



BELLA VISTA

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DEPARTMENT OF COMMUNITY
DEVELOPMENT SERVICES
616 W. LANCASHIRE BLVD.
BELLA VISTA, AR 72715

BOARD OF ZONING ADJUSTMENTS REGULAR MEETING

DATE: AUGUST 16, 2016 AT 7:00 P.M.
LOCATION: COMMUNITY DEVELOPMENT SERVICES CONFERENCE ROOM
616 WEST LANCASHIRE BOULEVARD
BELLA VISTA, AR 72715

AGENDA

I. CALL TO ORDER

II. ROLL CALL

Members: Robert Walker, Chairman; Linda Lloyd, Vice-Chairman/Secretary; John McBee; Harry Newby; Thomas Carney; and Charles Whittenberg.

III. MINUTES

A. Minutes from previous meeting: May 17, 2016

IV. UNFINISHED BUSINESS

None

V. NEW BUSINESS

A. Introduction of new member Larry Wilms

VI. OPEN DISCUSSION

- A. Code changes:
 - 1. Fences and accessory structures at City Council
 - 2. Legal notifications at City Council
- B. Review of this board's review criteria
- C. Other item(s)?

VII. ANNOUNCEMENTS

- A. Next City Council Work Session will be held on Monday, August 15, 2016, at 5:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- B. Next City Council Regular Session will be held on Monday, August 22, 2016, at 6:30 PM in the Bella Vista American Legion Hall at 1889 Bella Vista Way.
- C. Next Planning Commission Work Session will be held on Thursday, September 1, 2016, at 4:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- D. Next Planning Commission Regular Session will be held on Monday, September 12, 2016, at 6:30 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- E. Next Board of Construction Appeals meeting is scheduled for Tuesday, September 13, 2016, at 3:00 PM in the Bella Vista City Hall Conference Room at 101 Town Center.
- F. Next Board of Zoning Adjustment meeting is scheduled for Tuesday, September 20, 2016, at 7:00 PM in the Bella Vista City Hall Conference Room at 101 Town Center. We do have business to discuss.

VIII. ADJOURNMENT

Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For additional information or to request this service, please contact the City Clerk at 479-876-1255.

7:00 P.M.

TUESDAY, AUGUST 16, 2016



**COMMUNITY DEVELOPMENT
SERVICES DEPARTMENT**
616 W. Lancashire Blvd.
Bella Vista, Arkansas 72715
Phone: (479) 268-4980

Board of Zoning Adjustment Regular Meeting

DATE: MAY 17, 2016
LOCATION: COMMUNITY DEVELOPMENT SERVICES CONFERENCE ROOM
616 W. LANCASHIRE BOULEVARD
BELLA VISTA, ARKANSAS 72715

MINUTES

I. CALL TO ORDER

The meeting was called to order by Chairman Walker at 4:00 PM.

II. ROLL CALL

Members present: Robert Walker, Chairman; Linda Lloyd, Vice-Chairman/Secretary; Doug Farner; Harry Newby; Charles Whittenberg; A.J. Morris, Jr.; Thomas Carney.

Members absent: None.

III. CONSIDERATION OF MINUTES

A. Regular Meeting Minutes – January 19, 2016.

1. Mr. Whittenberg said on item 3 in the meeting minutes – did we ever come up with an answer on that? Ms. Bonner said in the calendar year of 2015, we had 3 lot-split requests. We already know of 3 potential lot-splits for this year.
2. Mr. Whittenberg said on item 12 in the minutes Chairman Walker said he can't imagine anyone would want to put a fence in the front of their storefront. I added that TH Rogers is an example of that. I just wanted to make a point that there are places where that does happen that's pertinent.
3. Chairman Walker said in regards to item 4 in the minutes, there seems to be a lot of discussion about fencing. I thought at the last meeting we had made a recommendation to limit the height and the setbacks of the fence. I thought that was a closed item, but I found out that the Planning Commission is reviewing that again. What was our responsibility in discussing this if it went to the Planning Commission?
4. Ms. Bonner said Part of it is you guys were coming up with recommendation to Planning Commission on how you would like to see things changed. Planning Commission then forwards a recommendation to City Council. They can change it at any time. What you were really doing was making a language recommendation. Planning Commission looked at that and made some changes to it themselves before they sent it on. City Council since changed it again. There had to be language created so that there could be a public hearing on what changes were being looked at. The discussion began with this Board since it's who would have to vary it if such a request was made.
5. Chairman Walker asked did the recommendations made by this Board hold up, or where they changed. Ms. Bonner said there were some minor changes, but isn't sure if they have been finalized by City Council.
6. Director Suneson said City Council had a work session last night for this issue. As you may know, recommendations from the work session are just those, recommendations. The Council has to wrestle with what ultimately come down to their legislative function.

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We go through a public hearing process with the Planning Commission. We definitely have to make sure that there is language that the public can review. We have received a lot of public input across the board on fencing as well as accessory structures. City Council deliberated a little bit at the end of April at the regular meeting. Staff was given the directive to rewrite the language because City Council wasn't happy with it. Currently, there are four recommendations on changes in front of the City Council. Fencing code. One is to allow fencing in the front yard. Two would increase the current to 36" to 48' for parcels under 1 acre in area. Parcels larger than that could go up to 8'. There's also commercial and industrial properties to allow in the front yard, in the front setback (much like TH Rogers). The fourth recommendation is if a fence is too high in the front yard to remove the administrative variance of increasing that height by 25%. If that remains in place, then fences under those proposed regulations can go up to 5'. Those were the Staff recommendations to the Council. They have not acted on them as of yet, but may in June.

On a motion by Mr. Farner and a second by Chairman Walker, the January minutes were approved with the corrections by voice vote.

IV. UNFINISHED BUSINESS

None.

V. PUBLIC INPUT

None.

VI. NEW BUSINESS

A. *ZVR-2016-23569: Rear Setback Reduction at 29 Metfield Drive for a Building Addition in an R-1 Zoning District; Parcel #16-21097-000; Nathan and Mindy Ellington.*

1. Chairman Walker said each application to be considered by the Board will have a completed application and will be accompanied by currently adopted fee for such applications. That has been done. Director of Community Development Services, or his or had he designee, shall receive all the applications in accordance with the development calendar. The application shall be placed on the agenda and heard by the Board in the order which they are received. Applicants shall appear on his or her behalf, or be represented by an agent or attorney in the hearing. In the absence of any appearance by the applicant agent or attorney the Board will proceed to dispose of the matter on the record before it. In such case, if the Board feels necessary the application may be deferred until the next regular scheduled meeting if not represented. Here's the order of the hearing and the allowed speaking times. The applicant will have 15 minutes to speak. Present your case in 15 minutes, okay? The Director of Community Development Services, Director Suneson, will give his side of the case with 10 minutes to speak. Interested property owners that are present here will have 3 minutes each to speak. For the applicant's rebuttal, to anybody that has spoken, you'll have 10 minutes to speak. You may withdraw your application at any time or appeal at any time to the decision of the Board. After the hearing, and prior to the deliberations of each case, the Board reserves the right to defer action until the next scheduled meeting, if necessary. After the hearing the Board will deliberate the case and reach a final decision. If the application is approved by the Board on necessary permits for the initiation of work shall be obtained

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as outlined, unless a time extension is granted by the Board. Otherwise the Board approval of the application will be considered void at the end of the time allowed by the respective ordinances. If the variance request is denied, the Board will not reconsider the variance until 1 year from the date of denial. I will now call on the applicant, and you will have 15 minutes to present your case.

2. Ms. Mindy Ellington introduce herself and said this is my husband, Mr. Nathan Ellington. We have lived at 29 Metfield Drive for 19 years. I've lived in Bella Vista all my life. My grandfather was the Senior Vice-President for Cooper Consultants, and helped create Bella Vista. In the past couple of years we've done renovations, making the house a little bit bigger. We have 3 children, two grandchildren. What we are proposing to do is add a bedroom, sitting alcove and additional bathroom. This past year we added a new master bedroom and bathroom. The master bathroom was very small. It had a sink in one area, and then a door that opened up to a toilet and shower. If you opened the shower it clinked the toilet every time. So, we were excited to get the new bathroom with a bathtub. Now, what we're wanting to do is finish what used to be our master bedroom with a bigger closet and smaller bathroom so we can turn it into a guest room. Currently, our new master bedroom - the way we went - to the south side of the property - we've already hit the building setback line there. So, the best way to go is to go out. Right now I think we can go 4', but we need additional room to make the bathroom a comfortable size, and a walk-in closet. I think we are asking for an additional 2'.
3. Ms. Bonner said if you don't mind my interrupting, the last 2 pages of your package have the rooms that they're talking about adding as well as color coding for the different use of additions that was done on the property.
4. Ms. Ellington said we can go out about 4' without a variance.
5. Mr. Ellington said we can't make a functional bathroom without having another 4' or so. We probably have 70' between the back of the house and the road. There's all the utilities are in place. There's absolutely no reason that there would ever be any utilities in that area.
6. Chairman Walker said for the record, the Ellington's have produced a Facebook page showing all the construction of the existing structures and the proposed additions.
7. Ms. Ellington asked do you have any questions for us.
8. Chairman Walker said you have 2 parcels on either side. Ms. Ellington said yes, we own the main lot and the parcels on both sides of the house.
9. Chairman Walker asked would it ever be in the realm of possibility that you would ever consider selling either of those parcels. Mr. and Ms. Ellington said absolutely not.
10. Mr. Walker said currently in the back of that parcel, of your main parcel, you have a road that comes in, I guess a temporary area where you can drive trucks in to do whatever landscaping you needed.
11. Ms. Ellington said what we were doing is -- our backyard is fenced in, but each of the panels are removable.
12. Mr. Ellington said it is a modular fence where there's 10-foot sections, and panels can be removed.
13. Ms. Ellington said we can come in through our driveway and around that side yard and in through the fence.
14. Chairman Walker said the area I am referring to is directly behind your house on the drive -- is that temporary in nature? Ms. Ellington said yes, the City removed a large tree in that area. Once this project is done we are going to sod or put plans in that area.

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15. Chairman Walker asked if there are any questions. Hearing none, he asked for the Staff Report.
16. Ms. Bonner said the applicants have requested a variance of Municipal Code §109-73(c)(3) be granted to reduce the rear building setbacks requirements in an existing R-1, Residential Single Family zoning district. When the house was originally constructed, the City did not exist. At the time the plans were submitted for the original house construction, a deck was planned on the back side of the house and it would be 10' from the closest rear property line. At some point prior to the City's incorporation, the deck shown on the original plan was replaced with a brick and stone paver patio. According to the Benton County personnel that listed the information on the improvement portion of the AR County Data Website that patio is now 47' wide and 17' out from the house. Since the City came into incorporation, the two additions that the applicants have mentioned have been added on to the house, one to the north, one to the south. Neither addition extended any farther to the rear than the original house so there were no variances needed at that time. There's also been a carport constructed during this calendar year (2016), which is on adjoining lot 10 that the applicants also owned. If the variance is approved and would allow for the construction of the roughly 240' to 250' square foot edition, it would include the seating alcove, two closets, and the additional bathroom that was shown and referenced earlier in that building edition. All of the legal notifications both by newspaper, certified mail, and sign posting were completed in time for the April meeting which we then had to cancel for lack of a quorum. They were not required to repost any of those things because of a lack of us being able to get a quorum. The subject parcel is zoned R-1 as well as all of the existing houses to the north, south, and west of this portion of Metfield Drive. There is common property, and limited common property to the east before reaching the Yates Drive. The townhomes to the east are zoned R-3, Residential Multi-Family. The common properties in this and the surrounding subdivisions as well as that limited common property that are part of Metfield Courts are all zoned P-1, Open Space. There is a vicinity map that follows the Staff Report that gives those zoning areas and does reference both the subject parcel as well as the two adjoining lots that the applicants do own. The Land Use Plan calls for this entire area to remain low density residential. That would include those areas that are currently townhomes. The only exceptions would be for the Metfield golf course which are to the north and east and are shown as recreational on that plan. The vicinity map should be attached on the back of the Zoning Map for your use. On the Master Street Plan Metfield Drive is shown as a residential street. The closest classified streets are Euston Road to the west, Commonwealth Road to the north, Jack Crabtree to the east and McNelly Road to the south. There were 6 variance review criteria that the application had to be reviewed against. I'm going to read each question and then the Staff comments will follow. 1.) Do special conditions and circumstance exist which are peculiar to the land, structure or building involved which are not applicable to other land, structures or buildings in the same zoning districts? *No. However the planned addition is not as wide as the deck on the original plot plan would have been. If the house was constructed according to its original plot plan, the original house corners would have met the city's rear building setback of 20', but the deck would not have.* 2.) Does the literal interpretations of the provisions of the Ordinance deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Municipal Code? *No.* 3.) Do special conditions and circumstances result from the actions of the applicant? *No. The applicant is looking to add an addition of 8'6" to the rear of the house and is asking for a variance prior to any other reviews of this project by the City. The distance*

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between the proposed right rear corner of the house and the closest rear property line would be about 10'. The current left rear corner of the house is about 18' from its closest rear property line. The current right rear house corner is probably about 12' from its closest rear property line and about 3' from the side property line. That sidewalk's front corner is about probably within 12" of the same property line, but of a lot under common ownership with the subject parcel. So again neither one of those would require the current house corners for a variance. 4.) Does granting the variance requested confer on the applicant any special privilege that is denied by the Municipal Code to other lands, structures or buildings in the same district? Yes. Rear building setbacks can be reduced, but the reduction is usually for placement of septic leach fields. This house has been converted to sewer due to septic problems encountered during one of the previous additions. 5.) Is the variance requested the minimum variance that will make possible the reasonable use of land, building or structure? No specific request other than addition sizes was included in the application. Staff has assumed that the rear setback required by Municipal Code 107-03(c)(3) of 20' would need to be reduced to the 10' shown on the plat plan after all the additions have been drawn. 6.) Is the variance in harmony with the general purpose and intent of Municipal Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare? If granted, the variance would not be detrimental to the health, safety, or welfare of the public or the neighborhood. Staff is recommending conditional approval of this item because of the number of other additions that have been made to the original structure as well as the fact that both adjoining lots are under common ownership with the subject parcel. The following are Staff's recommended conditions of approval.

- All construction material personnel vehicles and/or equipment will only be able to access the subject parcel during construction via its existing driveway off Metfield Drive. It is Staff's understanding that typically access is not allowed across common property or limited common property which would be the only way to access the back of the house from Yates Drive. We're asking that if those approvals would be granted by those private ownerships, one of the Townhouse Association and one of Cooper properties that those would either be posted or Staff could see those and therefore know that requirement has been met.
- A minimum of 10' of distance shall be maintained between the rear setback and the rear property line. This may require a surveyor to stake the corners of the building addition.
- Based on the plans supplied with the variance package, the applicants of this variance would be required to acquire several permits from the City. These would include: a Grading and Erosion Control Permit; a Residential Building Permit; a Plumbing Permit; and Electrical Permit; and a Mechanical/HVAC Permit.
- Variances are not acted upon within 180 days will become null and void. If one of the applicants or approved representatives pulls at least one of the previously mentioned permits, that would demonstrate proof of action.

Following the Staff Report are the 2 maps that I referenced as well as an email from Ms. Ellington on the answers that I tried to confer into the Staff Report. Also following is a 2005 aerial image that shows the back of the house, and then the other pages that I referenced.

17. Chairman Walker asked if there are any questions for Staff.
18. Ms. Lloyd said on question 4, you say that building setbacks can be reduced, but that reduction usually is for replacements of septic leak fields. What does the Ordinance

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allow you to reduce setbacks for? Ms. Bonner said you can reduce if for whatever you want. Typically, in the past, septic systems is what we have usually seen these requests for. You can reduce it, but there wasn't a case in the past where I could find it had been reduced other than for septic systems.

19. Ms. Lloyd said so, this is not an administrative reduction. Ms. Bonner said no, a rear setback can only be reduced by the Board of Zoning Adjustment.
20. Chairman Walker said asked if there are any other questions. Hearing none, we will now have an opportunity for any interested home or property owners to ask questions of the Board.
21. Ms. Lynn Baisa of 4 Sunderland Drive asked if this addition will be going into the easement. Ms. Bonner said there's a building setback that is separate from easement. Every lot has a 7.5' utility and drainage easement that goes all the way around the lot that is also depicted plot plan. They would be staying outside of that, but they would be reducing the rear setback from 20' to something bigger than the 7.5'. It would not encroach on that easement.
22. Ms. Baisa asked has this been done before. Will it go over the property line? Ms. Bonner said there have been reductions in the past but this will be the first one that will be for actual buildings. It would not be over the property line.
23. Chairman Walker asked if there are any other members of the public that wish to speak. Hearing none, the applicant will have a chance for rebuttal is there's anything they wish to address.
24. Mr. Ellington said my wife and I would just like to thank you for your time.
25. Chairman Walker said we will now close the public hearing and deliberate.
26. Mr. Whittenberg said he doesn't understand the plan. Ms. Bonner explained the existing structures and proposed addition.
27. Chairman Walker said I would recommend to Staff to require an actual staked survey to make sure everything is in compliance.
28. Director Suneson said as part of the building permit application, there is an acknowledgment by the applicant that requires them to locate property corners at their expense. I'm sure with all the construction they've been doing that they know where their property corners are.
29. Chairman Walker asked are there any other questions or comments. Hearing none, he said he would entertain a motion.
30. Mr. Newby motioned to approve ZVR-2016-23569 with Staff's recommendations, and the motion was seconded by Ms. Lloyd.
31. Chairman Walker asked for a voice vote.
32. **Motion passed 6-0.**

VII. OPEN DISCUSSION

A. Board Vacancy.

1. Ms. Bonner said the Board currently has one vacancy that needs to be filled. If you know someone who would be interested in serving, please contact our office so that Staff can guide them to the application on the City's website.

B. Upcoming Code Changes.

1. Director Suneson said Staff is still working on code changes for accessory structures. I have a meeting with a couple of the Aldermen to delineate exactly how they would like to regulate accessory structures. It is still a work in progress. Also, at the direction of the Planning Commission, Staff has been directed to generate new, and less onerous,

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notification requirements. For zoning variances the City would be responsible for the cost of publication as well as the sign posting. We can very easily use reusable signs for the notice of public hearing. There will also be a reduction in the radius required for notification. We really are trying to make it less work for the applicant.

2. Ms. Bonner said previously there was a 400' radius from the boundary of the property required for notification by certified letter, and we're looking at reducing it down to 200'.
- C. *Country Club Villas.*
1. Chairman Walker asked how the Dogwood Drive project with the 48 houses is coming along.
 2. Director Suneson said we are waiting for construction drawings, for subdivision review. I can only assume the applicant is going through Health Department review for the extension of water and sewer utilities. They will probably need Highway Department review as well for the addition of a right-hand turn lane.
 3. Ms. Bonner said I heard from them last week and they were literally waiting to make sure the whole 60 days had expired for anybody to bring an appeal before they tried to bring anything to it because they didn't want to be in court and building it at the same time. They're looking at the day after Memorial Day, and coming in for permits the day after that.

VIII. ANNOUNCEMENTS

- A. *Next scheduled meeting of the Board of Zoning Adjustments is on Tuesday, June 21, 2016, at 7:00pm in the Bella Vista City Hall Conference Room.*

IX. ADJOURNMENT

The meeting was adjourned at 4:52 PM.

SUBMITTED BY:

Brenda Jorgensen
Administrative Assistant
Community Development Services Department

APPROVED AND ACCEPTED THIS 16TH DAY OF AUGUST, 2016.

Robert Walker, Chairman
Bella Vista Board of Zoning Adjustment

Linda Lloyd, Vice-Chairman/Secretary
Bella Vista Board of Zoning Adjustment

VARIANCE REQUEST INFORMATION

Variance Requested (supply code section you wish to vary):

Section 109-42(d) of the Municipal Code requires that each variance request meet each of the following criteria in order to be granted. Please attach additional sheets of paper to this application for continuations of variance request justifications.

Variance Review Criteria	Justification of Variance Request
1. Does the literal interpretation of the provisions of the Municipal Code deprive the applicant of rights commonly enjoyed by other properties in the same zoning district?	
2. Do special conditions and circumstances exist which are peculiar to only this land, structure or building and not to others in the same zoning district?	
3. Are special conditions and circumstances in the item above the result of any action by the applicant? If yes, do new special conditions or circumstances exist? If yes, what are they?	
4. Does granting the variance confer any special privilege that is otherwise denied by the Municipal Code in the same zoning district?	
5. Does granting the variance keep the spirit, general purpose, and intent of the provisions of the Municipal Code?	
6. Is the request the minimum variance that will make possible the reasonable use of land, building or structure?	
7. Is the variance injurious to the neighborhood or otherwise detrimental to the public, health, safety, and welfare?	
8. Will the granting of the variance support the obligations to comply with all other applicable statutes, ordinances, laws, or regulations?	