



**CITY OF HEDWIG VILLAGE, TEXAS
BOARD OF ADJUSTMENT
SPECIAL CALLED MEETING
THURSDAY, APRIL 27, 2017
6:00 P.M. - 955 PINEY POINT ROAD**

MINUTES

1. Call To Order

Chairman Schenk called the meeting to order at 6:00 p.m.

Present: Gary Schenk, Chair

Zouhair Atassi

Sally Lindley

Anne Retzler

Sam Searcy

Zack Petrov, City Attorney

Lane Standley, Building Official

Brandy Worthington, Board of Adjustment Secretary

Absent: Larry Abrams, Member

David Lam, Member

2. Overview of Board of Adjustment Responsibilities and Procedures

Zack Petrov, Acting City Attorney, explained the Board is a quasi-judicial body of the City. The board will hear evidence and apply that evidence to the requirements for a variance when making the final decision on the request for a variance. The board members have immunity in their official capacity as board members. The applicant has the burden of proof to meet the requirements for a variance to be approved. The applicant must prove the variance is necessary to secure a development on the property which differs from others in the district. The variance may not be materially detrimental to other property or the public wellbeing and due to a special condition enforcement of the code will result in unnecessary hardship. The special condition cannot be solely financial and cannot be self-creating. The variance cannot be contrary to the general spirit and intent of the code.

The procedure for the meeting will be as follows:

1. The Chairman will open the meeting.
2. The applicant will give his presentation.
3. The public will be given an opportunity to speak and give evidence for or against.
4. The building official will submit his recommendation to the board.
5. The applicant will be given an opportunity for rebuttal any evidence submitted.
6. Board may ask questions of anyone who spoke during the hearing.

7. The board will make its decision. There are five possible outcomes.
 - a. The board can grant the variance.
 - b. The board can grant the variance with conditions.
 - c. The board can modify the variance and grant the modified variance.
 - d. The board may reject the variance.
 - e. The board may decide to get additional information and postpone the variance decision until the additional information is presented at the next meeting. The next meeting must be held within 30 days according to the city code.

The expectation of the board is to apply the facts and evidence of the request to the standards and the requirements for a variance, the board members must be fair, and open-minded.

3. Public Hearing on a request for a variance for the required Front Yard Setback for the property located at 11118 Capri Street in the City of Hedwig Village, Texas

Property address: 11118 Capri Street, Hedwig Village, TX 77024
Property owner: Frierson & Appel Investments, LLC
Action requested: Variance

A. Presentation by Applicant

Gary Frierson spoke on behalf of Frierson & Appel Investments, LLC. The request for a variance is for the front yard setbacks. The Code of Ordinances (Code) currently states the front yard setbacks must be 70 feet from the centerline of the street. The applicant is requesting a variance of the front yard setbacks to 50 feet from the centerline of the street. The Piney Point East Fault runs through the property which leaves no room to build without the variance. The proposed residential building would move forward on the property 20 feet, if the variance is approved. He stated the current Code should not apply to this property due to the Piney Point East Fault that bisects the property. He stated enforcement of the current Code would render the property unusable for its intended purpose.

Bryce Burkett, civil engineer with Fugro USA Land, Inc. (Fugro), stated his company specializes in delineation of fault lines. He stated Fugro visited the property on Capri Street for survey profiles and elevation data along the fault line in order to complete the study. He stated the faults in the Houston area are active and move. The faults can cause extensive damage to structures. The Houston area faults are not associated with earthquakes but can cause millions of dollars in damage. He stated the Piney Point East Fault could possibly move about a quarter inch (0.25") a year. Fugro created a fault hazard band and recommended an area on the property where the residence could be built in order to make the property useable. He stated the fault line extends about a mile in a northeast to southwest direction.

Chairman Schenk asked if visible displacement could be seen from the street.

Mr. Burkett and Mr. Frierson both stated displacement was visible.

Chairman Schenk asked how much displacement there was.

Mr. Burkett stated the displacement was about two feet. He stated there was a noticeable drop.

A resident in the audience disputed that claim.

Chairman Schenk clarified that there is visible displacement on the property between the upthrown side and the downthrown side. He asked how much horizontal displacement of the area is directly affected by the fault.

Mr. Burkett stated the zone of significant deformation is more than 50 feet wide on the property. The fault hazard band includes the fault hazard zone, the uncertain areas on either side of the fault hazard zone, and the clearance or setback.

Anne Retzler asked about the footprint of the house that was on the property previously.

Mr. Frierson stated the previous house was a two story and about 1900 square feet.

Chairman Schenk asked how big the proposed house would be.

Mr. Frierson stated the proposed house would be between 5500–6500 square foot in size.

Ms. Retzler asked if previous house was built on the fault line and if there was any structural damage.

Mr. Frierson stated the previous house was built on the fault line but he could not speak of any disclosures of the sale. However, an inspection of the previous home did show the house was raised with piers. He did not know how many piers were installed or when the piers were installed.

Chairman Schenk asked if Mr. Frierson had built in Hedwig Village before and if he was aware of the fault.

Mr. Frierson stated he had not built in Hedwig Village before but was aware there were faults all over Houston and was unaware the faults were active and moving.

Chairman Schenk asked Mr. Burkett if it was accurate to say that the Galveston-Houston Subsidence District was created to mitigate the subsidence issues of the Gulf Coast area and their work has slowed the subsidence.

Mr. Burkett answered in the affirmative. He stated some faults in the Houston area have almost stopped moving and others are continuing to move.

Chairman Schenk asked Mr. Burkett why Fugro used a 40 times multiplication exaggeration to show the fault.

Mr. Burkett stated use of 40 times multiplication was to make the fault apparent on the surface profiles and to show fault movement.

Mr. Frierson stated the Piney Point East Fault appears about 1000 - 1200 feet below the surface and shaped like an hourglass. The Houston area has a lot of sandy clay soil. The movement of the fault combined with the type of soil in the Houston area leads to foundation issues.

Chairman Schenk asked if the engineers could speak about building a foundation on this lot.

Mr. Frierson stated his engineers were unable to attend the meeting but their comments were in the paperwork Mr. Frierson gave to each member of the board.

Chairman Schenk referenced a letter in the paperwork from the engineers that stated there were very few alternate foundation design options available. The engineer stated in the letter he performed a preliminary bridge foundation design which the engineer described as likely economically unfeasible. The engineer stated in the letter that the most economical option would be to request a variance. Chairman Schenk stated he believes the engineer could create a foundation that would work on the lot without the variance.

Mr. Frierson stated the engineer worked on designing a foundation that could be used on this lot but stopped working the issue when the foundation would need a hundred tons of steel for the I-beams only. In order to build on this property, the design would need a bridge, using steel I-beams and concrete, over the fault and anchored on both sides. The cost of building the bridge is not economical. The fault is active and will continue to move so any structure built over the fault will also move.

Mr. Frierson read from the Code and stated the Board of Adjustment is compelled to act based on the standards as set forth in the Board of Adjustment guidebook. He stated that granting the variance would not be contrary to the public interest. He stated his company is requesting to move the front yard setback up 20 feet. The proposed variance does not encroach upon public or private properties and imposes no risk to public safety. The proposed variance would allow construction of a conforming single family home that would benefit and beautify the city while adding to the local tax base. The location of the lot makes it ideal to grant the variance based upon the existence of side facing homes across the street and front Tiber and Monte Cello. These homes are closer to Capri Street than the homes that front Capri Street. He states the proposed house at 11118 Capri Street

would not be noticeable as nonconforming due to the houses on the left side of the street. He stated line-of-sight is not affected by moving the proposed house closer to the street by 20 feet. He stated Capri Street is a curving street and the proposed house would not be out of place.

Mr. Frierson stated that due to the fault line, compliance with the Code would create an unnecessary hardship. Enforcement of the Code would destroy the only lawful use of this property. Consideration by the board should be given to these factors. He stated financing would be difficult if not impossible to secure for any structure on the affected area. His company must disclose the presence of the fault to anyone interested in financing the construction of the house. Warranties on any craftsmanship or equipment installed on or in the house would not be available or enforceable for any structure built in the fault area of the lot. A home built on the fault may not be insurable. A home built on the lot would have a lower resale value. The property has been listed for sale on the housing market and there have been no offers for purchase. He stated granting the variance would be in keeping with the spirit of the ordinance. The proposed home should be big enough to fit the property as well as be conforming to the sizes of other homes in the neighborhood.

Mr. Frierson stated the proposed footprint of the house would have some of the structure overhanging the fault. He stated the garage would be in the back of the property.

B. Presentation by Any Resident

John Kiappes, 811 Tiber, stated his back yard faces the property in question. He stated he purchased his house in 1979 and was informed of the fault line at that time by his realtor. He stated the fault line is well known in the area. He stated other property in the area affected by the fault line have houses that are built on one side of the fault line with the garage on the opposite side connected by a floating walkway. He does not want to see houses in Hedwig Village that appear to be built close to the street. He stated he does not believe the proposed home would blend in with the other homes in the neighborhood.

Alicia Lam, 11110 Capri, stated granting the variance to move the proposed house at 11118 Capri closer to the street will materially affect her property. She stated the neighbors like the setbacks as they are. The front yard setbacks which give the homes a large front yard were a factor in the decision for them to purchase this property. She is against granting the variance.

C. Presentation by City Staff

Lane Standley, Building Official, stated that personally he believes the applicant should have the variance. He stated building on the property without the variance could cause issues. He does not believe building the proposed house closer to the street will cause an aesthetic issue along the street.

Lane Standley stated his recommendation would be approval of the variance.

D. Questions by Board Members

Chairman Schenk commented on several topics. He clarified Frierson's statement that the Board of Adjustment was created to conform to the rules in the Code. In order for the Board to conform to the Code and the 70 foot front yard setback would mean the variance would be denied. He stated one of the requirements to consider for a variance would be an unnecessary hardship if the variance were denied. He commented that Frierson & Appel Investments, LLC does not have to build a 5500 square foot home. He commented that better due diligence on the part of the company before the property was purchase was needed. He commented that design options for the house are available and the options would be expensive. He stated that an economic hardship is not a criteria for a variance.

Zack Petrov stated finances can be considered as criteria for the hardship but not the sole criteria in the decision.

John Overstreet is a builder in the Houston area. He spoke in reference to the property in question and in his opinion the lot is unbuildable due to the location of the fault line. He stated building a smaller house on the lot does not remove the issue of the fault. His opinion is that the buildable portion of the property, in order not to build in the hazard area, is only about 20 feet. He stated any structure built on the property would require constant maintenance as the fault moves. He stated the only way to build on this property would be to move the front yard setback forward. He stated the fault line runs through the middle of the property. He stated there is always a way to build, such as a higher structure, but the Code limits those other options. He stated building a smaller house on the property but raising it up would lower the property values. Such a building would be unattractive.

Mr. Frierson responded to the issues raised by the residents' comments.

1. He asked Mr. Kiappes if he was an engineer. Mr. Kiappes stated he is a mechanical/chemical engineer.
2. Mr. Frierson stated there was no latitude by the members for the board to take into account the method by which his company acquired the property. He stated he was unable to go into details of the purchase. He stated the disclosure at the time of sale did not cover the issues raised by Mr. Kiappes' comments.
3. He stated that regardless of who purchased the property the end result would be the same. The board would be hearing a variance request or the city would have an abandoned home that was unable to sell.
4. He clarified that he did not imply that the Lam property is in violation of the Code. He clarified to Mrs. Lam that the variance would be for 20 feet, not 30 feet. He stated his company hired Mr. Overstreet to build a structure that would beautify the area.

5. In response to Chairman Schenk's comments, he stated the possibility of a builder building a 2000 square feet home is remote.
6. He stated his company will always have to disclosure the Fugro report to any potential buyer of the property. He stated the buildable portion of the property is too small. Mrs. Lam stated the property had a house on it for many years and the house was livable.
7. Mr. Kiappes stated he has spoken with an engineer from the University of Houston who said building on a fault line is possible. He suggested Mr. Frierson ask his engineering company to provide percentages of the degree of hazard in relation to building close to the fault line.

Bob Reynolds, with Fugro, stated he is an engineer and his company has been providing fault line studies in the Houston area for 38 years. He spoke in relation to the report his company provided to Frierson & Appel Investment, LLC. He responded to Chairman Schenk's earlier question about the exaggeration on the profiles. One reason for the exaggeration is to identify the significance of deformation as well as to allow for any uncertainties of the zone. Another reason would be to identify a clearance of 20 feet on the downthrown side (north side) and 10 feet on the upthrown side (south side). He stated that for this property the zone of significant deformation is at minimum 60 feet.

Mr. Frierson asked Mr. Reynolds if his company would be comfortable putting a percentage on the likelihood of deformation on any structure built on the property. Mr. Reynolds referenced Profile A from his company report. He stated the offset is about 18 inches for a distance of about 37 feet on this property.

Chairman Schenk stated he understood the zone of deformation on this property is about 37 feet. He questioned the 30 feet of clearance as determined by Fugro. He stated that 30 feet could be buildable space.

Chairman Schenk stated no known study exists to determine any subsidence amount for this fault and if the Piney Point East Fault is an active fault.

Mr. Reynolds stated the Piney Point East Fault is related to the Long Point Fault, which is an active fault. When the Long Point Fault moves, the Piney Point East Fault moves. He stated the movement of the Long Point Fault has slowed due to restrictions on groundwater pumping. Movement of the faults is related to groundwater pumping.

Mr. Frierson stated the Memorial Villages Water Authority (MVWA) still uses a collaborative groundwater well system. Chairman Schenk confirmed the MVWA still uses groundwater pumping but is mandated to transition to surface water. The MVWA uses five wells throughout the various Villages.

Mr. Frierson stated if this property is not developed it will affect the city. The property will not be contributing to the tax base and the property will be vacant. He stated a

precedent will be set if the device, a variance, already set in place by the city is not granted to mitigate the hardship.

Anne Retzler stated certain things are not considered unnecessary hardships, such as personal choices, preferred construction plans, more pleasing construction projects, cheaper construction costs, fiduciary loss, and the hardship cannot be self-imposed. She asked Mr. Frierson is he could build an alternative house on the property, such as part of the house on the front of the property and another part on the back on the property connecting the two halves with a hallway.

Mr. Frierson stated the property is such that no builder could get a footprint of a building on the lot. Any structure built would need room for plumbing, mechanical, electrical, as well as living space. The plumbing and electrical will be underground and will be subject to breakage when the fault moves. He stated the proposed house would need a variance of only 20 feet and the garage would be placed in the back of the property with the driveway consisting of pavers, possibly.

Chairman Schenk closed the hearing at 7:36 p.m.

E. Deliberation and Possible Action on the Variance Request

Chairman Schenk stated he would ask for the members in favor of the variance to vote then he would ask the members against the variance to vote.

Zack Petrov stated the Chairman does vote.

Chairman Schenk asked for those members who want to approve the variance request for 11118 Capri Street to say "Aye" and to raise their hands. Member Lindley voted in favor of the variance request.

Chairman Schenk asked for those members who want to deny the variance request for 11118 Capri Street to say "Nay" and raise their hands. Members Atassi, Retzler, Searcy, and Schenk voted "Nay".

4. Adjourn

Chairman Schenk adjourned the meeting at 7:38 p.m.

Approved and accepted on June 20, 2019.

/s/
Gary Schenk, Chairman

ATTEST:
Lisa Modisette

/s/
Board of Adjustment Interim Secretary