

These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on August 17, 2015.

MINUTES OF THE WYOMING BOARD OF ZONING APPEALS  
HELD AT WYOMING CITY HALL

July 20, 2015

The meeting was called to order at 1:30 P.M. by Chairman VanderSluis.

Members present:    Beduhn            Lomonaco        Meeter  
                                 Palmer            Postema         VanderSluis

Other official present:        Tim Cochran, City Planner

A motion was made by Palmer, and seconded by Meeter to approve the minutes of the July 6, 2015 Board of Zoning Appeals meeting.

Motion carried:        7 Yeas            0 Nays

PUBLIC HEARING:

Appeal #V150033                    P.P. #41-17-09-476-036  
Chris Weller  
2499 28th St. S.W.  
Zoned B-2

The application requesting three variances from the City of Wyoming Zoning Code was read by Secretary Lomonaco as follows:

Zoning Code Section 90-895 Requirements for Special Uses requires a motor vehicle sales lot with an established building to have a minimum seven foot wide greenbelt in the front yard. The petitioner desires to establish a car lot with no greenbelt provided. The requested variance is to waive the required seven foot greenbelt.

Chairman VanderSluis opened the public hearing.

Chris Weller, 2525 Chicago Dr. S.W., spoke on behalf of Calvin's Car Lot. Grandville Calvin Christian Schools would accept used cars and resell them. The business would be staffed by volunteers. The property has been vacant, and the owner of the neighboring property purchased 2525 Chicago Dr. S.W. Calvin would be leasing the property and making improvements to the building. The reduction in greenbelt is requested because it would be difficult to display cars in the front lot otherwise. There would be up to 10 cars with one row of five with a second row of five behind them.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran said the project had received special use approval from the Planning Commission. The current zoning standards were based on used car sales on Division. Many of those businesses were parking cars on the sidewalks. The required seven foot greenbelt separated cars from the sidewalk. Referring to an aerial photograph, Cochran pointed to the existing sidewalk, which is only one foot from the right of way. A seven foot green belt would eliminate the use of the front parking lot area. This size of this small lot makes this a unique situation. Staff supported the request for a variance from the front yard greenbelt and had formulated Finding of Facts for the Board's consideration.

A motion was made by Lomonaco and seconded by Meeter that the request for a variance in application no. V150033 to waive the required seven foot greenbelt be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because on June 16, 2015 the petitioner received approval from the Planning Commission to establish a used car lot on this property. Zoning Code Section 90-895 Requirements for Special Uses requires motor vehicle sales lots to have a minimum seven foot wide greenbelt in the front yard to separate the vehicles from the street right-of-way. This property was developed prior to the widening of 28th Street to five lanes. The 28th Street right-of-way extends into the parking lot. It is impossible to provide the seven foot greenbelt and maintain use of the property. All vehicles for sale will be placed near the building.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the authorization of the requested variance allows a reasonable use of this obsolete commercial property to occur.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed use of the property will be a viable use and improvement to the property. It will not diminish the overall marketability of adjacent land. The authorization of the variance will have no impact on traffic.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the existing situation with the parking lot within the right-of-way is unusual and would not make practicable the formulation of a general regulation.

Motion carried:           6 Yeas           0 Nays

Zoning Code Section 90-894 (5) Nonresidential Districts requires a six foot solid fence to be placed between a business zoned district and a residential zoned district. There exists an open woven wire fence between the subject B-2 General Business zoned property and the R-2 Single Family Zoned property to the north. The petitioner proposes to place privacy slats within the existing fence in lieu of the solid fence. The requested variance is to allow the alternative screening fence.

Chairman VanderSluis opened the public hearing.

Mr. Weller explained that although the ordinance requires a solid fence or masonry structure to serve as a barrier between commercially zoned property and residentially zoned property, the school located to the north of this property already has a fence erected. Instead of erecting a second fence next to it, which would leave an area where weeds could grow, he has spoken with the school and proposes putting slats in the existing fence.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran noted the existing fence is a woven wire fence that belongs to the Potter's House School. That property is zoned residential, while the properties on 28<sup>th</sup> Street are zoned commercial. Normally commercial properties have solid fences to shield the residential properties. This fence is wound around the school property. Staff supported the variance request to waive the solid privacy fence, using the alternative fencing proposed.

Beduhn asked about the height of the existing fence.

It was determined the fence was over 4'.

A motion was made by Meeter and seconded by Lomonaco that the request for a variance in application no. V150033 be granted, accepting staff's Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district. Zoning Code Section 90-894 (5) Nonresidential Districts requires six foot high solid fence between commercial districts and residentially zoned properties. Several commercial properties align the north side of 28th Street in this area. Potter's House School is located behind them and is in an R-2 Residential District. A woven wire fence exists between the two properties. The petitioner proposes to install slats into the fence to provide screening. This treatment would provide adequate screening. Other adjoining uses also bordering the school do not provide the solid fencing. The construction of a solid fence would be of marginal benefit, would be incongruous with adjoining fencing, and would be an undesirable expense. The City addresses fencing, and other similar ordinance concerns, at the time of development proposals.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the authorization of the requested variance allows reasonable alternative screening to the adjoining property and contributes to the viability of the proposed reuse of this obsolete commercial property.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the proposed use of the property will be a viable use and improvement to the property. It will not diminish the overall marketability of adjacent land. The authorization of the variance will have no impact on traffic.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or

situation because the existing situation with the long term buildings and fencing is unusual and would not make practicable the formulation of a general regulation.

Motion carried:           6 Yeas           0 Nays

Zoning Code Section 90-647 (2) (a) Off Street Parking Facility Design requires all parking lots and vehicle storage areas to be paved with an asphalt or concrete binder, and shall be graded and drained so as to dispose of surface water which might accumulate. The petitioner proposes to establish a vehicle storage yard with a crushed asphalt or milling surface. The requested variance is to allow the alternative surface for the vehicle storage yard.

Chairman VanderSluis opened the public hearing.

Mr. Wheeler wanted to use millings instead of the required paving because it was inexpensive and was a better solution for drainage on the property. The millings would allow for slow surface drainage and filter the pollutants from the water before ultimately going into the ground water. He did not want to pave over the existing septic systems which is located on the east side of the building. Using millings would also reduce the surface temperature. He demonstrated the draining properties of the millings by pouring a cup of water over a small container of the millings.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran explained the code standard had been enacted in response to the car businesses on Division. Dating from the township days, many had only been dirt and gravel. The City required pavement. The existing businesses at the time were forced to pave existing lots. Currently equipment storage does not require a paved surface however parking lots for cars and trucks are required to be paved. Any new pavement is required to capture water run-off. This zoning standard has been the norm for many years. While he personally understood the School's position, in order to be consistent with new development City staff cannot support this variance request. He cited the following findings.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district. Zoning Code Section 90-647 (2) (a) Off Street Parking Facility Design requires all parking lots and vehicle storage areas to be paved, graded and drained. This applies to the entire City in all zoning districts. The petitioner desires to use the rear of this property for vehicle storage and access into the building for preparation for sale. It is proposed that millings or crushed concrete be used for this surface. Staff is concerned that authorization of the variance could be used for justification of similar application in other situations. The proposed variance appears to be an economic situation. There are no exceptional or extraordinary conditions that are applicable to the property that distinguish it from other properties in the vicinity or district.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the property can otherwise be developed in conformance with the

requirements of the Zoning Ordinance and is not necessary for the preservation and enjoyment of a substantial property right.

3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the authorization of the variance will not diminish the overall marketability of adjacent land, and will have no impact on traffic.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the City requirement for paving of parking surfaces dates back several decades. It was created to upgrade properties, improve storm water management, and reduce dirt on public streets. The condition of this property, and its intended use, is not of a general or recurrent nature as to make practical the formulation of a general regulation.

A motion was made by Beduhn and seconded by Lomonaco that the request for a variance in application no. V150033 be granted, accepting Staff's Finding of Facts.

Meeter asked where the drain field was located.

Mr. Weller indicated the location of the septic system and drain field by pointing to the location on the aerial photograph.

Meeter then asked if paving over the septic system would impair its operation.

Cochran was not able to answer the question.

Palmer noted that if the septic failed the property would be required to hook up to the City sanitary system.

Cochran agreed.

Mr. Weller was told the septic system needs to breathe.

Postema asked where the millings would be used.

Mr. Weller said millings would only be used behind the fenced area, in the rear of the property. The cars would be brought in from the side and be stored in the rear while waiting on title work. Only ten cars in the front would be displayed for sale.

Lomonaco asked if possibly that there might ever be more than ten cars ready for sale, with some parked in the back.

Mr. Weller acknowledged that was a possibility.

Cochran noted that since the vehicles were driven onto the lot, for all practical purposes this would be a parking lot as opposed to a storage area.

Palmer thought the millings would make sense in regards to drainage.

Cochran noted a leeching basin could be installed.

Lomonaco could see the variance setting precedence. She did not think the reasons for the variance as this point were a good reason to grant the variance.

Postema thought the property was unique in the fact that they currently have a drain field. The rear property cannot be accessed from that area without driving over the septic system and drain field. There are not many parcels that are not currently connected to the City sewer system.

Chairman VanderSluis thought the location of the drain field could be used to support granting a variance.

Beduhn withdrew his original motion.

A motion was made by Beduhn and seconded by Postema that the request for a variance in application no. V150033 be granted, and formulated the follow Finding of Facts.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because the location of the septic system constitutes an extraordinary circumstance.
2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the past history of the property, the length of the vacancy and because the property would be difficult to use without the variance.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets. The variance would allow for improvement to the property.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because of the drainage situation. Most properties are connected to the sanitary sewer for drainage.

Motion carried:           6 Yeas           0 Nays (Resolution #5585)

PUBLIC HEARING:

Appeal #V150034           P.P. #41-17-370-476-009  
American Kendall Properties, LLC  
5101 Wilson Ave. S.W.  
Zoned ER

The application requesting a variance from the City of Wyoming Zoning Code was read by Secretary Lomonaco as follows:

Zoning Code Section 90-58 (2) a. Refuse Disposal requires apartment projects to provide dumpsters within 200 feet from the entrance to any building. The petitioner is constructing an apartment development that is proposed to have a single trash compactor serving the entire apartment project. The requested variance is to allow the single trash compactor in lieu of several dumpsters.

Chairman VanderSluis opened the public hearing.

Mike Speedy, American Kendall Properties, LLC, explained the City's ordinance does not recognize the use of trash compactors even though trash compactors have been in use for twenty years. A trash compactor will enhance the quality of the development. Dumpsters are noisy, smell and unattractive. The compactor is located in an enclosed structure designed to blend with the design of the complex, and is located in a convenient location to drop off trash. The compactor is environmentally friendly. After sensing seven deposits it automatically compacts the trash. When the container is full, a signal is sent to the hauler to remove the container. This reduces the need for scheduled pick-ups. A trash compactor is good for air quality. Dumpsters use areas that could be used for green space. One compactor leaves only one area to keep clean, so the complex can use staff to focus on other issues.

Karen Harris, 5080 Wilson Ave. S.W. had concerns of the location of the compactor. She thought it should be placed further north. It would add to the noise. Plus she was concerned whether more trash would be blown into her yard. She worried there would be a smell, and she believed it would be ugly.

Jim Kemink, 5126 Wilson Ave. S.W. indicated the location of his house in reference to the proposed compact site. He was also concerned with noise and smell.

Leonard Geerly, caretaker for 5101 Wilson said there was a misunderstanding about the compactor. It would be fully enclosed and only removed when full. That would eliminate the need for daily pickup.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran noted compactors are used by upscale apartment complexes. The City of Wyoming has not had dealings with upscale developments like this in the past. He added the development has already been approved by the Planning Commission and City Council. Currently the code would require one dumpster within 200' of every door. This would result in a number of dumpsters on site. The compactor would be an improvement to the complex. He was not aware of any issues regarding odor from a compactor, but the fact it is fully enclosed should minimize any issues. The City had not envisioned the use of compactor but there is merit to possibly changing the code in the future. Staff supports the variance request, and provided Finding of Facts for the Board's consideration.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because on June 16, 2015 the petitioner received

approval from the Planning Commission to construct The Haven, an upscale apartment development. An integral part of the development is to have one trash compactor to serve all residents, rather than dumpsters scattered throughout the complex. The single compactor is an enhancement to the aesthetics of the complex and will also serve to reduce errant trash.

2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the authorization of the requested variance allows for an improved design and function of the apartment complex.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the authorization of the variance will have no impact on adjacent land or on traffic.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because The proposed upscale apartment development will be the first to use a compactor within the City. Until such situation becomes recurrent, it does not make practicable the formulation of a general regulation.

A motion was made by Lomonaco and seconded by Meeter that the request for a variance in application no. V150034 be granted, accepting staff's Finding of Facts.

Lomonaco said she has personally seen a trash compactor. The trash cannot blow out and a number of pickups are eliminated. A compactor is better than a number of dumpsters. She did not notice any smell associated with the compactor.

Palmer asked if there was any chance the location could be relocated.

Cochran said the location was central as the clubhouse and mail pick-up area are located in the same area.

Postema asked for confirmation that the City has time restrictions on when haulers can pick up trash.

Cochran confirmed there was an ordinance regulating trash pick-up. (Editor's note: trash pick-up can occur between 6 A.M. and 10 P.M.)

Palmer understood that at the beginning the property would be upscale, but he wondered what would happen if there was a decline of the property.

Cochran said the City would have to re-evaluate the situation if there was any change in the quality.

Motion carried:           5 Yeas           1 Nays (Palmer) (Resolution #5586)

PUBLIC HEARING:

Appeal #V150035

P.P. #41-17-29-302-007

Postema Architects  
4992 Wilson Ave. S.W.  
Zoned RO1

Postema declared he had a conflict of interest, and asked to be excused. A motion was made by Lomonaco and supported by Palmer to excuse Postema.

Motion carried:        5 Yeas        0 Nays

The application requesting a variance from the City of Wyoming Zoning Code was read by Secretary Lomonaco as follows:

Zoning Code Section 90-893 Nonresidential Districts requires a commercial building to have a 30 foot setback from a rear property line. The petitioner is proposing to construct a commercial building that is shown to have up to a four foot rear yard setback. The requested variance is to allow up to a 26 foot reduction to the required 30 foot rear yard setback.

Chairman VanderSluis opened the public hearing.

Richard Postema, Postema Associates Architects, said staff's proposed Finding of Facts cover the issue. The required rear yard setback would be provided by an easement instead of purchasing property. There will be space equivalent to 30'. There is a good access to the Home Depot drive located next to the Big Boy Restaurant.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran noted both the Planning Commission and City Council had approved the proposed development. This had been a home site. When the property to the north was redeveloped, this property was left out. The property had been zoned for office use, but nothing had been proposed. Postema Associates Architects had approached the City with a request to rezone the property for commercial use. The zoning had to be different than that to the north because of the requirements for huge buffers. This lot was too small to meet all standards. There is a 25' greenbelt off Wilson Ave., a small parking lot and a small building. The property line is immediately behind the building. The developers worked with the shopping center owner on easements to make the property work. City staff supported the variance request and provided finding of facts for the Board's consideration.

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property or to the intended use that do not apply generally to other property or class of use in the same vicinity and district because on June 16, 2015 the petitioner received approval from the Planning Commission to construct this retail lease center. The property is unique in that it has a significantly restricted development area. The development of the site only works with the benefit of an access agreement with the adjoining property owner to the north and west. That agreement will allow rear driveway access and parking off-site. The proposed building is shown to be located four feet from the rear property line. The requested variance is to reduce the rear yard setback by 26 feet. The rear property line and ordinance required setback becomes a non-issue to the property owners with the mutual access agreement.

2. That such variance is necessary for the preservation and enjoyment of substantial property rights because the authorization of the requested variance allows for the development of this property. It could not be developed otherwise. The variance provides for a quality design of this commercial site.
3. That the granting of such variance will not diminish the marketable value of adjacent land and improvements, or unduly increase congestion in the public streets because the authorization of the variance will have no impact on adjacent land or on traffic. The rear access agreement provides for improved traffic circulation for the site.
4. That the condition or situation of a specific piece of property, or the intended use of said property, for which the variance is sought is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such condition or situation because the proposed development is unique due to the size of the property and it's relationship to the adjoining major retail center. Such a situation does not make practicable the formulation of a general regulation.

A motion was made by Palmer and seconded by Beduhn that the request for a variance in application no. V150035 be granted, accepting staff's Finding of Facts.

Motion carried:        5 Yeas            0 Nays (Resolution #5587)

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There were no public comments at the meeting.

There were no new business items.

Cochran introduced Matthew Buist, the newly appointed Board members to the rest of the Board.

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Canda Lomonaco  
Secretary

CL:cb