

**AGENDA
CITY OF BENBROOK
ZONING BOARD OF ADJUSTMENT
TUESDAY, JANUARY 24, 2017**

**911 WINSCOTT ROAD
WORK SESSION, 7:15 P.M.
PRE-COUNCIL CONFERENCE ROOM, OPEN TO PUBLIC**

**REGULAR MEETING, 7:30 P.M.
CITY COUNCIL CHAMBERS**

ALL AGENDA ITEMS ARE SUBJECT TO FINAL ACTION

- I. CALL TO ORDER
- II. CONSIDERATION OF MINUTES

Documents:

[ZBA MINUTES2.23.2016.PDF](#)

- III. OATH OF OFFICE
- IV. SELECTION OF CHAIR AND VICE CHAIR
- V. ADJOURNMENT

WORK SESSION FOLLOWING REGULAR MEETING

Board Training

THIS FACILITY IS WHEELCHAIR ACCESSIBLE. FOR ACCOMMODATIONS OR TO INFORM US OF INACCESSIBILITY TO THIS MEETING, PLEASE CONTACT ANDY WAYMAN, CITY MANAGER, AT 817-249-3000. FOR SIGN INTERPRETATIVE SERVICES, PLEASE CALL 48 HOURS IN ADVANCE.

**AGENDA
CITY OF BENBROOK
ZONING BOARD OF ADJUSTMENT
TUESDAY, FEBRUARY 23, 2016**

The regular meeting of the Zoning Board of Adjustment of the City of Benbrook was held on Tuesday, February 23, 2016 at 7:30 p.m. in the Council Chambers at 911 Winscott Road with the following members present:

Don Pilliod
Jason Ward
Jennifer Bond Mundine
Odessa Ellis
Wes Myers

Also Present: Liz Sowell, Board Alternate Appointee
Joel Trott, Board Alternate Appointee
Dave Gattis, Deputy City Manager
Ed Gallagher, Planning Director
Izzy Rivera, Building Official
Johnna Matthews, City Planner
Athena Seaton, Planning Intern
Mr. and Mrs. George Fruzick
Jeff Browning, Premier Homes

I. CALL TO ORDER

Chairman Myers called the meeting to order at 7:30 p.m.

II. CONSIDERATION OF MINUTES

Regular Meeting, January 26, 2016

Motion made by Ms. Mundine to approve the minutes of the January 26, 2016 Zoning Board of Adjustment meeting as presented. The motion was seconded by Mr. Pilliod. The Chair called the question.

Vote on the Motion:

Ayes: Mr. Pilliod, Mr. Ward, Ms. Mundine, Ms. Ellis and Mr. Myers

Noes: None

Abstain: None

Motion carried 5-0

III. OATH OF OFFICE

The oath of office was issued to Liz Sowell- Alternate Place C, by Donna Savage, Deputy City Secretary.

IV. REPORT OF ADJUSTMENT ITEMS

ZBA-16-01 A request for a variance to allow a reduction of two and one-half feet (2.5') (Chapter 17.44.030 – Height and Area Regulations, Paragraph D – Rear Yard, Benbrook Municipal Code, as amended by Planned Development Ordinance Number 1349) to authorize a seven and one-half foot (7.5') rear yard; and a variance of ten and six-tenths percent (10.6%) (Chapter 14.44.030 – Height and Area Regulations, Paragraph H – Maximum Lot Coverage, Benbrook Municipal Code) to authorize a fifty-five and six tenths percent (55.6%, 3,912 square feet) lot coverage on Lot 14, Block 3, Whitestone Ranch, Phase 4 (7212 Prestwick).

Chairman Myers introduced the item and asked for a presentation from the applicant.

George Fruzick, 3250 Marys Lane, Fort Worth, Texas, stated that he and his wife Victoria are the owners of the property at 7212 Prestwick, and are building their retirement home in the Whitestone Ranch, Phase 4 Addition. Mr. Fruzick stated that he is requesting a variance from the 10 foot rear yard setback and the 45% lot coverage requirements. Mr. Fruzick stated that his home is being built by Premier Homes of Granbury, Texas and that the home is nearly complete. He stated that his home is the first home that Premier Homes has built in Benbrook, which is why they were not familiar with the building restrictions.

Mr. Fruzick stated that he found out in mid-January from his builder that the Building Official would not issue a CO due to building deficiencies; specifically the rear yard setback and lot coverage requirements; and was informed that a variance would be required in order to move forward.

Mr. Fruzick stated that his builder built to the utility easement, which is 7.5 feet, as shown on the plat, but was not aware of any other setback requirements. Mr.

Fruzick also stated that the building is 10.6% over the 45% maximum lot coverage, which he and the builder were also not aware of.

Mr. Fruzick stated that plans were submitted to the City in August, and they were approved. Mr. Fruzick stated that by October construction on the home was well underway and that the building deficiencies came to light in mid-November. Mr. Fruzick stated that the builder did not relay any information to him until mid-January.

Mr. Fruzick stated that shortly thereafter, he met with Ed Gallagher, Planning Director and Izzy Rivera, Building Official, and proceeded to complete an application for a variance.

Mr. Fruzick stated that requiring changes at this late stage would create a hardship for several reasons, including drainage and foundation issues, heat gain, a negative impact on redesign and additional costs. Mr. Fruzick stated that he had letters of support of the variance from surrounding neighbors that he drafted and provided to neighbors. Mr. Fruzick thanked the Board and stated that he and his builder were available to answer any questions.

Chairman Myers asked for comments or questions from the Board.

Chairman Myers stated that as he understood it, Mr. Fruzick did not know about any deficiencies until January and asked Mr. Fruzick if that was correct.

Mr. Fruzick said yes.

Chairman Myers asked Mr. Fruzick if the builder had been notified about the deficiencies in November, but the deficiencies were not brought to Mr. Fruzick's attention until January.

Mr. Fruzick said yes.

Chairman Myers asked Mr. Fruzick if he was involved in any discussions that took place on December 17, 2015 regarding alternatives that could have been done to remediate the problem.

Mr. Fruzick stated that the only alternative that was brought to his attention in January, 2016 was to move the roofline back 2 ½ feet.

Chairman Myers asked Mr. Fruzick if he had an opportunity to discuss possible options with his builder to correct deficiencies.

Mr. Fruzick stated that the only options that he discussed with his builder were regarding the redesign of the back porch and roofline.

Chairman Myers asked Mr. Fruzick if he understood that a financial hardship alone is not a basis for granting any type of variance.

Mr. Fruzick said yes, he understood.

Chairman Myers asked Mr. Fruzick if there were other reasons aside from a financial hardship that would justify a variance being granted.

Mr. Fruzick said that moving the pillars and foundation back would change the dynamics of the building. Mr. Fruzick stated that his fear is cracking of the foundation due to the way it was designed. Mr. Fruzick stated that he is also concerned about flooding.

Chairman Myers asked Mr. Fruzick if he would like for his builder to speak with the Board about the issues.

Mr. Fruzick said yes.

Jeff Browning, Construction Manager for Premier Homes in Granbury stated that he designed the Fruzick's home and went through all the procedures that builders would go through in any city to get plans approved. Mr. Browning said that plans were approved and that they were not notified by the City until November about the deficiencies. Mr. Browning stated that he was trying to work it out with the city before notifying the property owner about the issues.

Chairman Myers asked if any options were discussed with city officials in December, 2015.

Mr. Browning said yes.

Chairman Myers asked Mr. Browning to relay to the Board members what options were discussed.

Mr. Browning said that the only option that was given was to apply for a variance to meet the setback requirements or cut the house back.

Chairman Myers asked Mr. Browning if it was his understanding that the pillars stuck out towards the golf course, which is the reason for the noncompliance with respect to the setback requirements.

Mr. Browning said that the particular concern was not mentioned to him until tonight. Mr. Browning said that he was told that they would have to cut the whole roof line back and were never told that just the pillars would need to be cut back.

Chairman Myers asked Mr. Browning that if that were true with respect to the pillars to move them back to be in compliance, would that substantially jeopardize the structure of the home.

Mr. Browning said that it would not jeopardize the structure of the home as long as precautions are taken.

Chairman Myers asked Mr. Browning if he knew that the Board could not grant variances based on a financial hardship alone.

Mr. Browning said yes.

Chairman Myers asked Mr. Browning if there were other issues with respect to bringing the house into compliance that would affect the homeowner aside from just a monetary issues.

Mr. Browning said that the space at the back of the porch would be affected which would affect the finish out on the back porch, including the kitchen on the back porch. Mr. Browning said that he could not think of another hardship aside from the owner stating that he is worried about the structure.

Chairman Myers asked Mr. Browning if moving the pillars back would require restructuring the weight distribution on that part of the house.

Mr. Browning said that moving the pillars back would restructure the entire back of the house because the beam on the back of the house supports the entire back of the house, including the roof and sits on the pillars. Mr. Browning said that rain could get on the back porch and into the house with a major flood.

Chairman Myers said that as he understands it, the issue is not a small economic hardship, but a substantial disadvantage to the owner's interests.

Mr. Browning said yes.

Chairman Myers asked Mr. Browning if he was aware of any modifications the home owner may propose in the future such as a fence along the back of the property.

Mr. Browning said that he knows that the owner plans to construct a wrought iron fence in the future, which is allowed on the golf course to not restrict views of the golf course.

Mr. Pilliod said that in the work session earlier, the discussion centered around the pillars being the problem.

Mr. Browning said correct.

Mr. Pilliod said that based on the discussion in the work session, his understanding was that the roofline overhang was not much of an issue. Mr. Pilliod asked Mr. Browning if he had considered alternatives to support the exterior roof line.

Mr. Browning said that it would be an eye sore.

Chairman Myers asked if there were any more comments or questions from the Board and asked for a presentation from City staff.

Ed Gallagher said the ZBA-16-01 request is for a variance to allow a reduction of two and one-half feet (2.5') to the ten-foot rear yard provided in Planned Development Ordinance Number 1349 to authorize a seven and one-half-foot (7.5') rear yard; and a variance of ten and six-tenths percent (10.6%) to Chapter 14.44.030 – Height and Area Regulations, Paragraph H – Maximum Lot Coverage, Benbrook Municipal Code to authorize a fifty-five and six-tenths percent (55.6%; 3,912 square feet) lot coverage on Lot 14 of Block 3 in Whitestone Ranch Phase 4, also known as 7212 Prestwick Terrace. Lot 14, along with the balance of the development is zoned "BR-PD" One Family Reduced Planned Development and the property owners, George and Victoria Fruzick of Fort Worth are the applicants for the variance case.

Mr. Gallagher stated that Lot 14 is a 60-foot wide by 117-foot deep, 7,020 square-foot property with an approximately 3,912 square-foot single family house currently under construction. Because of errors made in the preparation of the plans that were submitted to the Building Inspection Department by the

property owner's building contractor, as well as errors made during the review of the construction plans by city staff, the house was permitted and is being constructed with an encroachment into the required rear yard area and the allowable lot coverage maximum. The property owner/applicant is requesting the variances to allow the completion and occupancy of the house in accordance with the building permit issued by the City. The house is nearing completion and the rear yard and lot coverage deficiencies were discovered during the inspection process of the house by city staff.

On June 20, 2013 the City Council approved Planned Development Ordinance Number 1349 rezoning 22.019 acres of land, now developed as Whitestone Ranch, Phase 4, to "BR-PD," One Family Reduced Planned Development District, with the following conditions:

"Conformity with all height and area regulations of the "BR" One Family Reduced District, except:

- Interior lots shall have a minimum side yard dimension of 5 feet. A combined total of 15 feet is not required.
- Lots shall have a minimum rear yard dimension of 10 feet. A minimum rear yard of 15 feet is not required."

The approval of Ordinance 1349 did not amend the remainder of "BR" One Family District Height and Area Regulations, including Maximum Lot Coverage specifications.

Whitestone Ranch, Phase 4, including Lot 14 was platted on October 16, 2014. According to Tarrant County Deed Records, the property owner and variance applicant, George and Victoria Fruzick, acquired Lot 14 on January 23, 2015. It is staff's understanding that during the spring of 2015, the property owners began seeking possible building contractors and in June, awarded a contract to Premier Homes of Granbury, Texas, to construct a house on the property owner's lot.

Mr. Gallagher stated that he would defer to Izzy Rivera, the Building Official to outline the time sequence of events.

Mr. Rivera stated that on July 14th, 2015, the Building Permits and Inspections Department received building plans from Premier Homes, the building

contractor, for the construction of a single family home at 7212 Prestwick Terrace.

On July 17th, 2015 the Department reviewed the plans and after the initial plan review provided plan review comments to the building contractor on July 17th, 2015. Although the zoning setback dimensions were included on the plans, neither the zoning setback requirements, nor the lot coverage requirements were included within the July 17th, 2015 comments. The Building Permits and Inspections Department contacted the building contractor to discuss various plan deficiencies, including the form board survey that was not submitted; however, the discussion did not include the yet to be discovered rear yard and lot coverage deficiencies.

The Building Official noted that on August 7th, 2015, the Building Permits and Inspections Department received additional information from the builder, including engineered foundation plans and shortly after the August 7 contact with the building contractor, staff received a call from the property owner requesting information on the status of the permit application, as they were informed that the city was holding up the building permit. On August 17 the Building Permits and Inspections Department received a response from the building contractor addressing the staff's August 7th comments, and a building permit was issued.

On August 27, 2015, the Building Permits and Inspections Department received the form board survey. The form board survey was inadvertently filed directly with the building permit as opposed to being reviewed by the plans examiner/inspector. Foundation inspections were performed after the Department received the form board survey. A foundation inspection includes checking dimensions of the foundation and the location of the foundation on the lot before the foundation is poured.

Inspection Department records indicate that on November 10, 2015, after performing framing inspections, the Department left a voicemail message for the job superintendent to contact city staff to discuss construction deficiencies. The Department did not receive a response to the voicemail message. On November 18, 2015, during a re-inspection of other construction elements, the 2-foot, 6-inch encroachment into the rear yard setback was discussed in a telephone conversation with the job superintendent.

December 17, 2015, the Building Permits and Inspections Department met with the building contractor and job superintendent to re-discuss the 2-foot 6-inch encroachment into the rear yard setback and possible solutions, which was

discovered after the foundation was poured and the framing had begun. The building contractor asked about the idea of obtaining a variance and was informed to contact the Planning Department for information regarding the process to apply for a variance.

On January 5th, 2016, the job superintendent met with the Planning Director to discuss variance application requirements, including time frames, public hearing dates, and the application deadline of February 3, 2016, for the February 23rd, 2016 public hearing. The job superintendent indicated his company would be preparing and submitting an application for a variance for rear yard setback encroachment and the increase in lot coverage.

With no movement from the building contractor on a variance application, on January 22nd, 2016, the Building Permits and Inspections Department contacted the property owner of the residential structure to ask whether a variance application would be submitted before the rapidly approaching deadline. The property owner responded that he was only made aware by the building contractor of the date of the public hearing, not that a variance application needed to be submitted by a particular deadline.

A short time later I was informed by the Planning Director that the property owner had made contact and would be preparing and submitting the variance application prior to the deadline.

Mr. Gallagher stated that the Zoning Ordinance provides for and authorizes the Zoning Board of Adjustment (the Board) to grant a variance when in a specific case, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured. The Ordinance provides authority to the Board to grant a variance where literal enforcement of the Ordinance would result in an unnecessary hardship.

The Ordinance also provides that the Board may attach appropriate conditions and safeguards to any approvals. In granting a variance, the Board should prescribe only conditions that it deems necessary or desirable to protect the public interest. The Ordinance states that in making its findings, the Board should take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, and probable effect of such variance upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity. No variance should be granted unless the Board finds:

- a) that there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of reasonable use of his land, including sight visibility conditions;
- b) that the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and,
- c) that the granting of the variance will not be detrimental to the public health, safety, welfare, or injurious to other property in the area.

Variations may be granted only when in harmony with the general purpose and intent of the Zoning Ordinance so that the public health, safety, and welfare may be secured and substantial justice done. Pecuniary hardship to the owner, standing alone, must not be deemed to constitute undue hardship.

If a variance is granted, the Board should specify the reasons that a hardship is present and why a variance should be granted, so that they can be included in the official minutes. The Board may impose conditions and safeguards upon the issuance of a variance.

Mr. Gallagher stated that Staff recommends that after a public hearing the Board determine if the request meets the above criteria for approval to justify the proposed variance request, ZBA – 16 – 01, to reduce the required rear yard setback from 10 feet to 7.5 feet; and to increase the maximum lot coverage from 45% to 55.6% on Lot 14, Block 3, Whitestone Ranch, Phase 4, within the “BR-PD,” One-Family Reduced Planned Development District.

Chairman Myers asked Mr. Rivera to explain what he meant by the comment made with respect to August 27, 2015 item with respect to a form survey being inadvertently filed with the building permit as opposed to being reviewed by the Plans Examiner.

Mr. Rivera said that the form survey was not included in the original documents and that the applicant was notified of this in the comments that were sent to the applicant during the review of the plans. Mr. Rivera said that the survey was emailed by the contractor, printed and placed in the folder with the permit instead of being given to the Plans Examiner, and as a result was not reviewed by the Plans Examiner.

Chairman Myers asked Mr. Rivera how long was it from the time the error was made until the Plans Examiner reviewed the form board survey.

Mr. Rivera stated that he did not have an exact answer, but he was certain that it was after construction began.

Chairman Myers asked Mr. Rivera if it was fair to say that construction moved forward notwithstanding the form board survey had not been reviewed.

Mr. Rivera said yes.

Chairman Myers asked Mr. Rivera to explain to the Board what options were provided to the applicant in order to make the home compliant with the zoning ordinance in the December, 2015 meeting.

Mr. Rivera said that it was explained to the applicant that relocation of the support system of the open porch would need to be moved back 2 ½ feet in order to comply with the setback requirements of the zoning ordinance.

Chairman Myers stated that he just heard from the builder that the issue was not discussed. Chairman Myers asked Mr. Rivera if he knew of any other options available to the builder to make the home compliant.

Mr. Rivera said that if the support columns are moved back, the building code allows a certain amount of overhang up to 2 feet.

Chairman Myers said that there are 2 issues; one being the setback and the second issue being the lot coverage of 45%. Chairman Myers said that with respect to the setback requirement, moving the pillar back approximately 2 feet may bring the building into compliance. Chairman Myers asked Mr. Rivera how the issue regarding the lot coverage could be addressed to bring the site into compliance.

Mr. Rivera said that the lot coverage issue was not discussed until the owner met with the Planning Director.

Chairman Myers asked Mr. Rivera if he understood correctly that no discussion was had with the applicant about lot coverage.

Mr. Rivera said that is correct and that the issue of lot coverage was not discussed until January 5th.

Chairman Myers asked Mr. Rivera what, if anything could make the construction project compliant with lot coverage requirements, given that construction is almost complete.

Mr. Rivera said that it would be an extensive construction project which would need to be redesigned, reworked and reconstructed.

Chairman Myers asked Mr. Rivera if he considered that to be a substantial hardship on behalf of the property owner.

Mr. Rivera said yes.

Mrs. Mundine asked Mr. Rivera if there was a special setback for this addition and a setback for other additions within the city.

Ed Gallagher said there are setbacks in virtually every district; however, in this particular case there is a Planned Development (PD) addendum to the overall zoning ordinance that allows a 10 foot rear yard.

Chairman Myers asked Mr. Gallagher if an unwanted precedent would be established if the Board were to grant the variance. Chairman Myers said that the applicant has indicated that they are willing to place a restriction on the property so that the back area will not be utilized for a living area in the future. Chairman Myers asked Mr. Gallagher if a restriction was something that would be done through a deed restriction or a condition of the variance approval.

Mr. Gallagher said that if the Board were to grant the variance with conditions, if a future owner wanted to get a permit to enclose the back area, they would have to come through the Permits Office and the variance would be identified.

Chairman Myers asked Mr. Rivera that given his position with the City, if he thought that if the Board granted a variance, that a negative precedent would be established.

Mr. Rivera said no, errors performed by both parties contributed to the issue. He stated that if those errors did not exist, which he has put measures in place to ensure that the errors on the city's side would not exist, then one would not qualify for a variance.

Chairman Myers asked if the applicant would like to make a rebuttal.

Mr. Frusick thanked the Board for their consideration.

Chairman Myers opened the public hearing. There were no speakers. Chairman Myers closed the public hearing.

Mrs. Ellis said that she would like for the Board to consider the variance due to the errors made by both parties.

Mr. Pilliod agreed with Mrs. Ellis.

Mr. Ward also agreed that due to errors that the variance should be granted.

Chairman Myers agreed with Mrs. Ellis, Mr. Pilliod and Mr. Ward.

Chairman Myers asked for a motion.

Motion made by Mrs. Mundine to approve variance, ZBA-16-01 to reduce the required rear yard setback from 10 feet setback to 7.5 feet and to increase the maximum lot coverage from 45% to 55.6% on Lot 14, Block 3, Whitestone Ranch, Phase 4 within the BR-PD, One-Family Reduced Planned Development District based upon the fact that there are special circumstances in this case involving errors from the builder and the city as well that would deprive the home owner of reasonable use of the land that is necessary for the preservation and enjoyment of and the property rights of the applicant and that granting the variance will not be detrimental to the public health, safety, welfare or injurious to other property in the area. The motion was seconded by Mr. Pilliod. The Chair called the question.

Vote on Motion:

Ayes: Mr. Pilliod, Mr. Ward, Ms. Mundine, Ms. Ellis and Mr. Myers

Noes: None

Abstain: None

Motion carried 5-0.

V. ADJOURNMENT

There being no further business on the Board agenda, the Chair declared the regular meeting adjourned at 9:13 p.m.

APPROVED: _____, 2017

Chair