

# Board of Zoning Appeals

## MINUTES OF THE MEETING OF JUNE 4, 2007

**MEMBERS PRESENT:** Earl Ward, Chairperson  
James Belew, Vice Chairperson  
Tim Bailey  
Don Judd

**MEMBERS ABSENT:** Kipp Riddle

**OTHERS PRESENT:** Martin Dickinson, 701 North Grand, Pittsburg  
John Short, 820 West Kansas, Pittsburg  
Vernon Morton, 1306 Randall, Pittsburg  
Ruth Lemon, 110 East Carlton, Pittsburg  
Todd Kennemer, Assistant Director of Public Works

The Pittsburg Board of Zoning Appeals met on Monday, June 4, 2007, at 5:15 p.m., in the City Hall Commission Room. Chairperson Earl Ward called the meeting to order at 5:15 p.m. with four (4) members present.

**The first order of business was the approval of the minutes of the meeting of May 7, 2007.** In this regard, Jim Belew moved, seconded by Tim Bailey, that the minutes be approved as submitted. Motion carried unanimously.

A **PUBLIC HEARING** was held, as advertised, to consider the following:

Case No. 07-6 - A request submitted by Great Plains Real Estate Development, LLC (Meadowbrook Mall) for a 5 foot variance in sign setback requirements to allow a sign to be placed 10 feet from the west property line of Lot 2 located in the Meadowbrook Mall Addition at 202 East Centennial.

Chairperson Earl Ward opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. In this regard, Martin Dickinson, representing Todd Ewing for Great Plains Real Estate Development, LLC (Meadowbrook Mall), stated they would like approval to construct a sign with a 10 foot setback from the property line instead of the required 15 foot setback. This request was being made to fulfill an agreement made with a tenant in the new annex building. The sign was to be of the same split block design as the main mall sign located at Centennial and Langdon Lane, but smaller in scale.

**BOARD OF ZONING APPEALS  
MINUTES OF JUNE 4, 2007  
PAGE TWO**

Todd Kennemer stated that although the sign setback regulations [Section 27-106.4(f)(7)] allow this type of sign to be placed 15 foot from the property line, in this case, the 15 foot mark lies inside of a platted 20 foot utility easement. Section 29-103.7 of the Zoning Ordinance states, "No building, either a main or an accessory building, shall be constructed, moved, or altered so as to encroach onto or within a platted or recorded easement." He stated the applicant also filed a request to vacate the east 10 feet of this 20 foot easement the entire length of Lot 2, Meadowbrook Mall Addition. The vacation request was heard at the Planning and Zoning Commission meeting on May 21<sup>st</sup>. The request for vacation was not approved. A copy of the minutes from that meeting was provided to this Board for reference. At the June 12<sup>th</sup> City Commission meeting, the Commission agreed with the Planning and Zoning Commission's recommendation and did not approve the vacation of the easement.

The Planning and Zoning Commission denied the request for vacation because there are utilities located in the easement. They did, however, make a recommendation to the Board of Zoning Appeals to grant a variance to allow the sign to be placed 5 foot into the easement at the 15 foot mark with a "hold harmless clause" releasing the City from any liability of utility interference. Mr. Kennemer relayed this recommendation to the Board. Mr. Kennemer stated that since the vacation of the easement was not recommended, this case shifted from a variance request allowing the sign to sit 5 feet closer to the road (with a 10 foot setback) to a variance request to allow the sign to be built 5 feet into the easement (with a 15 foot setback allowed if there were no easement).

Jim Belew asked why the applicant was requesting the variance. Mr. Dickinson stated they wanted the sign to be in line with the main mall sign at the corner of Centennial and Langdon Lane.

Tim Bailey asked why the sign could not be built at the eastern edge of the 20 foot utility easement, as it appears there was room between the easement and the edge of the parking lot pavement to place the [10' wide] sign. Mr. Dickinson stated the applicant would prefer the sign be closer to the road for visibility and to line up with the main sign as best as possible.

Earl Ward asked if any of the trees would be removed in order to place the sign. Mr. Dickinson stated some of them would be removed.

Don Judd asked if the sign could be built without a variance. Mr. Dickinson stated it could be built, but a parking space may be lost and the applicant would prefer the sign be closer to the road. Todd Kennemer stated there was ample parking and if one space was lost the parking requirements were still satisfied.

**BOARD OF ZONING APPEALS  
MINUTES OF JUNE 4, 2007  
PAGE THREE**

There being no one present to speak either in favor of or in opposition to the request, Chairperson Earl Ward closed the **PUBLIC HEARING** for the request. The Board then considered the following factors:

1. There are no special conditions which exist in respect to the property or structure being considered which are different from other properties or buildings in the neighborhood.
2. There are no special conditions or circumstances such that the strict literal interpretation of the Zoning Ordinance would constitute unnecessary hardship upon the property owner represented in the application.

The Board of Zoning Appeals considered all eight (8) factors involved, but expounded on the above.

Based on these factors, James Belew moved, seconded by Earl Ward, that a variance be approved allowing the sign to be placed 5 feet into the utility easement with the sign's western edge at 15 feet from the property line, with a "hold harmless clause" to protect the City, to allow the sign to be in line as best as possible. Motion was not approved due to a tie vote of 2-2. (Belew and Ward in favor; Bailey and Judd opposed).

After a brief discussion of the factors to be considered in granting a variance, Tim Bailey moved, seconded by Don Judd, that the variance be denied because the sign could be built without a variance and no hardship was created by denying the request. Motion was not approved due to a tie vote of 2-2. (Bailey and Judd in favor; Belew and Ward opposed).

Earl Ward moved, seconded by Tim Bailey, to allow the sign to be placed as shown in the attached photos submitted by Mr. Martin Dickinson. Photos submitted showed the sign was not located inside the 20 foot utility easement. Motion was **approved** by a vote of 3-1. (Bailey, Judd, and Ward in favor; Belew opposed).

A **PUBLIC HEARING** was held, as advertised, to consider the following:

- Case No. 07-7 - A request submitted by Vernon Morton for a 15 foot variance in front yard setback to allow houses to be constructed 15 feet from the right-of-way line of Rose Harris Boulevard located at 825 West Kansas Street and 720 West Forest Street.

**BOARD OF ZONING APPEALS  
MINUTES OF JUNE 4, 2007  
PAGE FOUR**

Chairperson Earl Ward opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. In this regard, Vernon Morton stated that he has purchased 9 lots on this block, 5 lots facing Forest Street and 4 lots facing Kansas Street (Rose Harris Boulevard is the side street). There are 3 dilapidated houses on the lots that are being razed and 9 new homes are to be built. Each lot is 50 foot in width. The property is zoned R-1C and requires 30 foot front yard setbacks. Corner lots are required to have two front yards. Since the lots are 50 foot in width, the required 30 foot setback plus the required 5 foot side yard setback only leaves a buildable area 15 foot in width on the corner lots.

Todd Kennemer stated that the strict application of the Zoning Ordinance creates a hardship on the corner lots and renders them unbuildable. Rose Harris Boulevard is only one (1) block in length with two homes fronting the street and is sparsely traveled. Allowing this 15 foot variance in (secondary) front yard setbacks along Rose Harris Boulevard would allow homes to be built on both corner lots. The smaller setback requirements would match the setbacks of existing homes in the area; would not confer any special privilege denied on other lands; would not affect the public health, safety, or welfare and would meet the general spirit and intent of the Zoning Ordinance.

John Short, 820 West Kansas, stated he came to the meeting to find out exactly what was going on and to oppose the request if it would negatively affect his property. He stated that after listening to Mr. Morton and the Board explaining what was going on and why the request was being made, he was not opposed to this request.

There being no one else present to speak either in favor of or in opposition to the request, Chairperson Earl Ward closed the **PUBLIC HEARING** for the request. The Board then considered the following factors:

1. Because these are corner lots, there are conditions which exist in respect to the property or structure being considered which are different from other properties or buildings in the neighborhood.
2. Because these are corner lots, there are special conditions or circumstances where the strict literal interpretation of the provisions of the Zoning Ordinance would constitute unnecessary hardship upon the property owner.
3. The granting of a permit for the variance requested would not adversely affect the rights of adjacent property owners or residents.

**BOARD OF ZONING APPEALS  
MINUTES OF JUNE 4, 2007  
PAGE FIVE**

4. The granting of the variance requested would not confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures or buildings in the same district.
5. The granting of the variance requested would not affect the public health, safety, or welfare.
6. The granting of the variance requested would not be opposed to the general spirit and intent of the Zoning Ordinance.

The Board of Zoning Appeals considered all eight (8) factors involved, but expounded on the above. Based on the above factors, Tim Bailey moved, seconded by Jim Belew, that the variance be **granted**. Motion carried unanimously.

No applications have been submitted for the July 2<sup>nd</sup> Board of Zoning Appeals meeting. The next meeting is scheduled for August 6, 2007.

There being no further business to be discussed, Tim Bailey moved, seconded by Jim Belew, that the meeting adjourn. Motion carried unanimously and the meeting adjourned at 6:10 p.m.

Respectfully submitted,

Todd Kennemer  
Assistant Director of Public Works