

Village of Wimberley
City Hall, 13210 Ranch Road 12, Wimberley, Texas

Minutes of Board of Adjustment Meeting
Thursday, June 23, 2005 - 6:00 p.m.

The meeting was called to order at 6:05 p.m. by Chair Barbara Vansant. Board Members present were Jason Aldridge, Sue Johnson, Steve Gartside and Barbara Vansant. Mike Stevens and Bill Cline were absent.

Chair Vansant moved the meeting ahead to the Public Hearing.

Public Hearing: Application for Variance:

1. **BA-05-020** – Applicant, Herschel P. McCullough, 216 Mill Race Lane, Planning Area E, Zoning C-1. Application has been made for variance from the following section of the Village of Wimberley Antenna Facilities Ordinance No. 2004-003, as follows:

- Section XII.B(2)(b): Antenna Facilities shall meet the setback requirements for accessory uses for the zoning district in which the proposed facility shall be located, but in all events the setback requirements shall be at least 110% of the Antenna Facilities' height.

City Administrator Steve Harrison presented the case, as described above, noted this case to be different from a previous Application for Variance by the same applicant, heard by Board of Adjustment on March 31, 2005.

Chair Vansant stated that jurisdiction of the Board of Adjustment was established in this case.

Dr. Harrison stated that the property is currently in Planning Area E and zoned as C-1. The applicant has asked for a Variance regarding antenna height and setback requirements. Dr. Harrison read from in the Antenna Ordinance, stated that proper notice was made as far as the meeting and public hearing, and that particular issues would be addressed in the public hearing. He noted that the Antenna Ordinance was included in the packets presented to the Board, and that the nature of the setback in the Antenna Ordinance is to try to ensure the health and safety of antennas, and does allow HAM radio antennas, and allows heights up to 120 feet in the Village, with a requirement of a setback of 110% from property line, in case the antenna was to fall for any reason. The applicant requests that the antenna be closer than that.

Chair Vansant asked for further clarification that if the height of the antenna were 71 feet or less, there would be no need for a variance. Dr. Harrison said the applicant would still have to go through the building permitting process.

Chair Vansant read the traditional introduction to the public regarding Board of Adjustment Public Hearings.

The applicant, Herschel P. McCullough, was allowed to speak. He cited a difference in numbers from Dr. Harrison's presentation regarding lot size and changes in the height of the antenna tower. He stated that this is a different location from the previous request, and that there is no antenna constructed on the property, as in the previous case, and that the Variance request is regarding antenna location and setback requirement.

Board members discussed the conditions in Mr. McCullough's previous Variance request, safety aspects, the justification of a tower being 90 feet in height in order to accomplish the radio communication needed for Mr. McCullough's purposes. Mr. McCullough said the proposed location of the tower is 151 feet to the edge of the road, and cited the only objection was from an adjoining property owner, and that the proposed structure cannot be seen from the home on this adjoining property.

Chair Vansant stated that three criteria to be met before a variance may be granted regarding antennas, specifically, that the variance is not contrary to the public interest; that due to special conditions a literal enforcement of the ordinance would result in unnecessary hardship; and that the spirit of the ordinance will be observed and substantial justice will be done. She said that she did not see any of these addressed with specificity. Discussion followed between Board members and Mr. McCullough regarding specifications to be provided. Mr. McCullough stated this is not the same antenna as in the previous case, but that the same specifications presented previously would apply, and that this would be addressed in the Building Permit procedure.

Chair Vansant opened the Public Hearing.

City Administrator Steve Harrison submitted two (2) letters for the record, one dated June 20, 2005, from Roy L. Mitchell, the new owner of the adjoining property who could not be in attendance at the meeting, and the second from Wimberley resident Glenn Fryer.

Malcolm Harris, Jerre Cope, Merry Gibson, Scott Weaver, and Bill Johnson, all property owners on or near Mill Race Lane, spoke in favor of granting the variance and had no opposition to the antenna facility.

Susan Thurber cited research she had done and presented an article from which she read to the Board. She is opposed to the granting of the variance and the precedent which would be set.

Chuck Anema and Ron Freeman spoke in favor of the variance being granted, on behalf of amateur HAM radio operators.

Glenn Fryer said that the most important consideration of the Board of Adjustment should be the public interest and that the setbacks in this case are contrary to public interest, and that a variance would undermine the ordinance.

Bob Flocke said that amateur radio is within the public interest and spoke favorably for the granting of the variance.

The Public Hearing Closed.

Mr. McCullough was again allowed to address the Board. He spoke of HAM radio facilities and the coordination between major cities for emergency purposes. He also addressed the issues of the tower falling, and of retracting the antenna when not in use. A discussion with Board members followed regarding times of antenna usage and retraction, the height required, and the setbacks involved. Mr. McCullough referred the Board's attention to a graph with elevation response patterns, and said he would submit documentation at a later date justifying the necessity for the requested height of the antenna. Discussion followed regarding the provisions in the Antenna Ordinance.

The Board recessed at 7:40 p.m. and reconvened at 7:50 p.m.

Mr. McCullough discussed "grandfathering" and felt he did not have to comply with the Antenna Ordinance since he had purchased his property prior to the adoption of the Ordinance. The City Administrator advised the Board that the application for the

variance from the Antenna Ordinance was for an antenna that has not yet been constructed and, therefore, clearly does not fall under the requirements of the Ordinance. The date of purchase of the property has no bearing on the matter before the Board.

The Board summarized the information presented.

Steve Gartside moved that the variance be approved on the basis that it is in the public interest, that a conditional variance had been granted at the previous meeting, that the safety issues are adequately handled by the ordinances in place for construction and inspection, that there have been no objections on the basis of being unsightly, and in terms of establishing the need for a particular height is beyond the technical expertise of Board of Adjustment to make that judgment; that Mr. McCullough's assessment from a technical standpoint on the need for the height be accepted.

Sue Johnson seconded the motion for purposes of discussion only.

The Board then discussed the issues of public welfare, safety, and being careful in precedent setting. Also discussed were whether conditions needed to be attached, and the extent of required regular inspections. They determined that the location and height of the antenna are issues for further consideration, that an independent, expert opinion should be sought, and that it would be prudent, for future related issues, to establish guidelines to determine validity of antenna heights. Dr. Harrison pointed out that the burden of proof is on the applicant requesting the variance. With the importance of the precedent being set for the Village, the Board discussed giving more time to study the information which had been presented at the meeting.

Sue Johnson made a friendly amendment to the motion on the floor adding two conditions: First, this would be a conditional variance from the setback requirement for this particular antenna, contingent upon demonstrating to the Board of Adjustment that the height is necessary for the applicant to conduct his ham radio business. The second condition would be that every three years there be a structural engineer inspect the antenna, and that be a permanently filed with the City.

Steve Gartside accepted the friendly amendments.

Further discussion about the options available to the Board resulted in the motion being withdrawn.

Sue Johnson stated that the principle behind this action is to establish the parameters for the Board to look at, and ask, for in future similar cases.

Mr. McCullough requested that the conditions be specified in writing and submitted to him, so that he knows exactly what action is expected of him. The Board discussed their obligations on this and Legal Counsel pointed out that Mr. McCullough has the standard set in the Antenna Ordinance for granting a variance, and the burden of proof lies with him regarding justification for the antenna height of 90 feet at the location specified. She stated that Mr. McCullough may provide evidence, however he chooses, to bring back to the Board and the evidence must satisfy the Board for the variance to be granted. Mr. McCullough stated he understood.

Jason Aldridge made a motion to grant a variance with the conditions that the antenna tower gets inspected every three years by a structural engineer and the report is presented to the City, and that Mr. McCullough provides the Board with proof that convinces the Board that there is requirement for the 90 foot tower in getting his 90% communication with the rest of the world, and that if these conditions are met the variance will be granted. Steve Gartside seconded.

Discussion followed. Legal Counsel explained that Mr. McCullough still has to come back before the Board and prove the necessity of the 90 foot height, and that granting a conditional variance complicates the issue. The motion and the second were withdrawn.

Jason Aldridge made a motion to continue the hearing until August 11, 2005, at 6:30 p.m. Sue Johnson seconded. Motion approved by a vote of 4 Ayes to 0 Nays.

Chair Vansant returned the meeting to the **Consent Items** area of the Agenda.

The minutes of the meeting of March 31, 2005. Sue Johnson stated that the date of the meeting was March 22nd and requested the change of date. (**The correct date of the meeting was March 31, 2005**). The minutes were accepted as written.

Consider and Act:

1. Election of Vice Chair

Sue Johnson nominated Steve Gartside for Vice Chair. Jason Aldridge seconded. Motion approved by a vote of 4 Ayes to 0 Nays.

2. Discussion regarding designation of alternates.

Board Members continued the item until the next meeting.

Steve Gartside made a motion for the meeting to adjourn. Jason Aldridge seconded.

Meeting adjourned.

Respectfully submitted,

Cindy Colvert
City Secretary