



MEETING MINUTES

Date and Time: November 15, 2018, at 5:15pm

MEMBERS PRESENT:

B J Davis
Michael Atkinson
John Hyak
James Johnson
Gail Hoad
Mary Ann Wyatt
Brian Rokyta
Julia Welder

Absent

Jill Trevino

STAFF PRESENT:

Development Services:

Julie Fulgham, Director of Development Services
Alina Phillips, Planning Manager
John Johnston, Development Engineer
Lila Foster, Planning Technician

City Manager's Office

Charmelle Garrett
John Kaminski

City Attorney's Office:

Thomas Gwosdz, City Attorney

A: CALL TO ORDER

Chair Wyatt called the November 15, 2018, regular meeting to order at 5:15pm.

B. APPROVAL OF MEETING MINUTES

1. September 20, 2018 – Mr. Johnson made a motion to approve the September 20, 2018 minutes and it was seconded by Ms. Hoad. The motion passed unanimously.
2. October 30, 2018 – Corrections to the minutes of the October 30, 2018 Special Meeting were made by Chair Wyatt. The correction changes the minutes to state the meeting was called to order by the Chair, not Vice-Chair. Ms. Welder made a motion to accept the minutes as corrected and it was seconded by Mr. Atkinson. The motion to approve the minutes as amended passed unanimously.

C. CITIZEN COMMUNICATION

Mayor Paul Polasek was recognized and stated that he was there to thank the Commission for their service on the Planning Commission. He regretted not being able to attend the joint session with City Council on October 30th, but he appreciates the tough role the Commissions can sometimes have, and he truly appreciates the time the Commissioners spend in service to the City.

D: DEVELOPMENT REVIEWS/FORMAL ACTION

1. **Variance Request for Spring Ridge Subdivision Resub. No. 2** – Request for Variance to City Code for a tract legally described as being 1.07 acres and being part of Spring Ridge Subdivision Lot 3,

Block 1 located at 97 Brook View Drive; Robert M. Shaffer Living Trust & Separate Property Trust – Robert M. Schaffer & Nancy A. Chandler, Trustees (owners); Urban Engineering (agent).

.A variance request to Section 21-82(c)(5) *Single Family residential detached, rural subdivision, Minimum interior side yard setback* which requires the interior side yard setback to be 10 feet.

a. Staff Report presented by Julie Fulgham

The subject property is not located within the city limits of Victoria, Texas. The property lies within the City of Victoria's Extraterritorial Jurisdiction. Subdivisions created in the city's extraterritorial jurisdiction are subject to the city's Subdivision Ordinance, based on an inter-local agreement between the City of Victoria and Victoria County. The property is a 1.07-acre lot located at 97 Brook View Drive and was developed into a single-family residential lot within the Final Plat Spring Ridge Subdivision filed in 2009.

During the subdivision process, subdivision blocks and lots, infrastructure, utilities, easements, and building setback lines are established. A plat was submitted to the City for review and approval. The plat was approved by the City; it was filed with the County Clerk's office for their records. The current building setback lines established for the subject property by the recorded plat are as followed: 50' front yard setback line, 5' interior yard setback lines and 20' Drain and Utility Easement in the back yard.

The applicant is requesting a variance to the minimum interior side setback in order to replat this lot with a 2.5' interior side setback rather than the minimum 10' interior side setback currently required by the Subdivision Ordinance. The applicant is requesting this variance to satisfy their mortgage company's requirements since there is an existing garage structure encroaching in the currently platted interior side setback. When the garage structure was built on this property, the owner was not required to pull a building permit to construct it on their property because the City of Victoria does not have authority to issuing building permits for properties located outside of the city limits or enforce setbacks established by plats on property located outside of the incorporated limits of the City of Victoria.

The variance would allow the owners to have a 2.5-foot interior building setback line only in the area of the existing garage. The variance, if approved, would allow the owners to have a 2.5-foot interior building setback line versus the 10-foot interior building setback line as required by the Subdivision Ordinance or a 5-foot interior setback line as established by the Spring Ridge Subdivision plat.

The subject property is not located within the city limits of Victoria, Texas. The property lies within the City of Victoria's Extraterritorial Jurisdiction. Subdivisions created in the city's extraterritorial jurisdiction are subject to the city's Subdivision Ordinance, based on an inter-local agreement between the City of Victoria and Victoria County. The City of Victoria does not have authority to issuing building permits for properties located out of the city limits or enforce setbacks established by plats on property located outside of the incorporated limits of the City of Victoria. Rural residential subdivision lots must be a minimum of one acre in size if there is an absence of public water and wastewater facilities. The subject property is 1.07 acres. The intent of setback lines is to provide a minimum amount of open space and prevent the conflagration of structures in an urbanized area. Staff believes the low density of the Spring Ridge Subdivision, in addition to the lack of regulatory authority concerning the construction of buildings located outside of the City limits, creates a unique condition and circumstance. For these reasons, staff would recommend the approval of this variance.

In answer to Mr. Hyak's question concerning the amount of information sent from adjoining property owners, Ms. Fulgham stated that the Planning Commission is only looking at the setback variance associated with the plat and that the information given to the Commission from adjoining property owners covers many other issues. The City only has authority over platting requirements in the ETJ and does not regulate any sort of building or construction activity in the ETJ. If there are any other issues such as building encroachments or other construction issues then those will need to be enforced privately through the deed restrictions, or if there are easements, then Victoria County may be able to enforce issues related to that.

b. Public Hearing - Grant Van Meter 129 Brook View Victoria, TX 77904

Mr. Van Meter stated that he owns the property adjacent to the subject property. He stated that when Bob Shaffer came to him and told him of plans to build a metal shop, he explained to him that this was a deed restricted neighborhood and that whatever the deed restrictions allowed is what he could build. Mr. Van Meter also stated that he made the HOA president Brad Blanton aware of the situation.

Mr. Van Meter further stated he is not aware of what went on between Mr. Shaffer and Mr. Blanton, but construction began the following January and he assumed the HOA president would do his due diligence when researching this and since Bob (Mr. Shaffer) is an engineer by trade and it was his feeling he should have known better.

Mr. Van Meter explained that the applicant wanted to build right on the building line and any prudent person would know that a survey is required, and he didn't get a survey. Since then, a survey has been done and showed he was over on the building line. Mr. Van Meter believes there are issues with propane tanks, with sanitation easements in the front of the garage and his driveway. He asked how the Commission can grant a waiver when they don't have the authority to force a survey, but when someone make a mistake because they didn't get a survey they can come to the planning commission and ask for an out?

In response to Commissioner Davis' question, City Attorney Gwosdz stated that the issue of whether the Home Owners Association has approved a variance to their deed restrictions is a separate issue that is not before this Commission. The Commission's sole decision is to determine if this variance is appropriate to the plat.

In response to the fire concern posed by Commissioner Davis, Ms. Fulgham stated that normally it is a three (3) foot rule but that it can be reduced depending on the materials. This property is constructed with a metal roof and hardy plank which has the same R factor as brick, but these fire codes apply to properties within the City only and do not apply in this case.

c. Variance Deliberations and Action

A motion to approve the variance was made by Ms. Welder and seconded by Ms. Hoad. Commissioners Atkinson, Hoad, Rokyta, Welder voted to approve the variance and it passed. Commissioners Hyak, Davis, Johnson voted against the motion to approve the variance.

2. Variance Requests for McDonald's – Request for Variances to City Code for a tract legally described as

being 0.6887 acres and being part of the Indian Trails Subdivision, Section One, Resubdivision No. 7, Lot 3C located at 7808 North Navarro Street; McDonald's Corporation (owner); Pape-Dawson Engineers (agent).

Variance requests to:

Various sections within Chapter 20:

Section 20-82 (Maximum Number of Driveways), Section 20-83 (Location of Driveways), Section 20-90 (Nonconforming Driveways), and

Various sections within Chapter 21:

Section 21-64 (Building Setback Lines), Section 21-92 (Off-Street Parking Requirements, General), Section 21-96 (Queuing Spaces), and Section 21-101 (Landscaping).

a. Staff Report

The subject property is located at 7808 North Navarro Street and is owned by McDonald's Corporation. The site is developed with an existing McDonald's Restaurant. The property owner is proposing to tear down the existing restaurant and rebuild a new restaurant, which is 885 square feet larger, on the existing site. The applicant is requesting a total of seven variances which includes variances to the following sections: Section 20-82 (Maximum Number of Driveways), Section 20-83 (Location of Driveways), Section 20-90 (Nonconforming Driveways), Section 21-64 (Building Setback Lines), Section 21-92 (Off-Street Parking Requirements, General), Section 21-96 (Queuing Spaces), and Section 21-101 (Landscaping).

The following sections of Chapter 20, Streets, Sidewalks, Curbs, and Gutters are the sections requested to be varied from:

Section 20-82- Maximum Number of Driveways

(b) A commercial or multifamily land use on a street other than a freeway shall be permitted access only in accordance with the following:

(1) A driveway onto a street from a land use with less than two hundred (200) feet of frontage on that street shall be permitted in accordance with special conditions established by the director in accordance with section 20-91

Section 20-83- Location of Driveways

(d) Successive driveways located on the same property shall be located no closer together than one hundred (100) feet as measured between the adjacent driveway throats or the sum of the adjacent curb radii of the two (2) driveways plus a sixty-foot tangent length, whichever is greater, as shown in figure 20-83(d).

Section 20-90- Nonconforming Driveway

(a) It is the intent of this section that nonconforming driveways be discontinued and that driveways be required to conform to the regulations prescribed herein with nonconforming status applying only under the appropriate circumstances. It is the further intent of this section that nonconforming driveways will eventually be eliminated through the natural course of application of this section and the need for repair and reconstruction or changes in use. Nonconforming status is intended to be a status to prevent a property owner from having to pay to bring a driveway into compliance with newer

regulations after its original construction. Nonconforming status is not intended to guarantee a driveway will avoid alteration.

(b) Any driveway access that does not conform to the provisions of this chapter but legally existed as a conforming driveway prior to May 1, 2010 may be permitted to continue as a nonconforming driveway until:

(4) A driveway is reconstructed as defined by Section 20-80; or

(5) Any development that is required by the City Code to be accompanied by a site plan.

Additionally, the applicant is requesting variances to the following sections of Chapter 21, Subdivision and Development:

Section 21-64- Building Setback Lines

Building setback lines, as specified in Article III, Division 1, Development Guidelines, shall be provided for every lot. Such lines shall be drawn on the preliminary and final plats. When public utility easements in excess of the setback requirements exist or are established on a lot, the building setback lines shall be adjusted to conform, at a minimum, to the easement dimensions. No building permit or building moving permit shall be issued for a building which will encroach any minimum building setback line. Except the owner of two (2) adjoining residential lots may obtain a building permit to construct a house or structure across the interior building setback lines of the recorded lots.

Section 21-92- Off-Street Parking Requirements

(a) Off-street parking required. At the time that any building, use or structure is initiated, erected, enlarged or converted from one (1) land use to another land use which requires an increase in the number of parking spaces, off-street parking facilities shall be provided in accordance with these regulations for the use of occupants, employees, visitors and patrons. The provisions of this section shall not apply to properties located within the designated Downtown Business District, as described in Section 5-149 of the City Code.

(c) Amount of off-street parking spaces required: the required number of off-street parking spaces for any building, use or structure shall be determined by the list of land use classifications and corresponding parking standards contained in Table 3.1, of this section

Table 3.1: Restaurant, fast food 1 space per 100 sq. ft. of gross floor area

Section 21-96- Queuing Spaces

Uses which have drive-through window services shall provide queuing spaces. A fast-food restaurant with drive-through services shall provide a minimum of 5 queuing spaces. For other uses with drive-through services, the minimum number of queuing spaces required shall be determined by the Director of Development Services. Where such queuing spaces are provided, they shall conform to the following standards:

(4) Queuing lanes shall not interfere with parking spaces, parking aisles, loading areas, internal circulation or driveways.

Section 21-101- Landscaping

(d) Landscaped Area Required. A minimum of 10 percent of the total building site, as defined herein, shall be devoted to landscaping; except that the square footage of all portions of the building site covered by buildings footprints or areas designated as fenced and secured storage areas shall be subtracted from the building site area prior to making the 10 percent calculation. At least 70 percent of the required landscaped area shall be located within the street yard, as illustrated in Figure 3.6 of this section. For multiple-family developments, where it would be more desirable to disperse the

landscaping throughout the site, the percentage of landscaping to be located in the street yard may be reduced by the Director of Development Services.

Chapter 20, Article VI, Driveway Construction Variances:

Chapter 20, Article VI, Driveway Construction sets forth variance procedures in Section 20-91. Variances to driveway regulations differ from variances to the subdivision regulations in that the Planning Commission does not have a set of criteria to measure the variance requests against. The applicant must submit a request stating the circumstances showing that the literal enforcement of such provisions will result in an unnecessary and extraordinary hardship. The applicant's agent has submitted their request and it is attached.

In this situation, the driveways have existed in this configuration since the site was developed with this building in 1995. There are two driveways on a site with only 161.68 feet of frontage instead of the minimum 200 feet of frontage required for two driveways and which are separated by only approximately 60 feet instead of the minimum 100 feet of separation required by the ordinance.

Driveway regulations are intended to reduce the number of potential conflicts between vehicles on a roadway and on an adjacent site and provide adequate ingress and egress to a property while maintaining adequate traffic flow on the adjacent roadway. Prior to the construction of the median in front of this property, there were a high rate of crashes on this segment of Navarro. However, after the introduction of the roadway median, a 36% reduction in collisions occurred between Loop 463 and Broadmoor on Navarro Street. A signalized intersection, to the south of the property, maintains and improves the safety of Victoria Mall's private drive and LaSalle Crossing, a local city street. Signalized intersections improve safety by managing high volumes of motorized traffic and controlling speed on a roadway.

Therefore, staff concludes that the median and signalized driveway, located immediately south of this property, mitigates safety concerns of multiple driveways without adequate spacing due to the inability to make left turns into or out of the driveways and the probability of reduced speeds on the roadway in front of this property because of the signal. However, reducing the number of driveways improves traffic flow (which is a large factor in roadway capacity) on an adjacent roadway. A recent example of a site redeveloped to be in compliance with this article is the Frost Bank site currently under construction south of this property.

Chapter 21, Subdivision and Development Variances:

Variances to Chapter 21, Subdivision and Development must meet the criteria established in Section 21-16. Staff's analysis and recommendation of the requested variances to Chapter 20 is explained below. The criteria established in Section 21-16 is as follows:

- 1) The granting of the variance will not be detrimental to the public safety, health, or welfare, or be injurious to surrounding property;
- 2) The granting of the variance is not based on a hardship which is self-imposed;
- 3) The hardship is not based solely on the cost of complying with the regulation;
- 4) The granting of the variance will not have the effect of preventing the orderly development of other land in the area in accordance with the provisions of this chapter; and

5) There are special or unique circumstances or conditions affecting the land involved such that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of the property.

The property owner has requested four variances to Chapter 21. The requested variances include a variance to the minimum 25-foot front building setback to allow the encroachment of a canopy 3' into the required front setback, a variance to the minimum number of required off-street parking spaces to allow only 32 parking spaces rather than the required 43 parking spaces, a variance to the regulation that queuing lanes shall not interfere with parking spaces, parking aisles, loading areas, internal circulation or driveways; and a variance to the landscaping requirements to allow only 39% of the 70% of landscaping required to be in the front street yard.

While the ordinance does differentiate between a restaurant (1 parking space per 3 seats is required) and a fast-food restaurant (1 parking space per 100 square feet of gross floor area), staff recognizes that a fast food restaurant is a convenience driven business and the functionality of the site is dependent on adequate queuing or parking spaces. The introduction of a second drive-thru order window on this property will reduce the length of the vehicular queue, enhancing functionality. Furthermore, the existence of a rear access point on this property to the Victoria Mall (authorized by a cross-access agreement) allows for even greater functionality and is a mitigating factor in any reduction in the number of off-street parking spaces or in designing parking spaces blocked by queuing space.

Additionally, the applicant has requested a variance to allow for a 3-foot encroachment into the required 25-foot front setback to allow the construction of a canopy. The general requirements of setbacks allow for minor encroachments such as open eaves, cornices, windowsills, or canopies of up to 2 feet. The encroachment of a 3-foot overhang exceeds the minimum standards, when including the exceptions allowed by ordinance, by only 1-foot. This minimum encroachment has little to no effect on the orderly development of land and the intent of setbacks is still adhered to with the structural components of the building located outside of the minimum setbacks.

Lastly, the applicants are requesting a variance to the landscaping requirement that 70% of the required landscaping be located in a street yard, which is defined in the landscaping section as the area of a building site between the street right-of-way line and the actual front wall line of the building. This street yard applies to all sides of a lot fronting a public right-of-way. In this circumstance, there is a unique condition in that the site is located along a private drive, which is signalized. The mall access drive is not a dedicated right-of-way, but functions like one. If the mall access drive were to be viewed as public right-of-way, then the landscaping abutting the side property line would be considered 'street yard frontage' and the landscaping would be in compliance. It is preferable that the landscaping be spread between the street yard frontage on Navarro as well as the mall access drive to prevent corridors devoid of any vegetation.

For these reasons listed above, staff recommends approving the variances to Chapter 21, as requested.

b. Public Hearing

Nathan Billiott of Houston, TX addressed the Commission. He stated he is with Pape Dawson Engineers and is the Engineer of Record for this project. He stated he was before the

Commission to answer any questions. He further stated this property is routinely serviced by 18 wheelers and it is their position that trying to get them in and out the same driveway would prove difficult and to address the traffic backup onto Navarro we are planning to put in 2 drive throughs order lanes.

Variance Deliberations and Action

Various sections within Chapter 20:

A motion to accept the variances to Chapter 20, Driveways, was made by Mr. Johnson and seconded by Ms. Welder. The motion passed unanimously

Various sections within Chapter 21:

A motion to accept the variances to Chapter 21, Subdivision and Development, was made by Mr. Hyak and seconded by Ms. Hoad. The motion passed unanimously.

E: OTHER BUSINESS

Questions and Discussion related to the Joint Meeting with City Council held on October 30, 2018 and the Unified Development Code.

There was some discussion concerning the drafting of the unified development code under Chapter 211 which would allow direct enforcement authority and make it simpler for developers. It was explained that this would not develop a zoning map, but it would allow the city to streamline the process while not creating a zoning map. In reference to Mr. Atkinsons' question about zoning and borders, Mr. Gwosdz explained that the border would be the City limits and not broken into a zoning map as we know it.

The Development Services Monthly Development Report was presented by Ms. Fulgham.

F: ITEMS FROM PLANNING COMMISSIONERS - None

ADJOURNMENT

There being no further business, the meeting was adjourned at 6:08 p.m.

APPROVED: _____
Mary Anne Wyatt, Chairperson
Victoria Planning Commission

APPROVED: _____
James Johnson, Secretary
Victoria Planning Commission