

BOARD OF ADJUSTMENT

MINUTES

June 12, 2023 @ 5:00 p.m.

The Board of Adjustment held a Special Called meeting on Thursday June 12, 2023 at 5:00 p.m.

Members Present

Wendell Miller, Chairman
Don Jacimore, Vice Chairman
Wayne Cummings
Josh Stroud
Justin Cothren

Members Absent

NONE

Visitors Present: Mayor Fred Teague, City Planner Sara Jondahl, Planner I Victoria Marchant, and, David Garza.

Welcome Visitors

The First Order of Business is a Variance from Articles 3.22.5.2, 3.22.5.5, 5.5.4, 5.8.4, and 7.8.7 regarding commercial building design, landscaping, and signage, located at 1850 N Arkansas. Submitted by Barrett & Associates on behalf of Arkansas Tech University for Pope County EMS. (VARI-0523-000370)

City Planner Jondahl stated this was a Variance request for the new Pope County EMS facility. She stated that they were requesting relief from multiple items in this one Variance request. She stated that the existing conditions were that this is a vacant parcel of land along North Arkansas Avenue adjacent to Fire Station 3 and situated between N Arkansas and Reasoner Lane. North Arkansas Ave is a 4 lane to 5 lane Major Arterial road going from north to south. Reasoner Lane is classified as a collector street as part of the Future Street Master Plan with a connection to Old Highway 124/O Street over the Interstate. City Planner Jondahl stated that currently Reasoner Lane is not improved to a local residential standard. The current zoning of ATU is R-3 Medium High Density Residential with properties north of Reasoner Lane zoned C-2.

City Planner Jondahl stated that the guidelines staff must review for each variance include the following. Applicant demonstrates that special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands. Non-conforming uses in the area shall not be considered grounds for granting a variance. The application demonstrates reasons that justify a variance and the variance is the minimum to make reasonable use of the land. Make a finding that granting the variance will be in harmony with the general purpose and intent of the zoning code. The board of Adjustment may prescribe appropriate conditions and safeguards.

City Planner Jondahl stated that in item one, the applicant was requesting relief from Article 3.22.5.2 which requires “buildings avoid long uninterrupted facade planes and/or blank walls. Facades greater than 50’ shall incorporate wall plane projections... No uninterrupted length of a face may exceed 50’.” The purpose of the code governing wall articulation is to ensure diversity in building designs and prevent the creation of monotonous and unappealing long structures. She stated the request for relief pertains to a specific wall in the structure that primarily faces the roadway and measures “only 92’ long”. City Planner Jondahl stated that it was argued that this wall is considered a “short wall” and that retrofitting it with additional design elements would pose challenges for both the design team and the owner. She stated that financial hardships or challenges cannot be taken into consideration. During the Large Scale Development review, staff made a general statement regarding Commercial Building Design, suggesting that the requirement appeared to be met based on the provided drawings, pending confirmation with the building permit. During the review of the building permit itself, each requirement listed in the zoning code is thoroughly assessed for compliance. At that stage, it was observed that this 92’ wall did not fulfill the specified requirements, as the facade length exceeded 50’. Considering the building’s positioning and the lack of adequate justification, staff did not find sufficient evidence to grant a variance.

City Planner Jondahl stated that in item two, the request was for relief from the screening requirement listed in Article 3.22.5.5 for mechanical equipment. This requires that all mechanical equipment be screened from street view. The applicant is stating that “to screen these fans would require a much higher wall or screen that would not only look out of place but there is a concern the screen would create a backflow situation in which the exhaust would be forced back into the direction of the fan.” City Planner Jondahl stated staff does not want to create a hazardous situation for any of our emergency response personnel, however, staff is not experts on mechanical equipment so enlisted the assistance of a couple licensed professional HVAC and mechanical installers. They expressed doubt regarding the possibility of a backflow scenario caused by using a wall for screening purposes. According to them, ventilation systems always push air in a single direction. Additionally, since the vents are positioned against the taller wall, placing a screen in front of them would not result in any circumstances that could cause air to flow back into the structure.

City Planner Jondahl stated that for item three, the request was for relief in relation to the irrigation landscaping requirements outlined in Article 5.5.4. The current requirement states that a landscaped area should have either an underground sprinkler system, an automatic drip system, or a hose bibb located within 100’ of the area. Originally, the allowance for a hose bibb was intended for small-scale residential or single-family properties, while others were expected to have an automatic system to ensure the survival of the landscaping without requiring staff intervention. Considering that Pope County has a dedicated grounds crew responsible for maintaining their facilities and the utilization of drip bags for tree care until they establish roots, it can be argued that these circumstances are unique to this property and not applicable to others. Therefore, these special circumstances may serve as valid grounds to grant a variance from the standard requirements.

City Planner Jondahl stated that for item four, the building permit plans did not depict the trees along S Arkansas in accordance with the regulations, as they had been previously submitted during the Large Scale Development phase. According to Article 5.8.4, a Street Frontage Buffer zone of 10' is mandated, which should include either 5 shrubs or 2 small trees within this buffer area. As part of the review process, the request was made to demonstrate compliance with the frontage buffer requirements as originally presented during the Large Scale Development and satisfy zoning requirements.

City Planner Jondahl stated that in item five, the city has been requested to acquire the Maintenance Easement Agreement for the Right-of-Way (ROW) instead of assigning this responsibility to the developer. Typically, when a development takes place and there is insufficient ROW, the developer is required to dedicate the additional ROW along their property frontage. Arkansas Tech University has confirmed that Reasoner Lane is under the jurisdiction of the City, meaning that we hold the maintenance responsibility for it. During the Large Scale Development process, the developer was expected to obtain the additional "ROW" for their property, albeit through a distinct process from the usual ROW dedication. It is the developer's responsibility to acquire this Maintenance Easement Agreement from ATU.

City Planner Jondahl stated that regarding the final item, the applicant is seeking relief from the monument sign size limitations. As per Article 7.8.7, monument signs in residential zones are permitted to have a maximum height of six feet. The applicant is proposing a sign that exceeds this limit with a height of eight feet. Although the property is zoned R-3, it's worth considering that it is owned by ATU and is situated along a major, highly trafficked road in town. Given the low probability of development in a residential manner, it would be suitable to consider the regulations for monument signs within commercial zones on this particular property.

Staff recommends approval of the following variance requests relating to Article 5.5.4 and Article 7.8.7 as a result of the findings below

1. The applicant has demonstrated that special circumstances or unique conditions exist that are particular to the property and not applicable to other property's; and
2. The applicant demonstrates justification for variances on these two regulations; and
3. The applicant has met all other variance guidelines.

Staff recommends denial of the following variance requests relating to Article 3.22.5.2, Article 3.22.5.5, Article 5.8.4, and the request regarding dedication of ROW as a result of the findings below

1. The applicant has not demonstrated that special circumstances or unique conditions exist that are particular to the property and not applicable to other property's; and
2. It does not appear that a hazardous situation would be created by placing the screening in front of the venting; and
3. The applicant previously showed compliance with Article 5.8.4 during the large scale development application; and
4. Dedication of ROW or as in this case a Maintenance Easement Agreement is the responsibility of the applicant.

David Garza with Barrett and Associates stated regarding item one they were requesting relief from Article 3.22.5.2 the wall articulation design requirement. He stated that he understood the reason for that requirement for aesthetic reasons, however the article refers to commercial building design and this development was governmental not commercial. Mr. Garza argued that this article would not apply to governmental, institutional, or industrial development. He stated that item two was requesting relief from the screening requirements. Mr. Garza stated that once again this was not a commercial building but rather governmental. He additionally stated the trees that Arkansas Tech University and the applicant had and were planting would screen the likely everything above the window line of the building from the road and therefore screen the mechanical equipment. Mr. Garza stated that item three was regarding irrigation. He stated that both he and staff have pointed out that Pope County has a maintenance crew that takes care of their facilities. He stated that regarding item four, they had revised the plans to include the two smaller trees along the frontage and they were no longer asking for a Variance for that item as they were complying with the request. Mr. Garza stated that regarding item five, Arkansas Tech University has confirmed that Reasoner Lane is under the jurisdiction of the City meaning that the City holds the maintenance responsibility for it. He stated that at the time the Large Scale Development was submitted, they were not aware of that and they were relying on the same thing that the Lofts on Red Hill Lane did. Mr. Garza said that Red Hill Lane is not maintained by the City and is on Arkansas Tech property and therefore a maintenance agreement had to be acquired by ATU for the City to be able to maintain that. He said that in this case it is the opposite and they had already confirmed that the City had maintenance so the maintenance agreement was no longer necessary. Mr. Garza stated that Pope County was partnering with the City and the City was going to do the sidewalk in front of the fire station and Pope County was paying for the sidewalks and all the improvements in front of the new EMS facility. Mr. Garza stated item six speaks for itself and staff had recommended approval on it.

Member Cummings asked for clarification on the right-of-way issue. City Planner Jondahl stated that the difference is that the City had the agreement for the current width of the road and they are widening the road so in order for the City to have the maintenance over the additional widened area they would have to go through the Maintenance Agreement process. She stated that it was similar to the one completed for University Lofts on Red Hill Lane because they had to put sidewalks and storm drainage along Red Hill Lane. She reiterated that the City had a maintenance easement for the existing width of the right-of-way but they needed to dedicate additional for the widening portion that they are doing. Members Cummings asked since Arkansas Tech was the owner of the property that is who the maintenance agreement would be with. City Planner Jondahl confirmed that was correct. Mr. Garza stated that the City Attorney was involved in the right-of-way process with University Lofts and is familiar with that process. He stated that if this had to take place for Pope County EMS, the same process would need to happen for the fire station. Mr. Garza stated that it did not make sense for both the City and the County to have to acquire something that the City is already going to have to do. He stated that they would help the City in any way possible regarding legal descriptions that he could get to the City Attorney for him to process it.

Member Cothren asked Mr. Garza the size of the fans. He stated that they did not want two fans facing Arkansas Ave. Member Cothren stated that in Mr. Garza's report said from the architectural elevations most of the equipment will be screened with the exception of the exhaust fans from the bay zone. Mr. Garza stated that the building sat in the middle of the 18' drop from Reasoner Lane to Arkansas Ave so the bottom floor is already 8' above Arkansas Ave. He stated that the canopy of the trees would visually shield those exhaust fans from view. Mr. Garza said that they may be visible in the winter when there are no leaves but it would be difficult due to the angle drivers would be viewing the building as they came around the curve.

Member Stroud asked Mr. Garza if they were going to be planting some trees in between the ones that were already there. Mr. Garza confirmed that they were and the plans now reflect the landscaping that was submitted with the Large Scale Development.

Member Jacimore asked on Article 5.8.4 they were referencing the trees on S Arkansas, and asked if they were going to have to remove any trees. Mr. Garza stated that they were not going to remove any trees and that the new trees would go in between the existing ones.

Member Cummings asked regarding item two with the wall articulation the wall was considered a short wall even though it was 92' long. Mr. Garza stated that the wall articulation had to be 25% of the wall and the applicant already had 100% plans. He stated that they rely on the Large Scale Development. Member Cummings clarified that the wall articulation would require a redesign. Mr. Garza stated that yes it would and since it was a short wall he did not think it was necessary. He again stated that it was not commercial development but instead governmental. Member Jacimore clarified what elevation of the building was being discussed. Mr. Garza stated that they were referring to the north side.

Member Jacimore clarified that the building facade was going to brick. Mr. Garza confirmed that it would be.

Member Cummings asked if that was the side where the bay doors were going to be. Mr. Garza said it was not, that the bay doors were on the east and west sides. He then described the circulation on the site.

Member Jacimore made a motion to approve the application. The motion was seconded by Member Cummings and passed unanimously.

Meeting Adjourned

Chairperson