

**MINUTES OF THE COTTONWOOD HEIGHTS CITY
BOARD OF ADJUSTMENT MEETING**

Thursday, August 29, 2013

6:00 p.m.

**Cottonwood Heights City Council Room
1265 East Fort Union Boulevard, Suite 250**

ATTENDANCE

Board Members:

Bob Wilde, Chair
James Adinaro
Don Antczak
James Holtkamp
Doug Folsom

City Staff:

Brian Berndt, Community Economic Dev. Dir.
Shane Topham, City Attorney

Excused:

Noor Ul-Hasan
William R. Good

1.0 WELCOME/ACKNOWLEDGMENTS

Chair Bob Wilde called the meeting to order at 6:04 p.m.

2.0 ACTION ITEMS

- 2.1 (Project #BOA 13-004) Action on a request from Jae Park for variance from limitations on use in Chapter 19.35.050. The maximum floor area of each separate use confirmed within enclosing walls shall be limited to 5,000 square feet on the first story. The applicant is requesting a variance for a 10,000 square foot building located at 6746 South Highland Drive and 1979 La Cresta Drive**

Community and Economic Development Director Brian Berndt presented the variance request for property located at 6746 South Highland Drive and 1979 La Cresta Drive as stated in the staff report. Staff feels that through the interpretation, the request meets the intent of the ordinance and the General Plan's expectation for the area among other criteria.

It was confirmed that if the variance is granted, there will be a restriction limiting the property to a single story.

The applicant, Jae Park, detailed the five hardships set forth in the staff report and clarified that he was not requesting an increase in the maximum square footage, but rather maintenance of the maximum building footprint as a combined lot. He proposed to build one two-story building with residential building materials that will act as a buffer from high density on Highland Drive to the residences.

Mr. Park considered item one, neighborhood and community, to be an unreasonable hardship. By building per the current ordinance and allowing the variance, problems such as traffic, storm water, building mass, building height, and neighborhood scale will all meet the intent of the General Plan for a residential office.

Mr. Berndt confirmed that three lots north of the subject property will be combined as well. The restrictions pertain to the depth of the lots and the setbacks for the building being placed vertically.

Board Member Holtkamp asked if two 5,000 square-foot buildings would cost substantially more than a single 10,000 square foot building.

Mr. Park replied that it would be at an increased cost. He confirmed that the building will be used for medical offices owned by a physicians group. The clientele will include individuals with special needs. Eighty percent will be on Medicare, hence the request for a single story.

Motion: Board Member Holtkamp moved to accept the staff report and approve the variance subject to the following:

- 1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance; The portions of the zoning ordinance that are asked to be varied is the building size requirement from 5,000 square feet to 10,000 square feet. The purpose of this chapter of the zoning ordinance is:***

19.35.010 Purpose. The RO zone is intended to provide for the conversion of existing blocks of dwellings to small offices in order to stabilize adjacent residential areas and prevent the intrusion of non-compatible commercial uses. This zone is intended to function as a transitional zone between existing residential and traditional commercial uses by preserving the residential scale, intensity of use and ultimate design of the project. The RO zone allows the conversion of existing residences to office use and the development of vacant parcels with new office buildings designed to be compatible with existing adjacent residential dwellings. Compatibility will be ensured through strict analysis of applicable relationship, adjacency, reciprocity and alignment of RO-zoned buildings in association with existing neighborhoods. The restrictions in the RO zone are intended primarily for use in the city's older developed areas.

The RO zone is restricted to those locations and uses that will not materially increase traffic through residential neighborhoods, and it incorporates performance standards designed to prevent noise, lighting, parking and signs from intruding on or otherwise disrupting adjacent residential zones. Consequently, the RO zone is intended to accommodate small professional offices that attract a limited clientele, usually on an appointment basis. If such an operation later desires to expand, however, it is intended that the operation should relocate rather than enlarge the scope of the operation beyond the limits under this chapter.

Staff feels that the literal enforcement of the code to limit the building footprint may cause a hardship for the applicant but two two-story building maybe to the neighborhood (totaling 20,000 sq. ft.). The applicant can meet the criteria for each building if each building were constructed on each lot separately. Staff does not feel that combining the two buildings into one structure to create a larger single story building will degrade any portion of the zoning ordinance purpose. Staff believes the expectation of the ordinance is met by the larger single, single story structure versus two, two story buildings on two lots.

2. *There are special circumstances attached to the property that do not generally apply to other properties in the same district;*

The applicant's properties do have special circumstances that are not general to the R-O zone. The special circumstances include the dilemma of the zoning district to either build up or out and try staying within the parameters of the intent of the district. In staff's opinion, it is a judgment call whether a single story, larger building is more in concert with the adjacent residential neighbors or a taller two story building emulates the residential character of the area. Staff feels the intent of the ordinance is met with this request.

3. *Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;*

The applicant is asking to build one single residential office on two combined lots. There have been other residential office approved along this street and these will be essentially the only uses in the R-O zone and the only way this property right of maintaining the lower scale structure can be exercised is by the granting of a variance.

4. *The variance will not substantially affect the general plan and will not be contrary to the public interest; and,*

The general plan for this area is for establishment of low-scale residential offices which is what the applicant intends to build. The Highland Drive frontage road is not on any plans for widening and is classified as a local street and it is not planned to change the roads designation. Staff cannot find any future planning for upgrades that will be affected by granting this variance.

5. *The spirit of the zoning ordinance is observed and substantial justice is done. The spirit of the zoning ordinance is to segregate uses based on compatibility while protecting the city, surrounding neighborhoods, the environment and general health safety and welfare. The purpose of a variance is to provide a "relief valve" so to speak, when literally enforcing the ordinance will deny someone a property right that can be safely and reasonably varied. The applicant will own the two lots and could create two separate 5,000 square foot single story buildings or two two-story 10,000 square foot buildings (if the buildings were two stories). The applicant is working to create a building more on the scale of the adjacent residential properties, with all their respective issues as they exist is not serving justice in staff's opinion.*

The motion was seconded by Board Member Folsom. Vote on motion: James Adinero-Nay, Don Antczak-Aye, James Holtkamp-Aye, Doug Folsom-Aye, Chair Bob Wilde-Aye. The motion passed 4-to-1.

2.2 Approval of August 29, 2013 Minutes

Chair Wilde stated that the Board Members should review the minutes from tonight's meeting when they are made available. He reminded the group that if there are no modifications submitted they will be automatically approved.

3.0 ADJOURNMENT

The Board of Adjustment Meeting adjourned at 6:21 p.m.

Minutes approved: 09/10/2013