



CITY OF LINCOLN BOARD OF ADJUSTMENT

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BOARD MEMBERS: Thomas Hawk, Chair, thomasrhawk@aol.com; Anita McCall, Vice-Chair, a.mccall@bellsouth.net; Becky Burke, beckyburke@charter.net; Jerry Hoffman, jlskhoffman@charter.net; Kathryn Yarbrow, kathryny@charter.net

Tuesday, March 15, 2016 Meeting

Present: Becky Burke, Jerry Hoffman, Anita McCall and Kathryn Yarbrow with And Lynn sitting in as first alternate.

Absent: Tom Hawk.

Call to Order

Acting Chair Anita McCall called the meeting to order and recognized four members were present, one was absent and And Lynn was sitting in as first alternate.

Approval of Minutes

Acting Chair Anita McCall asked the Board if there were any additions or corrections to the minutes of the February 16, 2016 meeting.

Motion: And Lynn made a motion to approve the minutes. Kathryn Yarbrow seconded. Motion carried unanimously.

BOA-1-2016

Application from Freedom Church requesting a variance from the Lincoln Unified Development Ordinance to erect a projecting sign in the Central Business (CB) District which is larger than permitted in Section 153.170 of the Ordinance. The subject property is located at 125 East Main Street (Parcel ID 01112).

Mark Carpenter addressed the Board noting the following:

- Property Located at 125 East Main Street
- Current Use of Property- Church
- Current Zoning-Central Business (CB) Zoning District
- Applicant is requesting to place a 16 square foot projecting sign extending Six (6) feet off the building and 18 feet above the sidewalk

The UDO standards are as follows:

- 8 Square feet maximum allowed
- Projecting no more than four (4) feet from the building.
- Regulation amended in February 2016 to allow projecting signs in the CB District.

The required Findings of Fact are as follows:

1. Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)
2. The hardship results from conditions that are peculiar to the property. Such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)
3. The hardship did not result from actions taken by the applicant or the property owner. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Mr. Carpenter noted the following staff comments with respect to the findings:

- Hardship and conditions that are peculiar to the property would need to be determined. In lieu of a projecting sign, wall signs are permitted to be flush to the wall up to ten percent of wall area, not to exceed 100 square feet for each wall.
- Public safety is secured with the erection of the sign. However, the variance would be inconsistent with the spirit, purpose, and intent of the ordinance. The ordinance was just amended by the City Council last month to allow projecting signs of eight (8) square feet in size.
- The applicant will need to provide additional information, at the meeting, regarding how the four findings of fact are met in order for the Board of Adjustment to grant the variance.

Clint Darst, pastor of Freedom Church, addressed the Board in support of the request and noting the following points:

- Safety was how this first came about. Some tiles started falling off the building. As we were restoring the building front, we got back to the windows you see in the picture.
- We were grandfathered in with original sign.
- Once we took the tiles off, we had those windows we wanted to restore and fix
- With the placement of the windows on the building, there's not room for a flat attached sign.
- The size of the building is unique in downtown. The sign looks small on a building this large.
- Belks had a large, long sign.
- The large sign looks better due to size of building. A smaller sign would look awkward. With the windows where they are, where would we put the sign?

- The process started with tiles falling off the building and our desire was to go back to as close a historic looking building as possible.

Anita McCall asked the representatives of the applicant why they were asking for a variance.

Mr. Darst stated that 8 square feet would be too small.

And Lynn asked why not use the space available. It looks like you have a lot of flat space for a sign.

Mr. Darst stated the awning sticks out so far you can't see that space you're looking at from the sidewalk.

Ms. McCall asked if the sign is double sided. Mr. Darst indicated it is.

Ms. McCall indicated that the Board's concern is this sets a precedent. If we allow it for one, then it opens it up for every business and has the potential to block the view of the courthouse.

Mr. Darst asked if downtown wants the historic look shown in the Steve Bailey photo. Ms McCall pointed out the Salty Petal sign. Mr. Darst indicated the size and amount of signs in the picture.

Josh Sugg, Administrative Pastor, addressed the Board stating our awning is so long that our sign would not extend past it. I don't believe the sign would impede vision of the courthouse. Ms. McCall agreed that one sign would not but that if every business had one, it would.

Ms. McCall asked about placing the sign on the side of the building. Mr. Sugg noted that they had thought about that. We thought it would be more appealing from the front. The concern was that you would not be able to see it from the west.

Jerry Hoffman asked if the rendering was to scale and Mr. Sugg said it was.

Ms. McCall asked whether the sign has been tested for wind sheer. Mr. Sugg it has not but that a member who is an engineer has indicated the sign could withstand 10,000 pounds of force plus.

Mr. Hoffman asked why there is such a limit on the size of projecting signs downtown. Mr. Carpenter indicated projecting signs used to not be allowed at all downtown. Then the Southern Charm Winery sign was approved through a variance. Later, the Salty Petal sign was approved through a variance. So staff prepared a text amendment to allow that type of sign without the need for a variance.

Mr. Hoffman asked if we approved this, would it set a precedent. Mr. Carpenter indicated you would need to look at every case individually. Mr. Hoffman said he thought the sign is not obtrusive at all.

Ms. McCall stated that there is no hardship. Have we met the finding of hardship? The answer is no.

Mr. Lynn stated that he sympathized with the church and if the variance was just a foot or two over the regulation, it may be different. But this is double and we would be opening ourselves up with this.

Michael White, Associate Pastor, stated that with respect to the precedent issue, the building is the largest building in the CBD and the sign is 18 feet off the ground. It would be tacky to have a small projecting sign on a building that large. This is a unique circumstance.

Ms. McCall asked how the hardship is met. Mr. White indicated its the uniqueness of the building and the awning.

Mark Ingle, member of Freedom Church, addressed the Board stating most people find you on the web and they come and see the logo and know where they are. With it being so high, it would not really set a precedent.

Mr. Lynn indicated he did sympathize because he understands the issues but the extreme size and extreme nature does not fit with the building. The size and nature of the sign gives me pause.

Mr. Darst stated that because we are at a corner, it makes us unique.

Motion: And Lynn made a motion to deny. Anita McCall seconded.
Motion carried 4-1 with Jerry Hoffman dissenting.

BOA-2-2016

Application from the Paul L. Lail Estate requesting a variance from the Lincoln Unified Development Ordinance. The request is to subdivide the property and to create a new lot for an existing building. The proposed lot would not meet the required lot size and building setbacks in the Planned Business (PB) District. The Subject property is located at 1420 East Main Street (Parcel ID 15674).

Mark Carpenter addressed the Board noting the following:

- Property Located at 1420 East Main Street with multiple buildings located on the property.
- Current use of the property includes Lail Electrical Service, Retail Space, and Warehousing.
- Current Zoning- Planned Business (PB) District.
- Total property size- 0.77 acres

Mr. Carpenter noted the variance request is to subdivide the property and create one new lot. The proposed lot would be 0.117 acres in size. The lot would be created to divide the estate of Mr. Lail. The newly created rear property line would create a rear setback of 9.68 feet and left

side setback of approximately 24 feet.

Mr. Carpenter noted the relevant UDO requirements as follows:

- Lot size requirement- One (1) acre. The lot as it currently exists is nonconforming in that it is 0.77 acres in size
- Rear and side setback requirements are 30 feet in the PB District.

The required Findings of Fact are as follows:

- Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)
- The hardship results from conditions that are peculiar to the property. Such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)
- The hardship did not result from actions taken by the applicant or the property owner. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)
- The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Mr. Carpenter noted the following staff comments with respect to the findings:

- No changes will be made on the property other than the creation of a new property line.
- The property was developed prior to zoning when there were no setback requirements which would cause a hardship in subdividing the property
- There are 4 buildings on the property which is a unique circumstance
- In that no changes will be made other than creation of a new property line and that it is for the division of an estate the variance would be consistent with the spirit, purpose, and intent of the ordinance and public safety would be secured.
- Staff recommends that if the variance is granted that an agreement be submitted that allows for the continuation of parking on the adjacent properties.
- The applicant will need to provide additional information, at the meeting, regarding how the four findings of fact are met in order for the Board of Adjustment to grant the variance.

Steve Lail, representing the applicant, addressed the Board stating we are just trying to satisfy our father's will which stated that the property is to be divided.

Jerry Hoffman asked what would happen if a building on the lot was destroyed and they wanted to build a new building. Mr. Carpenter stated if it's a total loss and they build a new building, they would have to get a variance. If the damage was under 60 %, they could rebuild on the lot

as is.

Anita McCall asked if this met the criteria for a hardship. Mr. Carpenter noted the only way they can meet the will is through a variance.

Motion: And Lynn made a motion to approve. Becky Burke seconded.
Motion carried unanimously.

BOA-3-2016

Application from Terry Collins (TBC Properties) requesting a variance from the Lincolnton Unified Development Ordinance. The requested variance would allow an accessory building to remain on the property that doesn't meet the setback requirements in the Residential-8 (R-8) District. The subject property is located at 23 Circle Drive (Parcel ID 22507).

Mark Carpenter addressed the Board noting the following:

- Property Location-23 Circle Drive (Southwest Corner of Circle Drive and Idlewood Drive)
- Current Use of Property-Single Family Dwelling
- Current Zoning-Residential-8 (R-8)
- Property Size- 0.11 acres
- Adjacent Properties- Single Family Dwellings

Mr. Carpenter noted the following regarding the variance request:

- Applicant placed a 10' x 16' accessory building on the property without obtaining zoning or building permits. City received complaints about the building several years after construction.
- Accessory building was found to be too close to right side and rear setback. The ordinance requires that accessory buildings be ten (10) feet from the rear and interior side property lines.
- Applicant is seeking a variance to allow the building to stay in the same location which is approximately two (2) to three (3) feet from the property lines on both the side and rear.

The UDO requirements are as follows:

- Right Side Setback Requirement- ten (10) feet
- Rear Setback Requirement- ten (10) feet.

The required Findings of Fact are as follows:

- Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)
- The hardship results from conditions that are peculiar to the property. Such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)
- The hardship did not result from actions taken by the applicant or the property owner. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)
- The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

The applicant stated on the application that they are seeking a variance due to the unusually small lot size (0.11 acre) as well as two street right of ways (due to being a corner lot) - both factors contribute to the difficult placement of an accessory building that would meet the setback requirements.

Mr. Carpenter noted the following staff comments with respect to the findings:

- Notwithstanding the fact that the building was placed on the property without the proper permits, the property size is small. The existing house sits approximately 14 feet from the rear property line, about the same off the right side property line, and approximately 20 feet from the street right of way of Idlewood Drive. This could potentially be a hardship as there is very little room to place any accessory buildings on property.
- The accessory building does not appear to create a threat to public safety.
- The applicant will need to provide additional information, at the meeting, regarding how the four findings of fact are met in order for the Board of Adjustment to grant the variance.

Anita McCall asked if that was the only building. Mr. Carpenter responded that there is a carport also.

And Lynn asked how long the building has been there. Mr. Carpenter responded it has been there several years.

Jerry Hoffman asked if they had permits. Mr. Carpenter responded they did.

Terry Collins, applicant, addressed the Board stating the building was put there about 5 years ago. Mr. Collins said he thought the zoning regulations related to permanent buildings, not accessory structures. We did not have any problems until there were problems with a neighbor. The accessory building helps the tenants to have some storage and also to do their own yard work.

Ms. McCall asked what the complaints were and who made them. Mr. Carpenter responded the complaint related to the setback and came from a neighbor.

Ms. McCall asked if the building could be moved. Mr. Collins pointed out the site constraints.

Beverly Collins, applicant, stated they have owned the property for 18 years and anyone familiar with the area would know that we require tenants to be neat. All the lots are small. We do the best we can to get good tenants. The next door tenant calls in complaints about a lot of things in the neighborhood. We have lost a lot of tenants from this. He's complained about our tenants coming in late at night.

Ms. McCall asked for confirmation that the hardship relates to the lot size and the placement of the house.

Mr. Wahlburg, tenant of the property, addressed the Board stating that the next door neighbor complained because he shut his door. This all boils down to a neighbor that complains to cause commotion. The house is small and I use the shed for lawn equipment. If I store equipment outside, it gets stolen.

Motion: Jerry Hoffman made a motion to approve. And Lynn seconded.
Motion carried unanimously.

BOA-4-2016

Application from Johnnie Gonzalez requesting a variance from the Lincolnton Unified Development Ordinance. The requested variance would allow a deck to remain on the property that doesn't meet the setback requirements in the Residential-8 (R-8) District. The subject property is located at 22 Circle Drive (Parcel ID 22492).

Mark Carpenter addressed the Board noting the following:

- Property Location-22 Circle Drive (Southeast Corner of Circle Drive and Idlewood Drive)
- Current Use of Property-Single Family Dwelling
- Current Zoning-Residential-8 (R-8)
- Property Size- 0.12 acres
- Adjacent Properties- Single Family Dwellings

Mr. Carpenter noted the following regarding the variance request:

- Deck was constructed onto dwelling without obtaining zoning or building permits. (Deck was constructed by previous owner. City received complaint after new owner purchased)
- Deck was found to be too close to property lines on left side and rear.

- Applicant is seeking a variance to allow the deck to remain in the same location which is approximately two (2) to three (3) feet from the property lines on the rear and eight (8) to nine (9) feet on the left side.

The UDO requirements are as follows:

- Left Side Setback Requirement- ten (10) feet
- Rear Setback Requirement- twenty-five (25) feet

The required Findings of Fact are as follows:

- Unnecessary hardship would result from the strict application of the ordinance. (It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.)
- The hardship results from conditions that are peculiar to the property. Such as location, size, or topography. (Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.)
- The hardship did not result from actions taken by the applicant or the property owner. (The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.)
- The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Mr. Carpenter noted the following staff comments with respect to the findings:

- Notwithstanding the fact that the deck was constructed on the property without the proper permits, the property size is small. The existing house sits approximately 8-10 feet from the rear property line, about the 13-14 feet from the left side property line, and almost on the street right of way of Idlewood Drive. This could potentially be a hardship. However it could be argued that a patio would serve the same purpose as a deck and a patio does not require the same permits.
- The deck does not appear to create a threat to public safety.
- The applicant will need to provide additional information, at the meeting, regarding how the four findings of fact are met in order for the Board of Adjustment to grant the variance.

Johnnie Gonzales, applicant, addressed the Board stating he recently purchased the property and was not aware of the zoning violation. O'Neal Helms stated she was the realtor for the recent purchase and she thought everything was compliant. Removing the deck would harm the value of the property. The home inspector did not know it was a problem.

Anita McCall asked what would happen with the previous owner. Ms. Helms said they were not interested in lawsuits, they just want to keep the deck.

Ms. McCall asked what the complaint was. Mr. Carpenter responded the complaint was the same as the previous case.

Mr. Gonzales stated the complaint was directed at the previous owner and related to pigs.

Motion: And Lynn made a motion to approve. Anita McCall seconded. Motion carried unanimously.

Adjournment:

Motion: Jerry Hoffman made a motion to adjourn the meeting. Anita McCall seconded. Motion carried unanimously.

Laura Elam