

CITY OF DE SOTO
BOARD OF ZONING APPEALS

City Hall, 32905 West 84th Street
Tuesday, June 21st, 2004, 6:30 P.M.

MINUTES

1. The meeting was called to order by Chairman Joe Webb at 6:30 p.m.

2. Roll Call: Sedgwick Present
Zimmerman Present
Webb Present

3. **Agenda Items:**

- A. Consider a variance to Article 4, Paragraph 6 on page 33 of the Zoning Regulations defining minimum front and rear lot setback requirements. The .38-acre parcel is located at 31950 W. 83rd Street.

Chairman Webb opened the public hearing. The applicant, Phil Ruttan, introduced himself and owner Craig Rickard. They purchased the property in the late nineties and have failed to rent or sell it due to the very narrow building envelope. There is a prospective buyer now, an engineering firm with five employees, that is very promising. The proposed variance will allow for the construction of a new building that is the same depth as the existing building. The existing building is 35-feet in depth, 15-feet from the front property line and 10-feet from the back. Board member Sedgwick inquired of the stability of the soil at the rear of the site. Mr. Rickard responded that he believes it is stable.

City Engineer Mike Brungardt said a string of potential buyers have contacted staff about the property. The previous gasoline station use was abandoned; any new use cannot be grandfathered in and would require a site plan. The structure is legally non-conforming, and may remain if the degree of non-conformity is not increased. Due to the setbacks for the "C-2" district, the building envelope is only 15-feet deep. The building cannot be expanded to the north or south. Due to these limitations, staff and the Planning Commission have encouraged the applicant to seek a variance.

Brungardt continued that regarding the criteria used in considering variances, staff did not draw any conclusions on the hardship or spirit and intent criteria because they are subjective in nature. He directed the Board to the applicant's statement of hardship, submitted as Exhibit B. The site is believed to be unique because the extreme narrowness of the lot is not seen elsewhere and therefore would not set a precedence for other properties. Regarding impact to adjacent properties, the vegetative buffer and

change of elevation present to the north and east will help to mitigate this.

Lisa Briscoe, Planning Consultant with Patti Banks Associates, noted that the Comprehensive Plan gives guidelines for the site in three areas. It is located in a secondary gateway, the purpose of which is to provide primary settings that are unique and inviting. These areas have specific criteria that dictate the quality of development that takes place. Secondly, the subject property is not located in an area targeted for commercial growth. It is disjointed from other commercial activity by the intersection and Kill Creek. Lastly, it is located within the transitional development overlay, which calls for additional consideration as well.

Sedgewick said he envisions something that will beautify the City, and not simply be another building and parking lot. He is concerned because if this business is not successful, any number of commercial activities could go in there. Sedgewick discussed with staff the future plans for 83rd Street. Brungardt stated that there is adequate right-of-way for the addition of lanes and even a roundabout if needed in the future. The subject property is north of a 40-foot strip of right-of-way, and extensive right-of-way extends to the south of 83rd Street. There has been some discussion of vacating right-of-way at the location, but he does not recommend this at all. He would recommend granting a larger variance to the rear of the property to provide more setback in the front.

Sedgewick asked staff about the structural safety of moving the building nearer to the slope along the rear of the property. Brungardt responded that they may need engineered fill or structural support. The area is heavily vegetated; if the vegetation is removed it may not be as stable. Any problems would be dealt with during the site planning and permitting process.

Board member Zimmerman stated that from a historical perspective, there has been a business at the location for 75 or more years. An attractive business there would be an indicator that you've reached town. Mr. Ruttan showed the Board a drawing provided by staff. He stated that 35-feet was the minimum that potential buyers have said they could live with. He has no problem with shifting the building to the rear of the property a bit more. There is plenty of room for green space and landscaping in the front right-of-way.

Frances Lawhead, 31860 W. 83rd St., stated that she owns property to the north and east of Mr. Rickard's. She would be opposed to a public amenity such as a fountain at the location which would attract more people. A less intensive use would be better at the site because the intersection is unsafe. She believes that the bank in back is plenty stable.

Charles Lawhead, 31760 W. 83rd St., stated that the property is an eye sore and something needs to be done. He does not agree with giving away right-of-way. Mr. Ruttan responded that they are only requesting for reduced building setbacks on their own property.

Chairman Webb closed the public hearing. He explained the decision process, and read the criteria aloud for the Board.

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| A. | Uniqueness: | Sedgwick | Yes |
| | | Zimmerman | Yes |
| | | Webb | Yes |
| B. | Adjacent Property: | Zimmerman | Yes |
| | | Sedgwick | Yes |
| | | Webb | Yes |
| C. | Hardship: | Webb | Yes |
| | | Zimmerman | Yes |
| | | Webb | Yes |

Sedgwick asked if the Board should be considering a modified variance. Chairman Webb replied that changes or conditions may be addressed in the motion. Brungardt stated that the Board has authority, with the applicant's consent, to vary the degree of the request. It might be best to reflect in the record that the applicants have consented before making further findings.

After some discussion, Mr. Ruttan and Mr. Rickard verbally consented to amend their appeal from a 15-foot variance to the front yard and 10-foot variance to the rear yard setback to a 5-foot variance to the front yard and 20-foot variance to the rear yard setback.

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| D. | Public Interest: | Zimmerman | Yes |
| | | Sedgwick | Yes |
| | | Webb | Yes |
| E. | Spirit and Intent: | Sedgwick | Yes |
| | | Zimmerman | Yes |
| | | Webb | Yes |
| F. | Minimum Variance: | Sedgwick | Yes |
| | | Webb | Yes |
| | | Zimmerman | Yes |

Motion by Mr. Zimmerman to grant the variance of the described property by altering the rear yard from 20-feet to 5-feet and front yard from 25-feet down to 20-feet; second by Sedgwick.

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| Roll call: | Sedgwick | Yes |
| | Zimmerman | Yes |
| | Webb | Yes |

Motion carried.

4. Motion for adjournment by Mr. Zimmerman at 7:24 p.m.; second by Webb. All approved by “ayes”.

Respectfully submitted:

Kim Gordanier
Planning Coordinator