

MINUTES OF ZONING AND PLANNING COMMISSION  
PUBLIC HEARINGS AND REGULAR MEETING  
CITY OF WEST LAKE HILLS, TEXAS  
July 18, 2018  
6:30 P.M.

PRESENT: ZAPCO Chairman Robert Meisel, Vice-Chairman Les Gage, Commissioners Kathy Tullos, Bill Vandersteel and Sarah Swanson

ABSENT: Commissioner Rhett Hoestenbach and Laurie Maccini

1. Call to Order. Chairman Robert Meisel.

**Chairman Meisel calls the meeting to Order at 6:30 p.m.**

2. Consent Agenda: The following items are considered to be self-explanatory by the Commission and will be enacted with one motion. There will be no separate discussion of these item/s unless a Commission Member or citizen so requests.
  - a. Approval of the June 20, 2018 Regular Meeting Minutes.

**VICE-CHAIRMAN GAGES MOVES TO APPROVE.  
COMMISSIONER SWANSON SECONDS. UNANIMOUS (4-0)  
APPROVAL.**

3. Land Use: Variances to encroach into a front building setback and driveway setback and removal of two trees with trunk diameters of 14 inches or greater (Tree 304 – multi-trunk Hackberry (11”, 8”, 8”, 6” & 5”); (Tree 305 – multi-trunk Elm (7”, 6” & 5”); and Tree 307 – 15” Cedar) for the construction of a new residence at ABS 21, SUR 1 W. Sparks .550 Tract (adjacent to 1519 Wild Cat Hollow (Southwest)). (Sections 22.03.281 and 22.03.304 of the West Lake Hills Code.) Applicants Scott and Laura Carpenter.

- a. Staff Briefing.

**City Administrator Robert Wood: I wanted to mention a couple of things. One, there is a letter at the seat tonight that came in and is from a resident on Wild Cat Hollow. You saw it at the last meeting, everybody should have had an opportunity to see what the changes are. The applicant has appeared to have tried to address the comments and recommendations from commissioners. I’m sure they will give us a rundown of what they changed.**

**Commissioner Swanson: Is there a staff recommendation?**

**I didn’t send a staff recommendation out. Ashby’s original approval of all of the requests except for the carport is where he was at. I haven’t reformulated one. That’s what the original one was.**

- b. Presentation by applicant.

**Scott and Laura Carpenter are present. I wanted to summarize from the June meeting. It is adjacent to 1519 Wild Cat Hollow. We are requesting**

five variances. Three trees, a driveway encroachment and a front setback encroachment. The setbacks as they are defined restrict the buildable area to the middle of the drainage gully. You can see that in your packets. An overhead presentation is presented. Approximately 155 sq. ft. of Wild Cat Hollow encroaches onto the property according to our survey. WD10 needs a 15' easement. The easement is this red line as you see it going down to Wild Cat Hollow. This is an aerial showing the right-of-way designation to the city. That's triggering the front setback right here. The closest distance to the front of the setback and that is about 6.5' and the distance from the edge of the garage is about 22'9". Everyone had a concern about the carport. We came up with this plan which shifts in line with the structure. This does result in another tree variance which would be T303 and shifts down. The closest distance is 43'4" is about 62' from there to there. Here is a view of the structure. This is the driveway right here; garage and you can see the 43' distance to the edge of the asphalt. 62' is that distance within the 25' setback right there. Another site plan based on the input from the last meeting, it shifts the garage back up to be flush with the back of the structure right here, about 10'11" and the closest distance is about 21' and that occurs right here. We preserve this tree and get a couple of feet here of additional distance from the neighboring structure. Here is an overhead view of that site plan. The 10'11" occurs right here. Hardships is a pre-existing non-conforming lot, the topography which itself is difficult to build on. The slopes are greater than 30%. The minimum eliminating building footprint 1650 sq. ft. by leaving the gully in its natural state and we are adhering to the city's Master Plan with slopes that are greater than 20% and not in a flood plain or a drainage area which is where our buildable building space is located. And we are proposing approximately 3,800 sq. ft. and is at 15% impervious cover.

- c. Public Hearing: All persons wishing to speak for or against shall be heard.

Tracy Fell lives at 1519 Wild Cat Hollow. I'm representing next door. The other letters you got, nobody has gotten, when we got our variances we had to send out certified letters. Now ya'll don't do the certified letters. I'm curious the neighbors that just moved in next door knew nothing about this. He was not sure about this either. He's at 1517 Wild Cat Hollow. I'm just here to let you know, we are opposed to the variances. The whole house is 21' from the property line. As you come down to the where the street ends you see the house right there. Most of the other houses are quite a ways back. That is the nature of that street. It would be changing the feel of the street. Where the asphalt ends the property line goes down, the whole house, it looks like its 21' instead of 50'. As you come down you have a house right there on the street. That's the way we've looked at the plans. I'm not sure if I'm interpreting it right. From what it looks like to me, we were concerned about that and the neighbors that sent the other letters. They want those letters to be considered at this meeting. We just don't want a house right on our street.

Chairman Meisel closes the Public Hearing and reconvenes the meeting.

- d. Deliberation and action.

**Commissioner Vandersteel:** This is probably to the city. That statement about the right hand corner of the page that is on the screen, by not developing on slope of 20%. Is that actually defined in our Building Code?

**Robert Wood:** No. It's in the Master Plan where it talks about the intent is not to have development on the steep slope lots. But on the residential I don't think there is any restriction. On a commercial site there might be.

**Commissioner Vandersteel:** Looking at this it is a difficult site. There are two things; this is a public right-of-way?

**Scott:** No.

**Robert Wood:** It doesn't go around the lot.

**Commissioner Vandersteel:** The road ends here but there is a right-of-way that continues.

**Tracy:** They wanted to keep that open for wildfires. You can drive back there but it is rough.

**Commissioner Vandersteel:** It's mapped as an unpaved right-of-way. Who owns the property?

**Scott:** David Altounian. He can't be here tonight but supports our project.

**Commissioner Vandersteel:** What I'm trying to determine in this drawing, generally where the road is there is a right-of-way and it becomes the front lot line. What I was trying to figure out where the right-of-way stops and other private properties begins?

**Scott:** This is all private property and this is David's property and it goes right up to here. Tracy's property begins here. It cuts in and there's a rock face and is definitely not buildable. It just ends right there.

**Commissioner Vandersteel:** Beyond that line it abuts other private property?

**Commissioner Swanson:** So, Robert Wood, there's no easement or description that you're aware of that you would know? Our fire department thinks it has some sort of easement there for fire protection?

**City Administrator Wood:** I don't think so. They might want it to stay like that, but there is no easement. They may want that to be true; all there is technically is a walking path there and I don't think that would bring any kind of easement.

**Commissioner Swanson:** So the person who spoke with you some years ago was a mistake?

**Tracy:** It does go around. You can drive on it if you want to. If you go straight down Westlake Drive, I fear someone will drop a cigarette and it will

travel straight up that gully. It would be right behind my house. When we moved in we had only been there shortly. I was very concerned about, kids used to park back there and I called the Police Department at 3:00 in the morning and the officer was sitting back there. They were sitting on that road right back at that point. I saw a car out there. They said that was the police. When they did buy the other one it overgrew a little bit. I would like to talk to the Fire Department about what their plan is back there.

Commissioner Vandersteel: It had to do with what the yards were defined as. I thought for sure that had been a right-of-way. How is that a rear setback if it abuts a right-of-way? That's one thing. I can't discuss that because we are going under the presumption that what is that lot line to the left is a rear lot line. A general comment, what happens in these situations is that, I'm an architect, or was, I find it interesting that a lot of these site require amount of imagination. There often a sense is the only way to build a house is make it flat and pour a slab. That is kind of what I'm seeing here. You look at the site and it can't be done here. The setback lines that we put out are here for a good reason. Trying to maintain the setbacks it does keep the character of the city and is what everybody else is doing. I assumed they would re-think this. We made the problem slightly better here. It didn't address what needed to be addressed. I did try to remember there was a building in the American Institute of Architects home tour, however, the gully was the same but had no choice but to build in the gully. I assume it was piers. The problem that I see is a very unusual site. It's not going to solve the problem.

Commissioner Tullos: Do we have a notice issue if it was listed incorrect on the sign?

Commissioner Swanson: Did that need to be updated? The sign is still in place, correct?

Tracy: It said June and July 11<sup>th</sup>. His moving truck moved at 5:30. He is at 1517 Wild Cat Hollow.

Commissioner Swanson: So there was a mailing, it just wasn't certified.

Chairman Meisel: We don't have a notice issue. We need to move ahead here. We don't have a notice issue. I don't see a drainage easement here. I'm not seeing one on the survey. Perhaps foolishly I trust the surveyors to show a dedicated easement. What we do have is the right-of-way for Wild Cat Hollow in the bushes and the asphalt is not on it. As for this triangle that does not determine your setback. The setback is from property line and not asphalt. The argument could be made to plow the asphalt up and plant. The issue is simply at what point is the city obliged? We have an important law that the city cannot destroy the value of the lot. We can't just see here and say you can't build here. The balancing point comes at how many variances are required to allow you to have a use of your lot. As far as your house size is concerned. Westlake is a different world. You are certainly showing mitigation. The setbacks are there for a reason. It is a difficult lot. Strictly speaking the speech I give to folks the lot was there when you bought. You should have known you will have challenges there. We're going to have to grant a variance as to require you to build in a gully. We're going to have to

work that out among ourselves. The neighbors do have a point; most of this house is in the setback. It's economically attractive to put it there. You bought a lot with a big valley in it. Help me out here.

**Commissioner Vandersteel:** You're doubling down what I was saying. It means it requires a little extra costs. You don't have much of a choice on a small lot. I understand where the thing comes from. If I was a commissioner this isn't a plan I would come up with. The hardships but I'm not sure they've been taken fully into account. You see houses on hillsides. I presume nobody is looking at you. There are times this corner pokes out or something that is less egregious but I wish there was a better attempt to solve the problem.

**Commissioner Swanson:** I think in the situation where neighbors have asked to be able to move structures forward and have been denied and there is a sense of character of the street that others have abided by but it's been a hardship for them that enters into the equation, too.

**Vice-Chairman Gage:** I think it is an unusual shaped lot.

**Commissioner Swanson:** It's a very tough lot, yes.

**Commissioner Vandersteel:** It presents an issue of minimizing the buildable area on the lot. However, you have a small house that matches that. I would say this is something that I hate to grant such a large variance for something that I think could be figured out with just a little more thought. It shouldn't be a problem all the other neighbors had to build their houses. We say no to things all the time so don't think that we are picking on you because we are not. We are trying to do our job and keep the city the way it is intended to be.

**COMMISSIONER VANDERSTEEL MOVES TO RECOMMEND DENIAL OF VARIANCES. THE REASON IS THE SETBACKS. LET'S SEE YOU COME UP WITH A DIFFERENT PLAN. COMMISSIONER TULLOS SECONDS.**

**Vice-Chairman Gage:** If we deny he can't come back for a year?

**City Administrator Wood:** It would still go forward to BOA.

**Commissioner Swanson:** You have an option but have not purchased this property, is that correct?

**Chairman Meisel:** That shouldn't matter.

**Vice-Chairman Gage:** Between now and August 8, adjust, change, do something to your plan. You have another chance to amend your application and plan. They either stamp it one way or the other. You have another chance to change.

**Chairman Meisel:** I don't want to slam the door on you.

**Vice-Chairman Gage:** We're not the final word.

**Commissioner Vandersteel:** If BOA says no, the recourse is coming back with a different plan?

**Chairman Meisel:** If this application is rejected, the identical cannot come before again for a year. Again, that's the path.

**Assistant City Attorney Mueller:** There is also an appeal.

**VOTE: (4-0) FOR DENIAL.**

4. Land Use: Variance to remove a tree larger than 14 inches in diameter (Tree #239 – multi-trunk 11” and 16” Cedar Elm) at 14 North Peak. (Section 22.03.304 of the West Lake Hills Code.) Applicant David Burton.

- a. Staff Briefing.

**City Administrator Wood:** This project is they are re-developing the lot and building a new structure. The others don't require a variance. They have the one Cedar Elm. You can see in their drawing on the 4<sup>th</sup> page where they show the tree in relation to the house, you can see how those things go together. It will be significantly in the root zone for the tree. It's pretty straight forward. It's a tree variance and also construction. Trees usually go to Council but this goes to ZAPCO because it involves construction.

**Commissioner Tullos:** I'm a little confused about exactly what they're asking for. I think I understand the problem, and I agree the pictures were really helpful. But they talk about the tree, maybe we can encroach into the zone, but then if we can't do that, we want to take the tree out. We're really sad about that. I really don't understand exactly what they're asking for.

**City Administrator Wood:** I think they can explain that when they get up here. Maybe they were considering two different options. From the staff's side, anytime in the root zone, you're removing the tree because chances are it's not going to make it. It's a question for the applicant. Part of that was done as Ashby was leaving. When there is a tree, instead of excavating they will leave that part of the slab so it doesn't impact the tree.

**Commissioner Tullos:** Bottom line is, the applicant is going to tell us what they're asking for.

- b. Presentation by applicant.

**David Burton is the builder and agent for the property owner. I appreciate the opportunity to present our case. To summarize is support from the city to build the house as on the site plan. We've got an L-shaped house. The existing house has a 30' front setback. We are in a similar case our legal description is .55 acres and TCAD is .49. We are following the setback for greater than a half-acre lot. They want to keep the drive in the same location which is less disruptive. The architect has**

done all he can to get two cars in that two car garage. We want support to build this house. I've supplemented with additional proposals to get out of the CRZ as far as possible. We'll put our piers where we don't interfere with the roots. We want to keep the tree if we can. In talking with Ashby, if we get into that CRZ at all we should ask for this variance. We do want to build the house per this site plan.

- c. Public Hearing: All persons wishing to speak for or against shall be heard.

**Chairman Meisel closes the Public Hearing and reconvenes the meeting.**

- d. Deliberation and action.

**Vice-Chairman Gage: I'm confused. You're going to tear this house down? I'm looking at these pictures and all this is going away? And this is what you're going to build?**

**David: Correct.**

**Commissioner Vandersteel: The photos are just for the trees? Just to clarify, the Cedar Elm #239 is a pretty tree. We really want to try to keep it. We have various means to mitigate that situation. In case this isn't going to work, we want a variance in place to remove it. I have a question, I see other problems that aren't being applied for. The driveway as shown, the driveway is closer and if you tear a house down entirely that you can consider that drive an existing condition and be grandfathered.**

**Commissioner Swanson: That is a good point.**

**Vice-Chairman Gage: How far is that hammerhead?**

**David: That is proposed and we can change that.**

**Commissioner Vandersteel: Any other portion of the driveway can't be closer than 20' from the front lot line. Parking, things of that nature can't be within 20'. I wanted to bring that to your attention.**

**Commissioner Swanson: Have you talked with an arborist to see if these pilings can be air spade and if you haven't I guess that would make a difference to me?**

**David: I met with a third party arborist?**

**Commissioner Swanson: You met with the City of West Lake Hills?**

**David: I met with Ashby.**

**Vice-Chairman Gage: Did you get a written report?**

**Commissioner Swanson: I'd like to see it.**

**Commissioner Vandersteel: Did he make that recommendation?**

**David:** To air spade and then would be a procedure on how to cut. We jointly discussed the idea. I met with an engineer at the lot and he would send a letter of support.

**Commissioner Vandersteel:** This is a very minor issue.

**Vice-Chairman Gage:** I think you should have that written as part of your report.

**Chairman Meisel:** Legal, we've got the rules on variance if you don't take out a permit within a year, if we grant the variance on the tree would they have to take it out within a year. In tree terms that's a short period time. Give another year.

**Assistant City Attorney Mueller:** This is not a permit to remove a tree. I would say yes, if we grant he has one year. But if he starts construction on the house within that one year the variance is good but could come back as long as the variance was granted.

**City Administrator Wood:** Once the building is started the variance is good for the life of the property.

**Commissioner Swanson:** I have a problem with recommending to allow having the tree removed if we don't have a good sense of reason for the need to be removed. So at this point I don't think I would be in favor of that. It sounds like there may be other variances that are going to be needed?

**Commissioner Vandersteel:** He said he would fix it.

**Commissioner Swanson:** But it's not part of the plan. If you want to come back with a letter from the arborist and we really don't know why that needs to occur?

**David:** As I said, we want to keep the tree, can we get approval to have this small amount of impact on the CRZ?

**Commissioner Vandersteel:** Do we have any say on that?

**City Administrator Wood:** Couldn't it be phrased not as permission to do the work in the CRZ?

**Assistant City Attorney Mueller:** Yes, limit it to what is in front of us.

**Commissioner Swanson:** I would feel more comfortable if we had a letter from an arborist.

**Chairman Meisel:** We can move to grant the variance for construction in the CRZ as shown conditioned on air spade being done on this project. We're not going to say you take down the tree.

**Commissioner Swanson:** Do you want to come back or postpone and come back in a month with the letter?

**David: I would be happy to provide the letter.**

**Commissioner Swanson: Would you like to postpone and come back with a letter and change the driveway?**

**David: I don't think the client wants. I feel there is support to mitigate the impact of the tree.**

**Commissioner Vandersteel: To approve the recommendation means to mitigate the CRZ and the driveway is to be changed. We're not approving this but it doesn't slip.**

**Commissioner Swanson: I don't think their application is quite there yet.**

**CHAIRMAN MEISEL MOVES TO RECOMMEND APPROVAL OF A VARIANCE TO ENCROACH IN THE CRZ CONDITIONED UPON WRITTEN VERIFICATION FROM THE ARBORIST WITH THE MITIGATION PROCEDURES AND THAT WE ARE EXPRESSING NOT RECOMMENDING TO REMOVE. THE SKETCH ON THE DRIVEWAY DOES NOT CONFORM TO CODE.**

**VICE-CHAIRMAN GAGE SECONDS TO ALLOW CONSTRUCTION IN THE CRZ. UNANIMOUS (4-0) APPROVAL.**

**City Administrator Wood: Before you go forward to BOA, the site plan you have here, take out any reference to the removal of the tree.**

**David: I can clean all that up. I appreciate your patience.**

5. Adjournment by Chairman Robert Meisel.

**Chairman Meisel adjourns the meeting at 7:32 p.m.**