City of Wimberley
City Hall, 221 Stillwater, Wimberley, Texas
Minutes of Board of Adjustment Meeting
Monday, October 28, 2013 at 6:00 p.m.

The meeting was called to order at 6:00 p.m. by Chair P. Jason Aldridge. Board members present were Dick Larson, Cecil Gibson, Barry Tyler, and Bill Cline.

Staff members present were City Administrator Don Ferguson, City Secretary Cara McPartland, and City Attorney Brad Young

1. Consent Agenda

Approval of minutes of the August 26, 2013 meeting of the Board of Adjustment.

Boardmember Larson moved to approve the minutes of August 26, 2013, as presented. Boardmember Gibson seconded. Motion carried on a vote of 5-0.

2. Public Hearing and Possible Action

A. Public hearing and consider possible action on Case No. BA-13-004, a request for a variance to the City of Wimberley Zoning Code, Section 155.038(D)(3)(b) & (d) regarding the rear yard and secondary street setback requirements in a Single Family Residential 3 (R-3) zoning district for property located at 175 Rockwood Drive, Wimberley, Hays County, Texas. (*Dayna Beck, Applicant*)

City Administrator Ferguson reviewed the application, including the subject property's location within the Protected Water Overlay District, acreage, zoning, and proposed construction of a 1,152 square-foot single-family residence on a .2635 acre tract. He noted that development is restricted due to the limited lot size coupled with the width of the required building setbacks. The applicant is seeking variances to encroach 12 feet into the required 15-foot secondary street setback and 4.3 feet into the required 20-foot rear yard setback. No opposition has been received to the variance requests and City staff recommended approval.

Chairman Aldridge opened the public hearing. Hearing no comments, Chairman Aldridge closed the public hearing.

City Administrator Ferguson noted conditions required for granting of this variance pursuant to City of Wimberley Ordinance No. 2001-010, Section 10, and recommended the inclusion of specific, written findings in the motion, as listed below:

1. That there are special circumstances or conditions affecting the property involved such that the strict application of the provisions of this ordinance would (a) deprive the applicant of the reasonable use of the property; and (b) create an unnecessary hardship in the development of this property; and

2. That such circumstances or conditions are (a) not self-imposed; (b) not based solely on economic gain or loss; and (c) do not generally affect most properties in the vicinity of the property; and
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
4. The variance if granted will not: (a) adversely affect the public health, safety or welfare; (b) be contrary to the public interest; and (c) be injurious to or adversely affect the orderly use of other property within the area; and
5. The property involved is otherwise in compliance with all other applicable City ordinances, rules, and regulations; and
6. The granting of the variance will be in harmony with the spirit and purpose of this ordinance.

Boardmember Larson moved to approve the requested variance, with the inclusion of affirmative findings on all six above listed conditions, as cited by City Administrator Ferguson. There was brief discussion of the width of the City's right-of-way on the west side of the subject property. Boardmember Cline seconded. Motion carried on a vote of 5-0.

B. Public hearing and consider possible action on Case No. BA-13-005, a request for a variance to the City of Wimberley Zoning Code, Section 155.060(D)(5)(a) regarding the dominant street setback requirement in a Public Facility (PF) zoning district for property located at 220 and 222 Twilight Trail, Wimberley, Hays County, Texas (*Wimberley Emergency Medical Systems, Inc., Applicant*)

City Administrator Ferguson reviewed the application, including the subject property's location, zoning, and proposed construction of an additional E-M-S building, next to the existing headquarters building. The applicant recently purchased an adjacent, commercially zoned lot which has been consolidated with the applicant's existing lot into one (1) lot that is currently in the process of being rezoned from Commercial – Low Impact (C-1) to Public Facilities (PF). The applicant is seeking a variance to encroach ten (10) feet into the required 40-foot dominant street setback to allow the new and existing buildings to be built flush with one another. One informational inquiry was received regarding the variance request, but no opposition has been received by City staff. Based on review of the application, City staff recommended approval of the variance request.

Chairman Aldridge opened the public hearing. Hearing no comments, Chairman Aldridge closed the public hearing.

Boardmember Larson moved to approve the requested variance, with the inclusion of affirmative findings on all six above listed conditions (see list, Agenda Item 2A), as cited by City Administrator Ferguson. Boardmember Tyler seconded. Motion carried on a vote of 5-0.

C. Public hearing and consider possible action regarding an appeal of an administrative determination regarding enforcement of City Ordinances as they relate to a pole barn constructed at 411 Mill Race Lane, Wimberley, Hays County, Texas. (*City Administrator*)

Chairman Aldridge opened the public hearing.

Adjacent property owner Bill Appleman spoke of ongoing civil litigation with the applicant regarding the subject property's shared access easement and did not expect the City to be involved in these legal issues. Mr. Appleman felt the lawsuit might not have been necessary had City ordinances been enforced when Code violations first came to the City's attention ten-plus years ago. Mr. Appleman distributed written materials to the Board and questioned the applicant's ownership rights to the property where the pole barn was constructed and the City's regulatory authority over such development. He cited accessory building/use regulations and requested clarification of certain terms and definitions. Mr. Appleman noted his former experiences as a member of both the Planning & Zoning Commission and City Council and acknowledged that interpretation of City ordinances can at times be confusing due to conflicts in terminology. He also cited provisions of the Protected Water Overlay District that limit construction within the District's boundaries. Mr. Appleman recalled prior discussions of earlier cases involving definitions of public/private alleys/easements and application of those definitions. He offered to answer the Board's questions.

Chairman Aldridge closed the public hearing.

Discussion among the Board, Mr. Appleman, and City Administrator Ferguson addressed impact of the pole barn on Mr. Appleman's property value/ownership rights; issues related to civil litigation between Mr. Appleman and the Campbells; application of all City ordinances to the pole barn's use and construction; unresolved legal questions; City's enforcement of regulations related to alleys/easements; and disputed subject property boundaries.

Chairman Aldridge adjourned Open Session and convened Executive Session at 6:26 p.m. pursuant to §551.071 of the Texas Government Code for consultation with legal counsel.

Chairman Aldridge adjourned Executive Session and reconvened Open Session at 6:38 p.m.

No action was taken in Executive Session.

City Administrator Ferguson clarified that the requested variance is for an encroachment of the pole barn into the setback on the Campbell's property and stated that the shared access easement in question is not a dedicated public easement/alley, but a private right-of-way easement that the City has no authority to enforce, similar to the City's lack of enforcement authority over deed restrictions. He cited accessory building regulations/setback requirements and noted that the pole barn is a secondary residence, which requires a conditional use permit (CUP) and enforcement of setback requirements. City Administrator Ferguson clarified development regulations within the Protected Water Overlay District limiting commercial development and noted that the barn is adequately elevated to meet floodplain/way development standards.

Mr. Appleman cited Zoning Code §155.092(D)(4) Protected Water Overlay District; Permitted Uses and §155.092(E)(1) Protected Water Overlay District; Site Development Standards; Construction, which he stated expressly prohibits construction of new buildings. He felt that

City Code terminology has been misinterpreted and needs to be rewritten in the interest of clarity.

City Administrator Ferguson stated that Protected Water Overlay District provisions regulate commercial development within its boundaries, not residential development, and are not part of the requested appeal related to interpretation of setback requirements in the R-1 zoning district from easements, alleys, and alley easements.

Hearing no further comments, Chairman Aldridge entertained a motion.

Boardmember Cline moved to affirm the City's administrative determination regarding enforcement of City ordinances as they relate to a pole barn constructed at 411 Mill Race Lane. Boardmember Tyler seconded. Motion carried on a vote of 5-0.

D. Public hearing and consider possible action on Case No. BA-13-003, a request for a variance to the City of Wimberley Zoning Code, Section 155.036(D)(3)(c) regarding the interior setback requirement in a Rural Residential 1 (R-1) zoning district for property located at 411 Mill Race Lane, Wimberley, Hays County, Texas (*Alison Courtney Campbell, Applicant*)

City Administrator Ferguson reviewed the subject property's location, zoning/uses, pole barn's encroachment into the interior (side yard) setback, reasoning for location of pole barn, and written opposition to the variance request received from adjacent property owner Bill Appleman. It was noted that the pole barn is located on a portion of shared access easement that is currently the subject of litigation between the applicant and Mr. Appleman and that the requested variance shall not be construed to alter, interfere with, abrogate, or annul any easements, covenants, or other agreements between parties. He stressed that the applicant's CUP is conditioned in part on receipt of certification from the applicant that the pole barn is Code-compliant and suitable for occupancy.

Chairman Aldridge opened the public hearing.

Bill Appleman asked the Board deny the variance request based on his earlier submitted correspondence/comments and lack of affirmative findings on the conditions required for granting the variance. Mr. Appleman stated the applicant was aware of applicable City ordinances when construction commenced, but chose not to apply for the appropriate permits and variances, which he felt would not have been granted at that time. He said there was a more logical place for the pole barn (next to the main residence) than at site chosen by the applicant and that such self-imposed circumstances as the location and size of the pole barn do not qualify for the granting of the requested variance.
Applicant Alison Campbell stated that the litigation with Mr. Appleman is over use of the disputed easement and discounted his claims of property devaluation due to the pole barn's existence. (Mrs. Campbell distributed appraisal district property valuation records to the Board.) She spoke on her property's unusual lot configuration and stated she has not complained about Mr. Appleman's gazebo and roof, which she said hangs over the property line onto her property. Mrs. Campbell said the encroachment "is into the area of the mill race that is up on my property,

and it's not any part of Mr. Appleman's property that anyone uses." She spoke of Mr. Appleman's recent clean-up work on his property and building of berms to redirect water. Referencing the lawsuit between the parties, Mrs. Campbell stated that "the lawsuit is cutting off the easement at the gate so that nothing inside the gate is going to be in the easement," and anticipated a ruling from the court in the coming week. She spoke of the pole barn as an asset to the neighborhood that contains unique features that are aesthetically compatible with surrounding structures. Mrs. Campbell cited favorable comments made about the quality of the plumbing and electrical work that she completed herself.

Hearing no further comments, Chairman Aldridge closed the public hearing.

Discussion among Board members, City Administrator Ferguson, and the applicant addressed:

- Lack of proper zoning/permitting for the subject property's use and construction of the pole barn spanning a period of more than ten years
- Applicant's original use for the pole barn as a workshop/storage facility and current intended use as a secondary residence for her daughter
- Applicant's "incrementalist" approach to building the pole barn
- Lack of enforcement of City Code requirements in the beginning years of pole barn construction and associated Code compliance issues
- Applicant's stated intent to comply with all applicable Code requirements and conditional use permit (CUP) conditions
- Certification that pole barn is Code-compliant and suitable for occupancy before use as a secondary residence
- Applicant's intent to connect the pole barn to a water supply and permitted on-site septic facility before use as a secondary residence

City Administrator Ferguson cited conditions required for granting of this variance pursuant to City of Wimberley Ordinance No. 2001-010, Section 10, recommending the inclusion of specific, written findings in the motion as follows:

1. That there are special circumstances or conditions affecting the property involved such that the strict application of the provisions of this ordinance would (a) deprive the applicant of the reasonable use of the property; and (b) create an unnecessary hardship in the development of this property; and
2. That such circumstances or conditions are (a) not self-imposed; (b) not based solely on economic gain or loss; and (c) do not generally affect most properties in the vicinity of the property; and
3. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and
4. The variance if granted will not: (a) adversely affect the public health, safety or welfare; (b) be contrary to the public interest; and (c) be injurious to or adversely affect the orderly use of other property within the area; and
5. The property involved is otherwise in compliance with all other applicable City ordinances, rules, and regulations; and

6. The granting of the variance will be in harmony with the spirit and purpose of this ordinance.

Should the Board desire to approve the variance request, City Administrator Ferguson recommended additional language to Condition No. 5 (see above) regarding the applicant's March 1, 2014 deadline to comply with City Code requirements (listed as one of the subject property's CUP conditions), as well as the following additional finding: "This variance shall not be construed to adjudicate, grant, affect, alter, interfere with, abrogate, or annul any property rights, easements, covenants, restrictions, agreements, or other legal provisions affecting any real property rights. Moreover, this variance does not authorize the applicant to take any action for which it does not have the legal right to do so."

Hearing no further comments, Chairman Aldridge entertained a motion.

Boardmember Larson moved to approve the requested variance, with the inclusion of affirmative findings on all six above listed conditions, as cited by City Administrator Ferguson, along with the aforementioned recommended additional language. Boardmember Cline seconded. Motion carried on a vote of 4-1. Boardmember Tyler voted against.

3. Board Member Reports

- Announcements
- Future Agenda Items

Hearing no announcements or future agenda items, Chairman Aldridge called the meeting adjourned at 6:55 p.m.

Adjourned at 6:55 p.m.

Recorded by:

Cara McPartland

Cara McPartland

These minutes approved on the 27th day of January, 2014.

APPROVED:

P. Jason Aldridge, Chair