember Cox, seconded by Boardmember Eggen and approved with a 5-0-1 voice vote Variance #1035 was approved with the new proposed conditions as follow:

1. The Variances approved shall be limited to Lot 5 of Shady Lane Subdivision as shown on the site plan dated July 2008 and submitted with the application.
2. The variances approved are the following: 1) a five (5) foot front setback for the entire length of frontage along Shady Lane; 2) allow the reconstruction of a structure that has been damaged or demolished by more than 50% of its replacement value; and 3) allow up to 50% lot coverage not to exceed 4,112 square feet in building footprint and other lot coverage as defined in Section 27-201 of the BMCC.
3. The site plan dated July 2008 and submitted with this application is specifically approved.
4. The applicant shall apply within 120 days of Board of Adjustment approval for any additional building permits necessary to complete the project.
5. The reconstruction as permitted herein must be completed on or before September 1, 2009.
6. No temporary or long term encroachments on the right-of-way of Shady Lane will be permitted. This includes but is not limited to stockpiling building materials, erosion of soil from the subject property on to Shady Lane, parking of contractor, employee or other personal or commercial vehicles on the right of way except for the expeditious loading or unloading of such vehicles.

7. The applicant will provide the Planning Division with a landscape restoration plan and a soil erosion control plan within 45 days of Board of Adjustment approval. The landscape restoration plan shall also include a storm water retention/runoff plan. The Planning Division will either approve or deny the proposed plans. The applicant and the Planning Division will work diligently to arrive at approved plans. The approved plans will be made part of this variance approval. The approved soil erosion control plan will be implemented immediately. This erosion control plan will be maintained continuously until the project is completed. The approved landscape restoration plan will be implemented and completed on or before Sept 1, 2009.
8. The Applicant will work with the Engineering Division to determine whether street restoration for damage caused by this construction project will be required. The determination of the City Engineering Division regarding the extent of any repair will not require reconstruction of Shady Lane but shall be limited to reasonable and necessary repairs directly attributable to Applicant's reconstruction activities.
9. The applicant must remove the culvert for the High Ditch that was installed without permission or secure written permission from High Ditch Company to retain the existing culvert on or before April 1, 2009. The applicant shall work directly with High Ditch Company to fix leakage. Work will be accomplished as agreed to on or before May 1, 2009.
10. These conditions of this variance approval shall run with the land described in this authorization and shall apply to all current and subsequent owners, operators, managers, lease holders, heirs and assigns.
11. Failure to comply with these conditions of approval shall be deemed a violation of the zoning regulations. Enforcement of the regulations and conditions shall be as set forth in Section 27-1601 et seq. of the Unified Zoning Regulations.
12. The applicant must, at the conclusion of the project, restore and fill the trench at the northern property line and into the cul-de-sac to its original condition.

Motion:

Boardmember	Yes	No	Abstain	Not Present
Leon Pattyn				x
Barbara Walborn			x	
Lyn McKinney	x			
Troy Boucher	x			
Daniel Eggen	x			
Brent Nelson	x			
Paul Cox	x			

Discussion:

Boardmember Cox would like to discuss the idea of having 50% lot coverage. He feels that this is pressing past the allowances of the code.

Boardmember Nelson feels the most pressing issues are the runoff and the ditch and getting this project completed.

Boardmember Boucher feels that the some of the conditions proposed by Mr. Stevens are more acceptable than those of staff. He would like to accept condition #8 and #6 as proposed by the

applicants; he also feels that 50% is reasonable lot coverage. He feels the original garage might be treacherous to use.

The board discussed timelines and deadlines within the conditions.

Ms. Cromwell clarified what is considered lot coverage under the code.

In regards to condition 2, **Boardmember Boucher** stated that he would like to see 50% lot coverage instead of 43%. **Boardmember McKinney** and **Boardmember Cox** are both in favor of 43%, **Boardmember McKinney** has a problem with the idea of a deck above the garage looking over the neighbors homes. **Boardmember Nelson** feels that runoff is runoff and a garage will look better than a concrete pad. In regards to condition 6, **Boardmember Boucher** feels that the condition proposed by the agents applicant is better, the rest of the board felt that staffs conditions was better. In regards to condition 7, the board would like to see the plan drawn up by a landscape architect and be submitted by September 1, 2009. In regards to condition 8, **Boardmember Boucher** feels uncomfortable with the way that staff has worded the condition; he would like to strike the condition because he doesn't feel that the applicant should be forced to repair the entire street. In regards to condition 9, **Boardmember Cox** feels that the culvert should be removed because this is causing a big runoff and retainage problem. If the ditch was open it would help alleviate the runoff problem. **Boardmember Nelson** feels that the owner should have to retain the water on site. **Boardmember Nelson** asked if the board would be amenable to having some other solution to this problem without uncovering the ditch. **Ms. Cromwell** explained to the Board that there is no storm water drainage system on Shady Lane. The ditch used to act as the storm water drainage. If the ditch remains covered then a hole would need to be cut in the culvert to allow in storm water. **Boardmember Boucher** would like to see a condition that will allow the ditch to remain covered and find some other solution to the storm water retention. **Ms. Cromwell** stated that the landscape plan and soil erosion plan can encompass the storm water retainage and drainage plan. **Ms. Cromwell** stated that condition #9 was crafted because the High Ditch Company said that they do not want the ditch in a culvert. If the High Ditch Company is amenable to some other plan then perhaps a compromise can be reached. **Boardmember McKinney** feels that conditions 6 and 9 go together and should be combined somehow. **Boardmember Boucher** feels that the variance should be conditioned to require an agreement to be reached between the applicant and the High Ditch Company. **Boardmember McKinney** would like to see another condition to fix the trench on Mr. Vermillion's property.

The board went through the conditions and decided upon the following changes: (complete conditions listed above)

1. Same as staff recommended
2. Allow for 50% lot coverage instead of 43%
3. Exclude the words "Exclude Phase 3"
4. Same as staff recommended
5. Same as staff recommended condition but change deadline to September 1, 2009
6. Same as staff recommended
7. Same as staff recommended but incorporate a storm water retention/runoff plan and change deadline to September 1, 2009
8. Substitute staffs recommendation with Mr. Steven's proposed condition 8
9. The applicant must remove the culvert for the High Ditch that was installed without permission or secure written permission from High Ditch Company to retain the existing culvert on or before April 1, 2009. The applicant shall work directly with High Ditch Company to fix leakage. Work will be accomplished as agreed to on or before May 1, 2009.
10. Same as staff recommended

11. Same as staff recommended
12. The applicant must at the conclusion of the project restore the trench at the northern property line and into the cul-de-sac to its original condition.

Other Business:

Adjournment:

The meeting was adjourned at 9:16 p.m.

Troy Boucher, Chairman-Pro-Tem

ATTEST:

Elizabeth Allen, Planning Clerk