

BOARD OF ZONING APPEALS MINUTES
OCTOBER 17, 2011

The Board of Zoning Appeals met in regular session on Monday, October 17, 2011 in room 802 Municipal Building.

Members present: Mr. Dent - Chairman, Mr. Paschal, Ms. Davis, Vice- Chairman, Mr. Solum, Mr. Dickinson, Ms. Chivers, Mr. Dukes, and Mr. Sims

Also present: Bob Austin, Zoning Administrator; Lois Schmidt, Secretary; Wayne Brown, City Attorney; and Pam Costible, Zoning Enforcement

Absent: Mr. Booker, Mr. Jones, Mr. Oliver and Mr. Mitchell

Chairman Dent called the meeting to order at 2:46 P. M.

1. Minutes from September 19, 2011

A MOTION was made by Mr. Solum that the minutes for September 19, 2011 be APPROVED; seconded by Mr. Oliver. MOTION carried unanimously.

1. Minutes from September 19, 2011

2. Bluewater Engineering, on behalf of Newell Recycling – Section 24-1 requesting a variance to construct a new building for Newell Recycling located at 960 Molly Pond Road approximately 25 feet from the east front property line and also bringing several existing buildings into zoning conformance located on the west side of Molly Pond Road that are situated approximately 10 feet from the west front property line. Newell Recycling owns property on both the east and west sides of Molly Pond Road and the required front setback off either front property line is 40 feet. Tax Map 073-1-091-00-0 Zoned HI (Heavy Industry)

Mr. Bill Quarter, Bluewater Engineering and Richard Riley, Newell Recycling were present on behalf of the petition. Mr. Quarter explained the Newell owns property on both sides of Molly Pond Road and wants to bring the existing buildings on west side into conformance by obtaining a setback variance and obtain a variance to build a new building 245 feet from the front property line on the east side. The new building will be used to drain fluids from scrap vehicles and contain those fluids until they can be transported off site for recycling elsewhere. Obtaining this variance will allow the new building to be constructed out of the floodplain that is on other portions of the subject property.

There were 4 concerned citizens present.

Mr. Paschal asked for more definition of the proposed use.

Mr. Quarter said it will be a pole barn type construction open at one end with the capacity to drain all fluids into containment tanks and then the vehicles will be moved to the scrap yard.

Mr. Riley stated that Newell buys vehicles from insurance yards and tows them to Newell for scrap and reusable parts. This process is currently done but in a much more primitive manner. Logan Oil will do the containment set up and retrieval. This proposed process is much more environmentally safe.

Chairman Dent asked about noise.

Mr. Riley said there would be no additional noise.

Chairman Dent asked about odor.

Mr. Riley said there would be none all piping is rubber booted to eliminate that, this operation will be state of the art.

Ms. Chivers asked the size of the proposed building.

Mr. Quarter stated 175 feet by 50 feet, 8750 square feet.

Mr. Dickinson asked the height.

Mr. Riley said 25 to 28 feet.

Ms. Davis asked if the controlled noise could disturb the neighbors.

Mr. Riley said there are a few residences on Old Savannah that are located near the recycling operation on the west side of Molly Pond Road but there are none close to the property in question for the new building. This request will not cause any increase in noise or smell and might actually improve any that is apparent now.

Mr. Paschal asked how this process was done now.

Mr. Riley said manually with a person piercing the tanks under the car and draining the fluids the new system will be hydraulic with rubber boots to protect against any leakage.

Mr. Dickinson asked how many vehicles could be serviced in a week.

Mr. Riley said 10-50 per week would be the norm.

Chairman Dent asked what the maximum daily capacity of the facility itself.

Mr. Riley said as many as 100 per day.

Chairman Dent asked if they would ever reach that number.

Mr. Riley said he would not speculate.

Mr. Dickinson asked how the vehicles reach Newell.

Mr. Riley said roll-back trucks.

Ms. Davis asked the hours of operation.

Mr. Riley said 8-4 with no after hours.

Ms. Mildred Davis, 101 Kent Street, said she lives nearby and the noise is unbearable with lots of dust she said a sound barrier is needed. She also said the noise lasts until 7:30 or 8:00 P.M. She also complained that there was no notification of recycling operation when it began operation.

Chairman Dent explained that the BZA can only deal with the matter before it today.

Mr. Riley explained that there are 2 separate operations, recycling and salvage. It was a salvage yard long before Newell purchased the property and is zoned accordingly. This operation will have all vehicles removed for the east side and only stored on the west side of Molly Pond Road.

Attorney Brown explained that the neighbors need to contact License and Inspection Code Enforcement to report the noise and they will make determination if a nuisance complaint is warranted.

Ms. Chivers asked if there were any other similar facilities in the area.

Mr. Riley said Commercial Metals across the street from Newell is a recycling business but this vehicle draining is new and will diminish the activity as vehicles will be in/out more quickly.

Mr. Paschal asked if Mr. Riley would be willing to meet with the neighbors to education them.

Mr. Riley said yes. Newell Recycling is a family owned business with 18 operations around the country.

Mr. Dukes asked if there is a contingency plan if there is a spill.

Mr. Riley said the containment facility will have secondary provisions for that event and the building and operation will meet all EPA standards.

Mr. Dickinson asked if the area will fenced and if so how high will the fence be.

Mr. Riley said yes, 8 feet and down Molly Pond Road it will wood with cyclone used on other property lines, electronic security will also be used.

A MOTION was made by Mr. Dukes that the variance be APPROVED; seconded by Mr. Paschal. MOTION carried.

3. Southern Siding, on behalf of Michael West – Section 11-1 – requesting a carport addition in the front yard of 3314 Tobin Street that would be located approximately 17 feet from the right-of-way of Tobin Street where 28 feet is required. Tax Map 122-1-099-00-0 Zoned R-1C (One-family Residential)

Mr. Johnny Crews was present on behalf of the petition. Mr. Crews explained that they want to build a carport at this location that will be in the front yard setback area. He presented pictures of several others in the area.

There were no concerned citizens present.

Chairman Dent asked if the petitioner had the owner's permission to act.

Mr. Crews said yes.

A MOTION was made by Ms. Davis that the variance be APPROVED; seconded by Mr. Dickinson. MOTION carried.

4. R L Hayes Construction, on behalf of Jamie Sinkler – Section 9-1 – requesting a front setback variance from 10.5 feet to 8 feet for a single family residence located at 3122 Bilston Drive (Aylesbury Subdivision) Tax Map 040-3-210-00-0 Zoned R-1A (One-family Residential)

Mr. Roy Hayes was present on behalf of the petition. Mr. Hayes stated that this subdivision has had overall subdivision variances granted to allow for construction but the shape of this lot makes it necessary to ask for relief from that setback line.

There were no concerned citizens present.

Chairman Dent asked if the petitioner had the owner's permission to act.

Mr. Hayes said yes.

Chairman Dent asked if any other area houses have the same setback.

Mr. Hayes said yes or similar and that granting this variance will still keep the house in line with the other homes on the street but the curve of the lot makes it necessary for the variance to allow for the garage.

A MOTION was made by Mr. Sims that the variance be APPROVED; seconded by Ms. Chivers. MOTION carried.

5. Nicole Cooper, on behalf of Birnet Johnson – Section 26-1(g) – requesting that a transition home be allowed at 2059 Clark Street that would be located approximately 775 feet from another semi-institutional use where the Zoning Ordinance requires 1,200 feet of spacing. Tax Map 027-3-044-00-0 Zoned R-2 (Two-family Residential)

Ms. Nicole Cooper was present on behalf of the petition. Ms. Cooper stated that she wants to open a family personal care home at this site that had one previously but that use has lapsed and there is now another one within the 1200 foot distance requirement.

There were 14 concerned citizens present.

Chairman Dent asked if Ms. Cooper had permission to act on behalf of the owner.

Ms. Cooper said she actually has a purchase agreement pending the approval of the zoning.

Chairman Dent asked Ms. Cooper to explain her plans and the term transition house.

Ms. Cooper said her plan had always been a personal care home and while she had approached the VA but did not enter a contract with them and the property will be an assisted living home for up to 6 clients.

Ms. Davis said the advertisement of a transition home was misleading.

Ms. Chivers asked for an explanation of the difference.

Ms. Davis said a transition home has a negative connotation.

Chairman Dent said in his mind a transition house would be for a brief stay but that residents might be leaving another type of program before moving on. Personal care or assisted living would be a long term living arrangement.

Ms. Cooper agreed with that explanation.

Ms. Davis said a transition house can raise warning flags in a neighborhood.

Mr. Paschal asked if there would be 24/7 care.

Ms. Cooper said yes, her patients will have Alzheimer's, Dementia and other ailments, not necessarily just be elderly that will require supervision and care.

Mr. Austin explained that according to the Zoning Ordinance this would still define a Family Personal Care Home and would be processed accordingly.

Ms. Davis wondered if the petition should be re-advertised as a family personal care home to remove any stigma associated with a transition house.

Attorney Brown stated that the explanation by the petitioner of the use is less of a burden to the neighborhood he did not feel that was necessary.

Mr. Austin stated that the other operating semi-institutional use is 775 feet from the subject property on Edgar Street.

Mr. Michael Hensley, Clark Street said that transition home leads people to believe that it could house released convicts or addicts and wants assurances.

Mr. Austin explained that the department would term those as halfway houses and are not allowed to be advertised as a family personal care home.

Ms. Cooper explained that she goes through Caring Together an organization that works to place the elderly and handicapped only.

Ms. Davis asked if the neighbors present would be agreeable to that.

They said yes.

Ms. Dorothy Spivey, 2051 Clark Street wanted Ms. Cooper to be aware of crime in the area.

Ms. Anne Fosse said as a 20 year resident and a register C.N.A. there is a difference to assisted living and personal care home.

Mr. Austin said not in the Zoning Ordinance which is what this petition is requesting a variance from.

Chairman Dent asked if it will be staffed 24/7.

Ms. Cooper said yes.

Ms. Fosse said there is a lot of noise and crime in the area that could be a hazard to the residents.

Ms. Cooper said she will have security, the doors will be alarmed among other measures.

Mr. Butch Palmer said as an area resident and property owner he welcomes the use as it will have eyes always open on the block.

A MOTION was made by Ms. Davis that the variance be APPROVED; seconded by Mr. Paschal.

Mr. Austin explained that the petition will still need a Special Exception before Ms. Cooper can open and the crime stats may be discussed at that time.

Chairman Dent called the question.

MOTION carried; petition APPROVED.

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6. Johnny Bussey – Section 14 – requesting to erect an eight foot fence at 3530 Morgan Road where the Zoning Ordinance limits the height to six feet. Tax Map 129-0-105-00-0 Zoned R-MH (Manufactured Home Residential)

Mr. Johnny Bussey was present on behalf of the petition. Mr. Bussey stated that he was replacing an existing 8 foot back yard fence and continued the fence up the side property line and was notified the fence was too high for regulations. He wants to eliminate the view of his yard from his neighbors. There are bad feelings between the one next door neighbor that have included calls to the police and Social Services regarding Mr. Bussey's care of an elderly woman that lives in the home with him. When he was informed that the fence was too high he stopped the work and applied for the variance.

There were 2 concerned citizens present.

Ms. Davis asked if it is a corner lot.

Mr. Bussey said no.

Chairman Dent asked if the petitioner was aware of the reasons for the bad feelings.

Mr. Bussey said he had formerly rented a home here and had problems then.

Ms. Brenda Jones, 3532 Morgan Road, stated that she objects to this petition. She has lived here for 19 years and is a Vietnam Veteran and she cannot see into Mr. Bussey's rear yard or across his front yard to have a clear view of the street and this affects her feelings of security. She is concerned for her safety since people could be concealed by the tall fence.

Ms. Davis asked if any harm had come to Ms. Jones or her property.

Ms. Jones said no but will block areas of view and she won't be able to see up and down Morgan Road or see if there is an activity behind the tall fence.

Mr. Bussey said he was only continuing the fence to the front corner of the house and presented pictures of the fence he was replacing and the stopping point.

A MOTION was made by Mr. Dukes that the variance be APPROVED; seconded by Ms. Chivers.

Commissioner Dickinson asked for clarification on the pictures.

Mr. Bussey indicated where the fence will stop is where the rock is currently piled up in the pictures.

Mr. Dickinson asked approximately how far that was.

Mr. Bussey said about 12 feet is left to replace and will stop at the front corner of the trailer.

Ms. Jones said she is PTSD victim and cannot be hemmed in.

Ms. Arlene Jones, 3527 Morgan Road lives across the street and said this fence will block the view into the back yards.

Mr. Paschal explained that is Mr. Bussey's right.

Chairman Dent called the question.

MOTION carried; petition APPROVED.

7. Chastagner's Inc., on behalf of Bill Craven – Section 11-1 – requesting a variance for the rear and side setback for a swimming pool located at 1201 Reid Road from 10 feet to 3 feet. Tax map 032-4-042-00-0 Zoned R-1C (One-family Residential)

Mr. Earl Chastagner was present on behalf of the petition. He stated that this is a patio home and the owners want to install a lap pool within the already existing 5 foot brick wall.

There were no concerned citizens present.

Chairman Dent asked if the petitioner had the authority to act for the homeowner.

Mr. Chastagner said yes.

Chairman Dent asked if there had been any neighborhood opposition.

Mr. Chastagner said no in fact one neighbor would like one themselves.

A MOTION was made by Mr. Dukes that the variance be APPROVED; seconded by Mr. Dickinson.

8. Chastagner's Inc., on behalf of Brad Usry – Section 8-4 (b) – requesting a variance to allow a swimming pool wall to be located within 3 feet of the side and rear property line of 1112 Council Drive where 10 feet is required. Tax Map 032-2-165-00-0 Zoned R-1 (One-family Residential)

Mr. Earl Chastagner was present on behalf of the petition. He stated that the homeowner wants to install a 12 x 32 in-ground pool that had been approved previously but had expired.

There were no concerned citizens present.

Chairman Dent asked if the petitioner had the authority to act for the homeowner.

Mr. Chastagner said yes.

Chairman Dent asked if there had been any neighborhood opposition.

Mr. Chastagner said no.

A MOTION was made by Mr. Sims that the variance be APPROVED; seconded by Mr. Dickinson.

9. Chastagner's Inc., on behalf of Carol Warezak – Section 11-1 – requesting a 3 foot side and rear setback for a proposed garden pool located at 81 Bristlecone Lane where the required setback is 10 feet. Also, a retaining wall will be accented and have a height of approximately 10 feet where the Zoning Ordinance limits the height of walls to 6 feet. Tax Map 023-0-129-00-0 Zoned R-1C (One-family Residential)

Mr. Earl Chastagner was present on behalf of the petition. He stated that the homeowner and himself had presented the plans to the homeowners association and obtained approval from the association and the architectural board and presented that in writing.

There were no concerned citizens present.

Chairman Dent asked if the petitioner had the authority to act for the homeowner.

Mr. Chastagner said yes.

A MOTION was made by Ms. Davis that the variance be APPROVED; seconded by Mr. Sims.

10. William Stephens – Section 8-4 (e) – requesting a variance to construct a two story garage in the rear yard of 228 Lafayette Drive. The new 1,536 square foot garage along with an existing shed total 1,761 square feet and this lot is limited to 902 square feet. The height of the structure will be 24 feet. The petitioner is also requesting a separate electrical service. Tax Map 018-0-026-00-0 zoned R-1 (One-family Residential)

Mr. William Stephens was present on behalf of the petition. Mr. Stephens stated that he wants to construct a two story garage on his property.

There were no concerned citizens present.

Chairman Dent asked if any neighbors had commented on the request.

Mr. Stephens said that one neighbor stopped and said he was ok and both immediate neighbors are agreeable.

Ms. Davis asked if he understood he could not have an apartment on the second story of the proposed building.

Mr. Stephens said at first he wanted one for his divorced daughter and her children but understands from Staff that it is not allowed and agrees.

Chairman Dent asked if he still needs separate electric service in that case.

Mr. Stephens said yes for his shop area.
Mr. Paschal asked if there would be any plumbing.

Mr. Stephens said he would like a two fixture bathroom.

Mr. Paschal asked how the City could insure that this did not become a converted living space.

Mr. Austin said we have it on record that the petitioner understands it cannot and Code Enforcement would be called in if it did.

Mr. Stephens said he wants a sink and toilet only , no other fixtures, no kitchen and no bedrooms.

A MOTION was made by Mr. Dukes that the variance be APPROVED; seconded by Mr. Sims. MOTION carried.

11. Church of the Atonement – Section 28-B-7 – requesting a variance to erect an illuminated sign for the Church of the Atonement located at 2616 Tobacco Road that would contain 42 square feet in area and have a total height of 13 feet where the Zoning Ordinance limits the area to 24 square feet and height to 6 feet and only allows indirect incandescent lighting. The church is also requesting a front yard setback variance to have the sign 5 feet from the right-of-way where 10 feet is required. Tax Map 140-0-010-05-0 Zoned A (Agriculture) with a Special Exception

Mr. Curt Miller, Vicar of the church was present on behalf of the petition. Mr. Miller stated that the sign will be 11 feet from the edge of the pavement.

Chairman Dent asked if the sign will be on church property.

Mr. Austin stated that the old placement of the sign was ok before Tobacco Road was widened but after the sign was grandfathered but now that they want to replace it and move it slightly and they must obtain this variance.

There were no concerned citizens present.

A MOTION is made by Mr. Dickinson that the variance be APPROVED; seconded by Mr. Sims. MOTION carried.

MEETING ADJOURNED

