

Village of Wimberley
City Hall, 13210 Ranch Road 12, Wimberley, Texas
Board of Adjustment Minutes
Thursday, March 31, 2005 - 6:00 p.m.

The meeting of the Board of Adjustment was called to order by Susan Thurber, Chair, at 6:00 p.m. The following members were present: Bob Flocke, Steve Gartside, Sue Johnson, Susan Thurber, and Barbara Vansant.

Board Member Barbara Vansant made a motion to accept the minutes of the February 24, 2005 meeting as presented. The motion was seconded by Board Member Sue Johnson. The motion was carried by a vote of 5 (Ayes) 0 (Nays).

Sue Johnson made a motion that future Board of Adjustment meetings would begin at 6:00 p.m. for regular business, with the Public Hearing to follow. The motion was seconded by Barbara Vansant. The motion was carried by a vote of 5 (Ayes) 0 (Nays).

Steve Harrison, City Administrator, introduced the first applicant. Susan Thurber stated that the Board had jurisdiction and opened the Public Hearing of:

BA-05-018 – Applicant, Sierra Classic Homes, 1530 FM 3237, Planning Area A, Zoning NS-CUP. Application has been made for a variance from the following Sections of the Village of Wimberley Zoning Ordinance No. 2001-010, as follows:

- Section 47.8.H.1: Private roads and driveways on land where the average slope or building site slope exceeds 15% shall be constructed to have a slope not exceeding 15% and shall follow the contours of the land.

Mr. Harrison stated that a CUP permit had already been granted to the applicant, and that when the CUP was being put together, the Neighborhood Services considered were conditional uses of the property, and that an entrance from FM3237 up to the house would be at a considerable slope; that the proper notices had been given, and that no written correspondence regarding the application had been received.

Mr. Harrison invited Joel Wilkinson, City Engineer, to speak regarding the application. He stated that the plat submitted to his office was too vague to determine the slopes on the property. Mr. Wilkinson also stated the proposed road is transverse to the contours and this would result in a grade in violation of the code. He stated that he feels the road could be designed to meet the code.

Joey Smith, Construction Manager of the Hill Country Division of Sierra Classic Homes addressed the Board and presented topo maps of the property, located at the corner of FM3237 and Box Canyon Road. Mr. Smith stated the neighbors requested that he not make his drive from the house to Box Canyon Road because of the narrowness of that road. If the entrance is from FM3237, the road would have to be longer in order to get a 15% grade, would involve the destruction of valuable trees and decrease the property value. Mr. Smith presented a letter from TxDOT stating they would be sending a permit for a culvert. Drawings of the proposed entrance were also presented. Steve Harrison stated that the CUP acknowledges that the road to this home would be constructed from FM3237.

The Board had a discussion with the applicant regarding the slope from Box Canyon Road, the removal of trees, and the health & safety issues involved, and possible alternatives. Patty Akers, City Attorney stated that the Board is not required to come up with alternatives.

Board Member Bob Flocke made a motion that a variance be granted based upon the six conditions required. Steve Gartside seconded the motion.

The Board discussed a possible continuance of the application based upon the need for more information.

Board Member Steve Gartside withdrew the previous second to the motion. Board Member Bob Flocke withdrew the previous motion.

The Board agreed to consider scheduling a Special Meeting if the applicant was in agreement to provide additional information. The applicant readily agreed to provide specific information regarding the number of trees that would be destroyed if they complied with the Ordinance. Additionally, the applicant agreed to provide information relating to cut and fill work they had already completed on the lot. The City Administrator explained that this information was needed to ensure that the Ordinance limitations were followed.

Board Member Bob Flocke made a motion to continue the public hearing on this request until Wednesday, April 6th at 6:00 p.m. Board Member Barbara Vansant seconded the motion. The motion carried unanimously.

Steve Harrison introduced the next applicant. Susan Thurber stated that the Board had jurisdiction and opened the public hearing of:

BA-05-019 – Applicant, Herschel P. McCullough, 216 Mill Race Lane, Planning Area E, Zoning C-1. Application has been made for variances from the following Sections of the Village of Wimberley Antenna Facilities Ordinance No. 2004-003 As follows:

- Section XII.B: Requirements for amateur wireless facilities in excess of forty (40) feet in residential and neighborhood service districts or in excess of sixty-five (65) feet in all other zoning districts.
- Section XII.B(2)(b): Antenna Facilities shall meet the setback requirements for accessory used 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.

Steve Harrison stated background information on the Antenna Ordinance and background on the applicant. It was noted that the Planning & Zoning Commission had redone the Antenna Ordinance to be in compliance with federal regulations, and adopted this in February, 2004. Mr. McCullough was satisfied with the update of the ordinance.

Patty Akers, City Attorney, addressed the Board regarding sections in the ordinance regarding Ham radio use and noted the zoning exemptions. She emphasized to the Board that the real issue in this application is not the height of the antenna but the setback requirement involved, and that the FCC regulates Ham radio facilities.

Steve Harrison cited a memo from himself to Mr. McCullough outlining the specifics of his case. A neighbor complaint was how the city first knew the antenna was in place. Mr. Harrison further explained how the city has tried to resolve the situation, that no setback on Mr. McCullough's property would fit the height of that tower, and that no building permit has ever been granted.

Mr. McCullough stated that he had made early computations based on the height of the tower when it was collapsed (not at full height).

Four (4) people from the audience had signed up to speak to the Board:

1. Scott Weaver – supports Mr. McCullough.
2. Malcolm Harris – no concerns about the tower.
3. Merry Gibson – supports the variance.
4. Bill Johnson – supports Mr. McCullough communicating with Ham radio.

Steve Harrison submitted a letter to the Board, for the record, from Scott Sypult, a neighboring property owner.

Mr. McCullough explained to the Board his reasons that the variance should be granted, then asked for questions from Board Members. Discussion followed. The Board determined that even if Mr. McCullough had obtained a building permit for the tower, he would still need a variance. Special conditions were cited.

The Board Members were in agreement that the Board of Adjustment did not want to set a precedent. Further discussion ensued. The Board then agreed they needed more information and documentation to meet the special conditions.

Sue Johnson made a motion to grant a conditional variance from the setback requirements for this particular tower, contingent upon the following:

1. Demonstration by applicant to the City Administrator that the 90 foot height is necessary to communicate anywhere in the world 90% of the time.
2. Applicant will get a Building Permit.
3. Applicant will get a triennial (every 3 years) structural engineers inspection as part of a special permit.
4. Documentation that construction exceeds the manufacturer's recommendations regarding mass and depth of the foundation.

The Board gave the applicant twenty-one (21) days to meet these conditions. Board Member Bob Flocke seconded the motion. The motion carried unanimously.

Meeting adjourned at 9:55 p.m.