

**ZONING BOARD OF ADJUSTMENT
MEETING MINUTES OF JANUARY 29, 2009**

APPROVED

STATE OF TEXAS §

COUNTY OF TARRANT §

CITY OF BEDFORD §

The Zoning Board of Adjustment of City of Bedford, Texas, met in work session at 5:30 p.m. to discuss items on the agenda for the and regular session at 6:00 p.m. in the Council Chamber of City Hall, 2000 Forest Ridge Drive on the 29th day of January 2009 with the following members present:

David Cook	Chairperson
John Novelli	Vice-Chairperson
Terence Sean Bajuk	Members
Jeffrey Corbet	
Roger Fisher	
Richard Smyer, Alternate	

Constituting a quorum.

Board Member Smyer attended the work session.

Staff present included:

Bill Syblon	Development Director
Dan Boutwell	Planning Consultant
Yolanda Diaz	Zoning Board of Adjustment Secretary

(The following items were considered in accordance with the official agenda posted on the 23rd day of January 2009.)

WORK SESSION 5:30 P.M.

The Zoning Board of Adjustment met at 5:30 p.m. in the conference room to review and discuss items on the Agenda.

ZBA Minutes of October 20, 2008: The meeting minutes were reviewed and were correct as written.

Officer Elections: The Board discussed the elections.

Variance Case V-061: Indian Motorcycle Rezoning

Applicant: Mark Hambel

Description: The applicant proposes to convert the old Harrigan's restaurant into a motorcycle sales and service business. The exterior of the structure will not be enlarged or altered. There is an existing adjacent residential use located to the west of the property, which was rezoned from H-Heavy Commercial to MD4-Medium Density and is being used for assisted living residences. However, at the time the improvements on the subject property was initially constructed, all adjacent land was zoned as H-Heavy Commercial. The property adjacent to SH 183 along this section of the corridor is still currently zoned as H-Heavy Commercial, with the exception of the adjacent MD4 zoning, which was zoned as a residential reuse of an existing hospital rehab facility.

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The Zoning Board of Adjustment reconvened in the Council Chamber at 6:00 p.m.

REGULAR SESSION 6:00 P.M.

CALL TO ORDER

Chairperson Cook called the meeting to order at 6:00 p.m., and read the Zoning Board of Adjustment Meeting Format Outline aloud.

Good Evening, my name is David Cook. I am the Chairperson of the Bedford Zoning Board of Adjustment. I now call this regularly noticed meeting to order.

A quorum is present, so the Board may proceed with its scheduled agenda.

Prior to commencing our hearing, I would like to review our meeting format for the benefit of those in the audience.

Each case will be called in its regularly scheduled order as shown on the agenda.

The City Staff will make a staff presentation to the Board.

The applicant will be given an opportunity to make a presentation in person or by a representative.

Those individuals in the audience in support of or opposition to the proposed request will be given an opportunity to make a presentation to the Board.

The Board asks that all individuals and parties presenting information on each request please direct their comments to factual information, and not to speculation or subjective comments.

The applicant will be given an opportunity for a brief rebuttal as the applicant has the burden of providing the necessity and the justification for his or her request.

The Board will close its public hearing to discuss and consider the facts presented. In order for a request to be granted, there must be a minimum of four votes in favor of the request.

Please remember that the Zoning Board of Adjustment is a quasi-judicial body. A formal record is made of each hearing and each case. The Board is permitted to act only upon factual information or evidence that is presented by the staff and by parties making presentations at the public hearing on each case. Any party or individual who disagrees with a decision of the Board of Adjustment must appeal such decision to a State District Court as the City Council of the City of Bedford has no review authority over the decisions of this Board.

INVOCATION Board Member Corbet gave the invocation.

PLEDGE OF ALLEGIANCE The Pledge of Allegiance was given.

OFFICER ELECTIONS

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Chairperson Cook asked the Board to nominate and elect the Zoning Board of Adjustment Chairperson. The Board discussed the elections and made an acclamation to re-elect David Cook as the Zoning Board of Adjustment Chairperson.

Motion: Board Member Corbet made a motion nominating and electing David Cook as the Zoning Board of Adjustment Chairperson.

Board Member Bajuk seconded the motion, and the vote was as follows:

Ayes: Board Members Corbet, Fisher, Bajuk, Vice Chairperson Novelli

Nays: None

Abstention: Chairperson Cook

Chairperson Cook declared the motion approved.

Chairperson Cook asked the Board to nominate and elect the Zoning Board of Adjustment Vice Chairperson. The Board discussed the elections and made an acclamation to re-elect John Novelli as the Zoning Board of Adjustment Vice Chairperson.

Motion: Board Member Corbet made a motion nominating John Novelli as Vice Chairperson and electing him as the Zoning Board of Adjustment Vice Chairperson.

Board Member Bajuk seconded the motion, and the vote was as follows:

Ayes: Board Members Corbet, Fisher, Bajuk, Chairperson Cook

Nays: None

Abstentions: Vice Chairperson Novelli

APPROVAL OF MINUTES

Motion: Vice Chairperson Novelli made a motion to approve the meeting minutes of October 20, 2008 with noted corrections made at the work session.

Board Member Bajuk seconded the motion and the vote was as follows:

Ayes: Board Members Corbet, Bajuk, Vice Chairperson Novelli, Chairperson Cook

Nays: None

Abstention: Board Member Fisher

Chairperson Cook declared the motion approved.

PUBLIC HEARING

Variance Case V-061, request of Mark Hambelton for Indian Motorcycles, 1501 Airport Freeway, Bedford Road, Property Known as Lot 4A, Block 1, Northeast Community Hospital Addition for a Variance from the City Of Bedford Zoning Ordinance, Section 5.5B Fences Abutting Incompatible Districts (1); and Section 5.6D Landscaping Requirements (2). The applicant is requesting a variance to the screening and buffering requirements for a commercial development to screen any common border between a residential and commercial use with a masonry wall and live landscaping. The property is generally located west of Forest Ridge Drive and north of State Highway 183.

Chairperson Cook recognized Consultant City Planner, Dan Boutwell who reviewed Variance Case V-061. Mr. Boutwell stated the applicant proposed to convert the old Harrigan's restaurant into a motorcycle sales and service business. The exterior of the structure will not be enlarged or altered. There was an

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existing adjacent residential use located to the west of the property, which was rezoned from H-Heavy Commercial to MD4-Medium Density and was used for assisted living residences. However, at the time improvements on the subject property were initially constructed, all adjacent land was zoned as H-Heavy Commercial. The property adjacent to SH-183 along this section of the corridor was still currently zoned as H-Heavy Commercial, with the exception of the adjacent MD4 zoning, which was zoned as a residential reuse of an existing hospital rehab facility.

Although the rezoning of the adjacent property as MD4 appeared to be spot zoning, it was not illegal and did not detract from the intensity of the SH-183 corridor. It was this MD4 zoning district that caused the subject property to be nonconforming with our zoning ordinances. Our zoning ordinances require any commercial development to screen, with a masonry wall and live landscaping, any common border between a residential and commercial use [Sec. 5.5.B (1) and Sec. 5.6.D (2)].

Mr. Boutwell stated this condition did not exist when the property was originally constructed. It occurred when the adjacent property was rezoned for reuse as an MD4 product. At that time, the subject property became nonconforming but was permitted to continue as long as the property was not enlarged, altered, or rezoned. When the use was changed from residential to motorcycle sales and service, our zoning ordinance required a specific use permit to be obtained, which triggered the need to seek a variance.

The applicant submitted a request for a specific use permit and it was granted by the City Council conditional to receiving a variance from the Zoning Board of Adjustments.

State law requires all criteria established by state law be considered in order to grant a variance. Those criteria include:

- The variance is not contrary to the public interest;
- Due to special condition, a literal enforcement of the ordinance would result in unnecessary hardship;
- Granting the variance meets the spirit of the ordinance;
- Substantial justice is realized in granting the variance.

Pertinent Issues and Considerations

1. The applicant claims a number of hardships in this case. First, they did not cause the condition that created the need to comply. They allege their property was legally existing until such time the MD4 use was inserted into a commercial corridor. The applicant refers to this as being spot zoning. It is important for the ZBA to note that spot zoning is not illegal in all cases. It is only illegal when the action solely benefits the applicant at the detriment of the surrounding property. There is no indication that the higher intense use of MD4 is detrimental to any of the surrounding property, other than the fact that it is causing a nonconforming condition.
2. The applicant contends the need for the screening wall and landscaping is a hardship because of the physical condition of the site. The adjacent property is substantially elevated above the applicant's property. At locations it appears the height of the retaining wall between the two properties is approximately eight feet. The applicant states to construct a six foot masonry wall on top of the eight-foot retaining wall would be intrusive into the corridor.
3. The applicant points out the existing concrete drive and parking lot that extends to the property line was constructed prior to the rezoning of the MD4 property and was in compliance at the time of construction. In order to provide the landscape buffer, the concrete would need to be removed

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to permit planting. Since the difference in elevation is substantial, the height of the landscaping would not offer a sufficient buffer.

Staff Conclusion

The purpose of the screening and buffering requirements is to provide adequate separation and barrier between a commercial and a residential use. Normally, this occurs at the time the commercial use is constructed adjacent to an existing residential use. Our ordinance does not provide for conditions where previously zoned commercial property is changed to residential and causes the existing adjacent commercial property to be affected. In addition, the physical limitations of the property relative to the separation in grade appear to be a significant hardship in meeting the spirit of the zoning ordinance.

It appears all the criteria of determining a hardship exists in this case. It is our opinion, in this circumstance, granting relief from the screening [Sec. 5.5.B (1)] and buffering [Sec. 5.6.D (2)] requirements of the zoning ordinance supports the intent of the zoning ordinance and is a fair application of the variance authority.

Chairperson Cook recognized Roger Smeltzer, 2709 Parkview Lane, Bedford, Texas, who was there to represent this application. Mr. Smeltzer presented the Board photograph exhibits he had taken earlier that day which showed the adjacent property substantially elevated above the applicant's proposed business.

Mr. Smeltzer stated the adjacent property was in the process of adding a six ft. wooden fence onto the retaining wall between the two properties. The retaining wall was approximately eight ft. tall. The Board asked if the the adjacent property owner informed him they were going to add the wooden fence. Mr. Smeltzer stated he did not know the wooden fence was going to be built until four days ago.

Mr. Smeltzer stated their property was not visible to the adjacent property. The difference in elevation was substantial; and there was a large parking area between buildings. If they were required to add landscaping, the height of the landscaping would not offer a sufficient buffer.

Mr. Smeltzer stated their use was less noise and traffic obtrusive than Highway 183 and its 200,000 daily passengers. There was tremendous noise and traffic along this highway and it would be a hardship to have to build a higher wall to prevent the noise when the noise generated at their dealership would pale in comparison to the highway.

The Board asked Mr. Boutwell what was the landscaping buffer requirement. Mr. Boutwell replied 20 ft.

The Board asked if the applicant had talked with the adjacent property owner. Mr. Smeltzer stated they had limited discussion with the property owner during the specific use permit application process to let them know about Indian Motorcycles and who they were.

Mr. Smeltzer stated it would be an unnecessary burden for his client to add extra landscaping. There was a ravine under the parking lot. If they cut the pavement to add landscaping, it could affect the structure integrity of the ravine.

Mark Hambelton, 1719 Skyview, Wichita, Kansas. Mr. Hambelton stated the primarily type of business was going to be motorcycle retail sales and service. The Indian Motorcycles image was of up-scale motorcycles, the price range for one of their new motorcycles was \$30,000 - \$37,000.

Mr. Hambelton stated the service work would be done inside the building. The service work done inside the shop would be general maintenance for the most part, such as oil changes, and wheel upgrades.

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There was a bar facility inside the building and its purpose would be to serve coffee, sodas, and sandwiches, no alcoholic beverages would be served.

Chairperson Cook opened the public hearing and there being no one to speak, closed the public hearing.

Chairperson Cook recognized Dan Boutwell who stated there was a correction that needed to be made in his letter dated January 6, 2009, in the second paragraph, the last sentence *“When the use was changed from residential restaurant to motorcycle sales and service, our zoning ordinance required a SUP to be obtained, which triggered the need to seek a variance.*

The Board discussed the application and stated this variance had reasonable grounds and was justifiable. It fit the spirit of the ordinance.

There were no further questions asked of the applicant.

Motion: Board Member Corbet made a motion to approve Variance Case V-061 based on the opinion the retaining wall meets the spirit of Zoning Ordinance Section 5.5B; and requiring the applicant to meet Zoning Ordinance Section 5.6D would create an unnecessary hardship.

Board Member Fisher seconded the motion and the vote was as follows:

Ayes: Board Members Corbet, Bajuk, Fisher, Vice Chairperson Novelli, Chairperson Cook

Nays: None

Abstention: None

Chairperson Cook declared the motion approved.

ADJOURNMENT

Chairperson Cook adjourned the Zoning Board of Adjustment meeting at 6:21 p.m.

David Cook, Chairperson
Zoning Board of Adjustment

ATTEST:

Yolanda Diaz, Secretary,
Zoning Board of Adjustment