

**CITY OF KERRVILLE, TEXAS
ZONING BOARD OF
ADJUSTMENT**

September 12, 2019

MEMBERS PRESENT:

Robert Irvin, Chair
Robert Parks, Vice-Chair
Pablo Brinkman, Member
Sam Ligon, Member
Paul Zohlen, Member
Ernest Garza, Alternate

MEMBERS ABSENT:

Katherine Marlow, Alternate

STAFF PRESENT:

Drew Paxton, Planning Director
Mike Hayes, City Attorney
Dorothy Miller, Recording Secretary

CALL TO ORDER

On September 12, 2019 the Zoning Board of Adjustment meeting was called to order at 3:00 p.m. in the City Hall Council Chambers, 701 Main Street.

1. CONSENT AGENDA

1A. Approval of the minutes from the July 25, 2019 meeting.

Mr. Ligon moved to approve the minutes as presented; motion was seconded by Mr. Parks and passed 5-0.

2. PUBLIC HEARINGS AND ACTION

2A. Public hearing, consideration, and action concerning an administrative appeal in accordance with Chapter I, "The City of Kerrville Zoning Code" Article 11-I-23 (Appeals to Administrative Decisions; Granting Variances) to appeal an interpretation of Article 11-I-4(g) Use of Property Located in One Zoning District to Benefit of the Other for Lot 11 and part of Lot 10, Block G, of the B.F. Cage Subdivision, located at 829 Clay Street. (File No. 2019-056)

Mr. Paxton presented the findings of fact.

Mr. Patrick Cohoon, Attorney at Law for Mr. Bruce Motheral, spoke, stating this issue has been going on since December 17, 2018. Mr. Motheral is trying to put a parking lot in on Clay Street behind the Soaring Dragon restaurant on Sidney Baker Street. The restaurant parking lot stays full during peak times and Mr. Motheral is looking for relief. His proposal would be a practical solution to an ongoing problem. Mr. Cohoon presented a comparison of the City of Kerrville statute 11-I-4, comparing the prior version and the version effective December 21, 2018. The prior version says, *...unless the property being used for said parking or access is also zoned to permit, as a matter of right or permitted upon issuance of a conditional use permit, the use for which such parking or access is desired.* Restaurants on Sidney Baker Street are permitted uses as well as office spaces. Soaring Dragon, the recruiting station, and the tax office fit the allowed uses. The statute seems to agree with the proposed use. Mr. Cohoon said he has not been persuaded that the text means anything other than exactly what it says. The current version adds a clause: *...said*

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parking or access is also zoned to permit, as a matter of right or permitted upon issuance of a conditional use permit, the use for which such parking or access is desired. Per the old and current statute, the proposed use is allowed. Mr. Cohoon requested a reverse denial of the action and allow the parking lot as per the statute.

Mr. Parks asked if there is an existing parking lot on Clay Street. Mr. Paxton replied yes.

Mr. Paxton stated the RT zoning district allows limited commercial use. N21 on Sidney Baker Street is largely commercial. The provision does not apply because there are various multiple uses that are not allowed in RT, but are allowed in N21. City staff cannot enforce use of the parking lot for just the restaurant and cannot control who uses the parking lot whether it be customers and/or restaurant staff.

Mr. Zohlen asked if any uses in N21 are not allowed in RT. Mr. Paxton said yes the recruiting station and tax services are uses that are not allowed in the RT district.

Mr. Zohlen asked what is not allowed in RT, Mr. Paxton listed examples that are not allowed in the RT district or that require a conditional use permit (CUP). The City cannot apply conditions to the parking lot since it is not a CUP. If all tenants were allowed in RT and N21, a tenant that moves in that is not allowed in RT would then make the proposed parking lot an illegal use and again, the allowed use could not be regulated.

Mr. Parks asked what if additional parking was only allowed off of Sidney Baker Street and then not off of Clay Street. Mr. Paxton reiterated the city is not in a position to be able to put conditions based on this provision. This provision applies to any zoning district but when specifically looking at RT we are talking about several different areas across town as far as how this provision would be implied. Staff did bring this forward as a text amendment to the zoning code to help clarify this parking concern or parking use as it would apply to different zoning districts. Through that the Planning and Zoning Commission, and agreed by City Council, determined that this conditional use for a parking lot, not necessarily tied to a specific user, should not be a conditional use in the RT zoning district. Therefore we are bringing it back to the application of this provision where we are talking about those specific uses that would overlap that zone boundary. Since the stand alone parking lot is not available our staff opinion is because of the uses currently allowed on the property this provision would not apply because we cannot single out one use since it is a multi-tenant use.

Mr. Hayes stated he agrees with Mr. Cohoon in that this is a legal case not a policy case, an interpretation of the provision. Both sides were laid out well and Mr. Hayes thinks in this case, when this was written, we were not dealing with multiple uses. When applying to multi-use tenants, it is very clear that this provision of the code does not apply to this proposed use. The key is to look at use and match what is allowed in the zoning districts.

Mr. Brinkman said he struggles with it as he understands from a business standpoint; he understands the want. Unfortunately Mr. Motheral may not have done his due diligence in bringing this to staff, but as both attorneys have said, it is about the words and their specific meaning.

Mr. Paxton said staff has looked at how to make this work through policy changes, but is looking at the legal interpretation of this section.

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Mr. Irvin said the way it reads it is difficult to disagree with staff. He personally thinks it is ridiculous that there is parking three lots down and a church across the street, but Mr. Motheral cannot do it due to verbiage.

Mr. Paxton said the property to the north is grandfathered and Zion Lutheran Church is allowed in both districts.

Mr. Brinkman said staff cannot police tenancy. Mr. Paxton said the way the provision is written staff cannot tell Mr. Motheral to only allow RT uses. Mr. Brinkman agreed there is no way to do it.

Mr. Irvin opened the public hearing at 3:34 p.m.

Ms. Michael Louise Bond spoke, saying she is interested in preserving the integrity of neighborhoods in Kerrville and asked the Board to reject the appeal. She understands it is more or less a legal decision and that this is a quasi-judicial board. She has a conflict with our rural town that is being developed and neighborhoods and business districts changing. She sees ramifications for future developments in neighborhoods if this is allowed. Zion Lutheran Church has occupied the corners Or Clay and Barnett streets for decades. The parking lot to the north has been there a long time as well. She is also familiar with the driveway access that she, too, uses frequently and understands neighbors having objections. She has environmental concerns also with paving over land. She understands noon time congestion but evening after the other businesses close is not as bad.

Mr. Wayne Franklin spoke, representing properties next door to the proposed lot. He stated the home on that lot was removed and the lot is now a driveway, which keeps being prepared for what Mr. Motheral has in mind. It can only be entered through Clay Street. There are no sidewalks and people walk on the street and do not need more traffic, especially for N21 businesses. He does not want a parking lot right next to his house. Residents are against it and have gone before the Planning and Zoning Commission and City Council who both denied it, rightly supporting Clay Street residents. Mr. Franklin mentioned the uniqueness of being within walking distance of downtown. Mr. Franklin ask the Board to maintain the quality of the neighborhood so they can enjoy it.

Mr. Jesse Valdez spoke, saying he along with Mr. Mike Ayala object to the parking lot. They have lived there since childhood and want to maintain what it was and what it is. It is not going to help to add more traffic. Mr. Valdez has seen horrible accidents and watches traffic speed down the street after a football games. He objects to the request simply to maintain the little bit of the area.

Mrs. Carolyn Lipscomb spoke, stating she is against parking lots in neighborhoods. She worked as a committee member on the 2050 plan and in their discussions the goal was to protect our neighborhoods as much as possible. If you allow stand alone parking lots in neighborhoods, you are eroding those neighborhoods. Words do matter, but a judge told her you look at the intent of the law. The intent of the law is to protect neighborhoods where possible. She is already seeing R1 neighborhoods eroding by businesses going in and saw it in her own neighborhood.

Mr. Irvin called a five minute recess at 3:45 p.m.

Mr. Irvin resumed the meeting at 3:48 p.m.

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Ms. Mary Lee Stewart spoke stating she is a native of Kerrville, born in 1935, living on Myrta Street in 1940, where her mother had also lived. She cannot believe we are addressing this issue again. We addressed this with the Planning and Zoning Commission and City Council three times in less than two years. The lot Mr. Motheral bought had a house that she saw since 1940 and it was a good, strong house that he got rid of to use the property for business. She does not want business on Clay Street which has over twelve homes and asked what would be done with them, she stated that Ms. Ramona Reeves has lived there since the 1950s or 1960s.

Mr. David Lipscomb spoke, saying he is aware of future impacts that could affect other districts. Tenants can change over time. He realizes this is a tough situation and empathizes, but said we do not need a parking lot there.

Mr. Larry Eskridge spoke and discussed traffic that goes down Remschel Avenue, saying it is a mess. A parking lot is going to create more traffic down Remschel Avenue and is going to cause more problems. He said this is the fourth time addressing this issue.

Dr. Diana Fitch spoke, stating she was representing JuLee Reeves, the daughter of Ramona Reeves. She had a letter from Ms. Reeves, but said some things were left out. She said that, yes, on Clay Street Zion Lutheran Church has a parking lot but the rest is a lovely neighborhood. The existing driveway that is grandfathered is an eyesore on the street and now Mr. Motheral wants to put in a parking lot. Mr. Fitch read Ms. Reeves's letter, which related Ms. Reeves's disapproval for the parking lot, referenced the multiple letters to city staff, and the denials at Planning and Zoning and City Council. The residents do not want a parking lot. Mr. Reeh should not have been allowed to have a driveway that enters onto Clay Street and stated the City had voiced the same opinion.

Mr. Cohoon said there is no way to discount anyone's feelings. This is a quasi-judicial decision, not a policy decision. The provision allows for the parking lot. He agrees with Mrs. Lipscomb that we have to look at the intent of the law. It makes sense to look at multiple use for a parking lot and that the statue should be interpreted as it is written. If it qualifies now, it does not matter what future use is; the property owner has to follow the law. Mr. Motheral believes the law applies to his parking lot. Mr. Cohoon said he cannot find anything that does not allow it.

Mr. Paxton stated staff does have a process to handle policy decisions but is looking at the interpretation of this section. The intent is to have cross use when uses line up, but the uses do not line up.

Mr. Irvin asked if all businesses were permitted in both zones, would this have been approved? Mr. Paxton replied yes. Mr. Irvin stated the tenant mix is what is killing Mr. Motheral. He then asked if it would be a problem if a future tenant was non-conforming. Mr. Paxton said future use could make the proposed parking lot non-conforming.

Mr. Brinkman asked how that would work if there were no uses right now. Mr. Paxton said staff would look at potential use and at the intent, where do uses line up, and if the use makes sense. Where the use does not line up is why we have zoning districts. Mr. Brinkman stated the recruitment station can use the existing parking lot because the use is conforming.

Hearing no one else speak, Mr. Irvin closed the public hearing at 4:02 p.m.

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Mr. Irvin stated there is no good way to decide the interpretation of the provision.

Mr. Brinkman asked if an Executive /session would be appropriate. Mr. Paxton stated the Board could go into Executive Session for legal counsel but not to debate the merits of the case. Mr. Hayes replied yes, but there would need to be a motion and a vote. Also, that the Board would only be able to direct questions to him and he would be able to give legal advice.

Mr. Brinkman moved to call an Executive Session based on 551.071; motion was seconded by Mr. Zohlen and passed 5-0.

An Executive Session was called at 4:01 p.m.

Mr. Irvin called meeting back to order at 4:09 p.m.

Mr. Paxton read Section 11-I-23(a)7, which says, "(7) *Decision of the Board: After receiving all evidence and hearing all argument, the Board of Adjustment may reverse or affirm, in whole or in part, or modify the City administrative official's order, requirement, decision, or determination from which the appeal was taken and make the correct order, requirement, decision, or determination, and, for this purpose, has the same authority as the administrative official.*" Mr. Paxton stated the Board does not approve or deny the appeal, but rather it may reverse or affirm the original decision.

Mr. Zohlen moved to affirm the decision to deny the parking lot; motion was seconded by Mr. Ligon and passed 5-0.

3. STAFF REPORTS

Mr. Paxton stated he had nothing to report at this time.

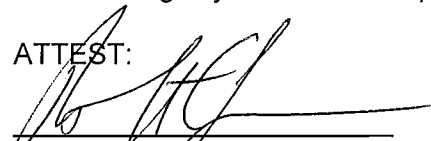
4. EXECUTIVE SESSION

An Executive Session was held at 4:01 p.m. and ended at 4:09 p.m.

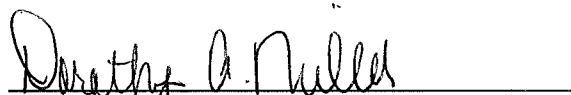
ADJOURNMENT

The meeting adjourned at 4:10 p.m.

ATTEST:



Robert Irvin, Chair



Dorothy Miller, Recording Secretary

10/10/19

Date Minutes Approved

