

## MINUTES

### ZONING BOARD OF ADJUSTMENT September 4, 2007

The Zoning Board of Adjustment met on Tuesday, September 4, 2007, with the following members present: Peter Neumann, Chairman; Steve Malone, Robb Schlimgen, Steve Rolinger, and John Herr. Staff present: Brad Solon, Brenda Vespested, Todd Peckosh, Mary Bosworth, and Travis Tegethoff, Growth Management; and Kevin Lewis, Attorney's Office.

#### **Appeal No. 5429 Continued from August 7, 2007**

M G Oil Company, PO Box 1006, Rapid City, SD 57709, applies for a variance to waive the the paving requirement as per Chapter 17.50.270 of the Rapid City Municipal Code for the property located at 3305 Beale Street, legally described as Lot 1, G L M Subdivision, Sec 28, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota.

Solon gave the video presentation. The green cards were turned in before the meeting. Troy Erickson from M G Oil was present from the appeal. Erickson showed the Board a new drainage and circulation plan. Neumann asked if Engineering has had a chance to review these new plans. Bosworth said that she has not had a chance to review the new plans. Neumann suggested that this be continued until it can be reviewed by City staff. Malone moved to continue the appeal until October 2, 2007; with a second by Schlimgen. Appeal No. 5429 was continued until October 2, 2007, by a vote of 5-0.

#### **Appeal No. 5427 Continued from August 21, 2007**

Mandalay Homes LLC, 4940 5<sup>th</sup> St Ste A, Rapid City, SD 57701, applies for a variance to reduce the side yard setback (abutting a street) from 25 feet to 18 feet as per Chapter 17.10.050 of the Rapid City Municipal Code for the property located at 4323 Portrush Road, legally described as Lot 1, Block 10, Red Rock Meadows Subdivision, Sec 28, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

Solon gave the video presentation. The green cards were turned in before the meeting. Toby Karn was present from Mandalay Homes for the appeal. Karn said that they purchased these lots as developed. Karn said that they now have a contract pending and they only need a 20' setback with the house that was chosen. Karn said that they do not have a house plan that will fit in the building envelope. Solon read the staff comments for the record. Solon read the staff comments for the record. Fire Department – no concern over reduced set back; will not impede access to or around structure; my only concern is the justification for the variance other than the applicant simply does not want to build a house that would conform to the lot size; topography or the like appears to be not a factor, just a matter of want; based on the request itself the FD is okay with it. GM Engineer – applicant is requesting a reduced side yard setback for a lot abutting Dunsmore Road; Dunsmore Road is classified as a minor arterial street on the City's Major Street Plan – this equates to higher volumes of traffic at higher speeds within a residential neighborhood; due to increased safety issues, recommend denial of reduced side yard setback. Karn addressed the higher speed on the road in that there is a stop sign on the corner. GM Planner – staff finds the variance request is in conflict with the City of Rapid City Municipal Code; the intent of the zoning ordinance is to provide a sufficient level of open space, and separation from main and accessory structures from neighboring properties; by not meeting the minimum required front yard setback requirements, potential aesthetic issues arise;

as such, staff cannot support the variance request. Karn would like uniformity because throughout the rest of the development they have an 18 foot front yard setback through the PRD. Schlimgen moved to deny the appeal due to the lack of any criteria, second by Neumann. Appeal No. 5427 was denied by a vote of 4-1, with Herr opposed.

**Appeal No. 5430 Continued from August 21, 2007**

Discount Lumber, 2211 E Highway 44, Rapid City, SD 57703, applies for a variance to reduce the rear yard setback from 25 feet to 4 feet as per Chapter 17.22.040 of the Rapid City Municipal Code for the property located at 1431 Sedivy Lane, legally described as Lot 1, KHC Subdivision, Sec 5, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

Solon gave the video presentation. The green cards were turned in before the meeting. Wally Bork from Knecht Home Center was present for the appeal. Bork said that they would like to build a storage shed for the building materials to get them out of the weather. Solon read the staff comments for the record. Fire Department – this proposed structure is basically a stand alone structure with easy access to the front and sides of the structure; however, access to the rear of the structure would have to be gained from the sports complex softball field; this is certainly doable during good weather, but during in climate weather gaining access to the rear of the structure may be challenging; a four foot set back does not safely allow emergency access to the rear outside of the structure. GM Engineer – the plat for this property shows an existing 10' major drainage easement along the south and west property lines; a note on the plat states "all major drainage easements shall be kept free of all obstructions including but not limited to buildings, walls, fences ..."; in addition, there is an 8' utility easement located on the interior side of all side and rear lot lines; applicant would need to vacate portions of the existing easements to build the proposed structure. GM Planner – staff finds the variance request is in conflict with the City of Rapid City Municipal Code; the intent of the zoning ordinance is to provide a sufficient level of open space, and separation from main and accessory structures from neighboring properties; by not meeting the minimum required side yard setback requirements, potential safety and aesthetic issues arise; in addition, the applicant currently has reasonable use of the property; as such, staff cannot support the variance request. Bork was not aware of the easements and he thought that the drainage easement was on the outside of the property line. Bosworth showed the Board and appellant a copy of the plat. Bork is not aware of any utilities in the easement. Bosworth said that the easements would have to be vacated. Schlimgen asked why they wanted to be 4' feet from the property line in stead of 10'. Bork said that it would be a junk collector if there were more room between the shed and the fence. Malone moved to approve a 4' rear yard setback for the proposed shed as shown on the site plan with the stipulation that the drainage and utility easements be vacated, with a second by Rolinger. Appeal No. 5430 was approved for a 4' rear yard setback for the proposed shed as shown on the site plan with the stipulation that the drainage and utility easements be vacated by a vote of 5-0.

**Appeal No. 5431**

Chad Boyd, 1011 E Saint Francis Street, Rapid City, SD 57701, applies for a variance to reduce the side yard setback from 8 feet to 4 feet as per Chapter 17.12.050 of the Rapid City Municipal Code for the property located at 1011 E Saint Frances Street, legally described as Lot 13, Block 5, Cloverdale Subdivision, Sec 7, T1N, R8E, BHM, Rapid City, Pennington County, South Dakota.

Solon gave the video presentation. The green cards were turned in before the meeting. Chad Boyd was present for the appeal. Boyd wants to build a garage and get two of his vehicles off the street. Boyd wants to be 4' feet from the property line so that he does not have to jog behind the house with the vehicles. There was discussion on alternate placements for the garage. Solon read the staff comments for the record. Fire Department – the FD has some concerns with the reduced setback request as this would put the proposed structure as shown 6 feet from the nearest structure; the concern is a possible solid fence in very close proximity to the proposed structure; if in fact there is a solid wooden type fence within this 6 foot space, the FD would not be in favor of the reduced setback as it could be a major safety factor for responding fire fighters in the event of a fire emergency in the proposed garage by reducing considerably the safety area of operation; however if it is a usual type chain link fence etc though not ideal the reduced set back request would be acceptable to the FD. GM Engineer – the original plat does not show any easement between lot 13 & 14. GM Planner – staff finds the variance request is in conflict with the City of Rapid City Municipal Code; the intent of the zoning ordinance is to provide a sufficient level of open space, and separation from main and accessory structures from neighboring properties; by not meeting the minimum setback requirements, potential safety and aesthetic issues arise; in addition, the applicant currently has reasonable use of the property as a single-family residence; as such, staff cannot support the variance request. Solon said that this lot is in the floodplain and that a Flood Plain Development Permit and an Elevation Certificate will be required to obtain a building permit. There was more discussion on the placement of the garage. Schlimgen moved to approve a 6' side yard setback for the proposed size of garage, using the small lot size as criteria; with a second by Malone. Appeal No. 5431 was approved for a 6' side yard setback for the proposed garage size by a vote of 5-0.

**Appeal No. 5432**

Robert Maples, 222 E Nevada Street, Rapid City, SD 57701, applies for a variance to reduce the side yard setback from 8 feet to 5.3 feet for the shed, to reduce the rear yard setback from 5 feet to 2 feet for the shed, to reduce the front yard setback from 25 feet to 24.8 feet for the garage, and to reduce the side yard setback (abutting a street) from 25 feet to 23.5 feet as per Chapter 17.10 of the Rapid City Municipal Code for the property located at 222 E Nevada Street, legally described as Lot 19, Block 2, Robbinsdale Terrace Addition #2, Sec 12, T1N, R7E, BHM, Rapid City, Pennington County, South Dakota.

Solon gave the video presentation. The green cards were turned in before the meeting. Robert Maples was present for the appeal. Maples is in the process of moving the property line over.

Maples said that his neighbor has given him the property and his shed and garage still do not meet the required setbacks. Maples said that he needs the variances in order for the City Council to approve the re-plat of the lot. Solon read the staff comments for the record. Fire Department – FD is acceptable to the requested reduced set backs as there appears to be adequate access into the property in the event of an emergency response incident. GM Engineer – the original plat does not show any easement between lots 19 & 20. GM Planner – staff finds the variance request is in conflict with the City of Rapid City Municipal Code; the intent of the zoning ordinance is to provide a sufficient level of open space, and separation from main and accessory structures from neighboring properties; by not meeting the minimum required setbacks, potential safety and aesthetic issues arise; in addition, the applicant currently has reasonable use of the property as a single-family residence; as such, staff cannot support the variance request. Maples said that the floor of the small shed that is 2' from the property line is stuck to the ground, otherwise he would have moved it. Malone moved to approve the 24.8' setback for the garage and extending the setback to 8' from the property line for future garage expansion, with a second by Rolinger. Appeal No.5432 was approved in part for a 24.8' setback for the garage and extending the setback to 8' from the property line for future garage expansion by a vote of 5-0. Malone moved to approve a 23.5' setback from E Nevada Street and a 2' rear yard setback for one shed and a 5.3' side yard setback for the other shed, with a second by Herr. Appeal No. 5432 was approved in part for a 23.5' setback from E Nevada Street and a 2' rear yard setback for one shed and a 5.3' side yard setback for the other shed by a vote of 5-0.

### **Appeal No. 5433**

Venture Investments LLC, 927 Main Street, Rapid City, SD 57701, applies for a variance allow the height of the proposed building to be 86 feet in lieu of the 45 feet required and 5 ½ stories in lieu of the 4 stories required as per Chapter 17.18.060 of the Rapid City Municipal Code for the property located at 1314 N Elk Vale Road, legally described as Lot 1, Atlantis Subdivision, Sec 27, T2N, R8E, BHM, Rapid City, Pennington County, South Dakota.

Solon gave the video presentation. The green cards were turned in before the meeting. Paul Bradsky from Venture Investments and Janelle Finck from Fisk Land Surveying were present for the appeal. Bradsky said that with the proposed structural building system, the variance needed would be for 69'6" in stead of the 86' originally requested. Finck showed the Board that the property is below the interstate and they have not been able to get a restaurant built because of the poor visibility. Finck said that they have topographical disadvantage to overcome. According to Finck, the property has to be accessed from the service road and not from Elk Vale Road. Bradsky gave the board affidavits from neighboring property owners supporting the variance request. Finck said that there are several hotels in Rapid City that exceed the height limit are required by ordinance. Solon read the staff comments for the record. Fire Department – the FD is okay with requested variance as the structure shall be required to have all the applicable fire suppression and detection systems in place as required by the 2003 IFC. GM Engineer – there are no issues with water, sewer, or drainage. GM Planner – staff finds the variance request is in conflict with the City of Rapid City Municipal

Code; the intent of the zoning ordinance is to preserve the skyline of the City and to ensure that one structure does not stand out more than other similar structures in the immediate area; by not meeting the maximum height requirement, potential aesthetic issues arise; in addition, the applicant has reasonable use of the property; as such staff cannot support the variance request. Herr questioned the reasoning behind the height requirement of 45 feet. Rolinger stated that part of the reasoning was to protect the downtown historical portion of Rapid City. Rolinger moved to approve the height for the building of 69'6" and a 5 ½ stories, with a second by Herr. Appeal No. 5433 was approved for the height of the proposed building to be 69'6" and 5 ½ stories by a vote of 5-0.

Herr moved to recommended that staff pursue changing the height regulations to 85 feet for buildings in commercial districts, with a second by Malone. The motion passed by a vote of 5-0.

Malone moved to approve the minutes of August 21, 2007, with a second by Rolinger. Motion passed 5-0.

There being no further business to come before the board at this time, the meeting adjourned at 8:20: a.m.