

MINUTES OF ZONING AND PLANNING COMMISSION
PUBLIC HEARINGS AND REGULAR MEETING
CITY OF WEST LAKE HILLS, TEXAS
August 15, 2018
6:30 P.M.

PRESENT: ZAPCO Chairman Robert Meisel, Vice-Chairman Les Gage, Commissioners Kathy Tullos, Rhett Hoestenbach, Bill Vandersteel and Laurie Maccini

ABSENT: Commissioner Sarah Swanson

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 July 18, 2018 Regular Meeting Minutes.

VICE-CHAIRMAN GAGE MOVES TO APPROVE. COMMISSIONER MACCINI SECONDS.

Commissioner Vandersteel: I have one comment.

Chairman Meisel removes the approval from the consent agenda.

Commissioner Vandersteel: On page 5, I think in the capital letters on the motion, "Commissioner Vandersteel recommends denial on the variance. The reason is the trees. I think it was the setbacks.

Chairman Meisel: Let's bring those back for approval next month. We're not going to take any action on the minutes to verify the contents of the recording.

3. Land Use: Variances to remove of three trees with trunk diameters of 14 inches or greater (Tree 779 – 14" Cedar; Tree 4043 – 15" Live Oak; and Tree #825 – 15" Live Oak) for the construction of a new residence at 701 Butler Cove. (Section 22.03.304 of the West Lake Hills Code.) Applicant David Burton.

- a. Staff Briefing.

City Administrator Robert Wood: I just passed one out. The request is the removal of three trees that have a trunk diameter greater than 14". This will be for new construction for a new home in the Butler Cove Subdivision. On Page 3, it fronts on Redbud Trail but it is off of a shared driveway. There is an aerial of what is around. Staff recommends approval of the three because the way the lot is situated and number of trees, it would be very difficult to get a house there without removing trees.

- b. Presentation by applicant.

David Burton is with Envy Builders. I'm representing the York's and the house is being designed by Vanguard Studios. As Robert mentioned we are requesting to remove 3 trees. The house is off of Redbud Trail in the Overlook at Butler Cove. The subdivision plat is shown and you can come in off of Redbud Trail or Old Stonehedge. There is a hammerhead and the subject lot is Lot 4. There is a driveway easement across Lot 5. A picture is shown. You can see it a heavily treed lot. We have 221 trees. Even though this is a new subdivision 3 different people have owned the property and have come before you. Both have requested three trees. The last requested a cut and fill. The previous proposed was larger. That variance expired July 5th. We're at 4,600 square feet. We have impervious cover at 20%. We are a two story house. John, the architect, has worked with the clients to have a low impact on the vegetation. There is one variance tree near the garage. Again, we're here to show the site plan in what we see a need to remove on the lot. Pictures are shown of the proposed residence. This is two pictures of the tree survey so you can see the extent of the trees. There is a large tree that is on the survey but it is dead. The second on to the right has topo lines. We're coming in here. We might move the driveway tighter so we don't have as much grade. This is the tree that we are trying to protect. This is right in the driveway and one in the right side of the house. We couldn't do much with this one. We looked at trying to keep this tree. Minimal space for a garage. This is where we ended up on the 3 trees. This is a detail of the lot next door. This is currently under construction but the proposed driveway for the house shows where it is going to be built. There is also a deed restriction in the subdivision that requires the garages to not be street facing. We're not facing any street but you're not presenting the driveway openings to other properties in the subdivision. That was another factor in why we've got the garage facing this direction as opposed to facing Redbud Trail. This is just a picture of the dead tree. That's all I have to present.

- 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.

Commissioner Vandersteel: The only comment I had is the information about the covenant of the subdivision about the garage not facing the street, which is Redbud Trail. It doesn't access Redbud Trail. If that wasn't the case, you could go right it the end and you wouldn't have to take down the tree.

David: I discussed with the architect and he presented in the plans and the client's preferred a side facing.

Commissioner Vandersteel: I would feel more comfortable if I had some written evidence about that covenant just because this is a design driven variance. I'm concerned about the 15" Live Oak by the driveway and that being so close to not having to be removed. It's a simple matter of how you

deal with the garage. You can't have the door facing the street. I think that's a problem. That's my only concern. The other two I don't have a concern.

Chairman Meisel: Could you bring the plat back up? I appreciate the visual aids.

David: A copy of the HOA is presented on the video presentation.

Chairman Meisel: Given the amount of vegetation and screening you've got there. Can we get back to the plat?

Vice-Chairman Gage: What is the elevation?

Chairman Meisel: What is in this part of the building right here?

David: Master bedroom, bath closet.

Chairman Meisel: Is there a reason why that couldn't be slid over to avoid those trees? It seems to be roughly half of this. I'm not trying to redesign the home for you.

Commissioner Tullos: It's not like you're pushing into a topographically unsuitable area. If you pushed it one way or the other, it's pretty flat.

Commissioner Vandersteel: In the case of the tree in the driveway, both of these are what we call a design driven variances. It could have been done a different way but sometimes you're backed into a corner. In the event of the driveway, you got the garage and being the doors can't face the street, I don't know if that's a better option than what you're doing there. Any other option you'd have to remove that Live Oak anyway. The Live Oak that is next to the house, that is a more, you're not necessarily backed into that because you've got options.

David: There was discussion to get a cut variance here. We are trying to minimize how far we're sticking up here but I think we found a way to work that out without the variance. 855 is the cut line. We'll have a stem wall in the garage and we are going to slide the house over 24" from what we're showing here. We're pretty close to the building line, we don't have a lot of margin to the building setback. If we were to push this back we would have an issue with the margin.

Commissioner Tullos: You're saying this isn't actually how you contemplate, you're going to slide it right and that would put you in the setback?

David: We'll be right on the line with the roof overhang. In the month since we submitted, we were trying to save this tree. We couldn't work it with the driveway and garage space. This will be 4'-5' out of grade here. Once that constraint went away, we don't have to waterproof and build a step wall across the building envelope we can build a retaining along the setback.

Commissioner Vandersteel: Plus it gives you bigger distance from the left. Regardless of the tree on the right side, you within the building line.

Commissioner Hoestenbach: Is the Spanish Oak #702 where the driveway comes in?

David: There is right there.

Commissioner Hoestenbach: You're not impacting that tree. Push the driveway toward the Spanish Oak. There was an idea to make the driveway shorter or near it? You would have to remove the Spanish Oak?

David: This was an approved variance tree on the last application. We are keeping that one.

Commissioner Hoestenbach: I'm looking at tradeoffs. What alternatives. This is a lot that has a lot of trees on it. There are a number of variance trees effected by the build. What other alternatives were explored. This turned out to be best on the list.

Commissioner Vandersteel: I favor keeping the Spanish Oak because it is in the setback. The Live Oak is pretty much in the center in the buildable area and doesn't affect privacy. If you take out the Live Oak it impacts the neighbors.

Commissioner Tullos: You mean if you take out the Spanish Oak?

Commissioner Vandersteel: I'm glad you're keeping that one.

Commissioner Hoestenbach: Was there some discussion about the 15" Live Oak #4043?

Commissioner Vandersteel: That's next to the driveway.

Commissioner Hoestenbach: There was consideration you could work around that tree? Rather than go ahead and issue a death sentence for that tree, you're going to build the driveway without getting into the trunk?

David: Right now we have it at 30'. Again, that is what you see in the packet. We were trying to find a way to keep that one.

Commissioner Hoestenbach: How close to the trunk?

David: We're within a foot or two. We're probably 3-4' out of grade.

Commissioner Hoestenbach: There's no way to save that tree?

David: We're doing some pretty dramatic things to save the trees. This is kind of where it is. I know a variance tree is a variance tree, this is 15" not a 25". We took that into consideration.

Commissioner Hoestenbach: Given what I've heard and seen from the drawings, the better option between the Spanish Oak is to take the Live Oak

and the Cedar and save the Spanish Oak. I'm not as quick about the other Live Oak #825.

David: With the location of this tree, if that weren't granted, we have a 25' setback to deal with. If we take the desired building envelope we'll get into other trees. If we push it back we're not taking that tree we're getting into topography.

Commissioner Hoestenbach: Given other plans, there is not an increase in the number of trees and there is no other variances being requested. I think your explanation for the other Live Oak off of the master shows there is hardship there given the topography and also the number of trees we're dealing with. There has been a hardship demonstrated.

Commissioner Maccini: Just to say, in my opinion, this is a design drive for #825. Right now it is the style of house you want to put up there which is causing the tree. It's on how you want it to look.

Commissioner Vandersteel: You're saying off the master bedroom is the bath?

Commissioner Maccini: Can you go back to that picture?

David: You see it better right here.

Commissioner Vandersteel: It's quite a drop off. There's nothing underneath it?

David: Yes, sir. This is the flattest part of the lot. Anything we're pushing back we're getting into taller foundation forms.

Commissioner Tullos: What if you push it forward?

David: Then we'd be dealing with that tree again?

Commissioner Tullos: Just the little bump out, the bath and closet? Down on the map that we're looking at right now?

Commissioner Vandersteel: Because of the hill, if this was a flat lot right now. Could it be moved a little bit under the canopy of the tree, but because the house is on the hill that is going to be a problem. We see these plans and sometimes those circles go over the house and that's not a problem but the ceiling of that bedroom.

Commissioner Hoestenbach: They have another problem which is the septic field which would take out even more trees.

David: If we go forward, I don't know if they can make it work with those rooms. I don't know what the right trade-off is.

Chairman Meisel: The 6 and 13" don't require variances?

Commissioner Vandersteel: We're supposed to work around them.

Chairman Meisel: The setbacks and trees were there before the architect put it to paper. Somebody made a decision to ignore our ordinance for trees. I will grant that at some point you hit a threshold where you have to cut a tree but the 4,600 and 4,400 sq. ft. or 4,200, I don't think that extra feet is worth a 15" Live Oak. The Spanish Oak and the Live Oak were there, the topo was there when the architect came out there to form a concept. You still have to work with what you're given. The same applied to these variance trees. There is no question this is a design driven variance request. The other problem is with the facing of the garage, having looked at the homeowner's restriction that we are talking about, substantially visible from the street, with the elevation, it's not going to be visible from Redbud Trail. It can face which way you want. I would rather you go to the HOA than to come back here to cut down a 15" Live Oak.

Commissioner Vandersteel: The Live Oak is what gives you the value to the property. I think the modern designs, it is something that when the house is being laid out, we have seen plans that have trees but now the tree becomes a major element of the plan. Live Oaks can live a long time.

Commissioner Tullos: Do we have a motion?

Chairman Meisel: Do we have a motion?

COMMISSIONER TULLOS MOVES TO RECOMMEND APPROVAL OF THE REMOVAL OF TREE #779 THE 14" CEDAR AND DENIAL OF TREE #25 AND TREE #443, BOTH LIVE OAKS.

MOTION DIES WITH NO SECOND.

David: I'm just the builder. I'm representing the client. I think again there was discussion and development to do the best we could on a heavily wooded lot. It doesn't help that tree. If I move the garage right here, I still take that tree. I'd make the case that it is hardship to take an additional 20' of lot out of play.

Commissioner Vandersteel: If this lot was brought to my attention, here's a program and what do you do, what can I do to work with that? The trees themselves add the value to the house. We're not paying attention to the topography. It would be the challenge, the design you're working with is very elemental. These pieces can move around. If that's the case why not shift in such a way to avoid the trees. Floor plans are fairly flexible.

David: Unlike most other lots where we can't look at, maybe we put the garage here, that's the only place we can come into the lot.

Commissioner Hoestenbach: He's just complaining about that one room. The master bath, impacting that 15" Live Oak, all of us have that same thought. Maybe something else to save that tree. I'm getting the sense the other two trees are ok to cut.

COMMISSIONER HOESTENBACH MOVES TO RECOMMEND APPROVAL TO REMOVE TREE #779 14" CEDAR AND ALSO CUT

#4043 THE 15" LIVE OAK AND RECOMMEND DENIAL OF REMOVING THE 15" LIVE OAK BY MASTER BATH. VICE-CHAIRMAN GAGE SECONDS.

Commissioner Vandersteel: The option of withdrawing and don't remove any of the trees. This wouldn't be an issue. We don't mind losing the Cedars so much, as the HOA about the garage access Chairman Meisel makes a good point.

Commissioner Tullos: I'd like to speak against the motion. It seems to me that the consideration of flipping the garage around was not taken into account and at the beginning I believe the statement we cannot have a garage that faces the street when that is not what the restriction is. I think there is a little misconception there. I'd like another look if we flip it that way, that's where I'm coming from in my opposition.

MOTION FAILS 3-2.

COMMISSIONER TULLOS MOVES TO RECOMMEND ALLOWING THE REMOVAL OF TREE #779 THE 14" CEDAR AND RECOMMEND DENIAL OF 2 LIVE OAKS, TREE #25 AND TREE #443 ALWAYS REMEMBERING THE APPLICANT COME BACK WITH ANOTHER APPLICATION.

MOTION FAILS WITH NO SECOND.

Commissioner Vandersteel: You made two concepts, Kathy. You made the motion or option to withdraw.

Commissioner Tullos: I'm seeing where you're coming from and that's confusing.

Commissioner Hoestenbach: I think that's what they may want to reconsider.

Commissioner Vandersteel: There is an option to postpone this request and go back to the drawing board to save all the trees to show situations. This is difficult but not unworkable.

Commissioner Hoestenbach: You've heard suggestions and come back with.

CHAIRMAN MEISEL MOVES TO ACCEPT POSTPONEMENT. COMMISSIONER TULLOS SECONDS. UNANIMOUS (5-0) ACCEPTANCE.

David: With respect to the garage orientation, I want to be clear my and HOA would be visible from Redbud Trail, visible in the subdivision. It does present it to the backyard of this house. Again, given the entry of the lot, I think it is a hardship. I'm going to go back and look at that.

4. Land Use: Two variances: (1) To remove a tree larger than 14 inches in diameter (Tree #12 – 24" Live Oak; and (2) Modification of an existing circular driveway) at

904 Live Oak Ridge. (Sections 22.03.175 and 22.03.304 of the West Lake Hills Code.) Applicant Liana Davis.

a. Staff Briefing.

City Administrator Robert Wood: I won't go over the variances. The staff opinion is to recommend denial. The reason is this is a new house and want to do a driveway, if new or existing you try and bring it into code. If you're going to make change to the driveway instead of keeping two driveway cuts.

Commissioner Hoestenbach: That automatically makes it a variance request? Once they ask to make a change.

Commissioner Vandersteel: What is the total tear down or remodel?

City Administrator Wood: I don't remember for sure.

b. Presentation by applicant.

Leanna Davis is representing the applicant. The address is Live Oak Ridge. Understanding what Mr. Wood stated to the existing driveway, look at second page, the site plan, it says option one preferred in red. If you look at the existing we've got the driveway coming in here. You can see the existing driveway encroaching Tree #12. Making this angle is very tight. We were trying to take this tree into consideration. Our request is to continue the apron and change the pass and not disturb any trees. In looking at the tree, taking that into consideration we're trying to preserve the integrity. Just to manage the property a little better and keeping the spirit of preserving trees.

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

Doug Peachy is the builder. There is another way around to not take the 9" Live Oak. That way we won't have to take out any trees and the existing driveway is over the old septic field. There is another Live Oak as you're coming out that is 15"-20" coming out of the old drive.

Commissioner Maccini: Can you clarify?

Commissioner Vandersteel: it would be the second option.

Doug: If we did that we wouldn't take no trees.

Chairman Meisel closes the Public Hearing and reconvenes the meeting.

d. Deliberation and action.

Commissioner Vandersteel: A technical question; I agree with bringing things up to code. The circular driveway, who has those anymore? A lot of people say safety concerns. How did this get to this point? The second if they are allowed for 2 curb cuts, as they are as they are?

City Administrator Wood: The variance could be approved either way in same location or different locations? Either way it's a variance.

Commissioner Vandersteel: I was at the site, there is an option they have a construction path which is a location for the driveway, if we will look at a second driveway at all. I'm questioning the whole idea of a second driveway.

Vice-Chairman Gage: We have discouraged second driveway cuts. We haven't approved any recently. I'm very much opposed to second driveway cuts.

Chairman Meisel: This is a pre-existing driveway cut. Cuts are not being moved?

Commissioner Tullos: It was my understanding was to move the cut that as I look at the plan is to the right.

Doug: We would save the tree. If we have to stick with the curb cut.

Chairman Meisel: All that is requiring using an existing two curb cuts, as soon as you're willing to give up the second curb cut, I'm going to point out, justification for relocation the driveway within the lot is to promote the health of T#12 which is identified as a 24" Live Oak and I would suggest that 24" Oak is doing just fine where the driveway is. Perhaps the real answer is don't mess with it.

Commissioner Vandersteel: In the packet one of the reasons was the idea if you were to make a loop around that tree, a sharp a turn. The new driveway is to mitigate.

Leanna: That's why we're wanting to preserve the tree.

Chairman Meisel: A 25' Live Oak has adapted pretty well.

Commissioner Hoestenbach: The way it is now, it is really close. They have taken down the pavement and did pavers where the second entrance was, they've demolished the asphalt?

Doug: It's still there. As far as the protection of the tree, my question is, you can go in that way and have a hammerhead and you're not going around the tree at all. They can leave it like it is. That's an option they would have as grandfathered. Without a variance they could have one entrance or leave it like it is.

Commissioner Vandersteel: The question starts is in redeveloping this property, where does the grandfather of the driveway take hold? I don't know if that applied anymore. It's a remodel permit?

City Administrator Wood: If they go over the 50% rule that we have non-conforming uses, is the driveway still grandfathered or does the whole thing go as a set? The driveway is no longer grandfathered period.

Commissioner Maccini: If it's a building that they're touching. To be 100% sure I'd like to look at it. If they're not touching the driveway then they are not grandfathered?

Chairman Meisel: I have a question for staff. What appears to be the east side of the dwelling, there is a substantial improvement that crosses the 25' setback.

Leanna: We had a variance approved for that.

Commissioner Tullos: Does the fact that gates are being installed on the driveway have any impact? Is that anything that the city looks at?

Leanna: We're not installing gates.

Commissioner Hoestenbach: In keeping the circle drive as originally designed vs. option one, option two is better than the original. Again, I'm a little unclear if they need a variance or not. Option two is not the one I prefer. Option 3 is not part of the packet.

Vice-Chairman Gage: You'll be moving two curb cuts.

Doug: We're going to keep the mailbox where it is.

Leanna: That was a proposed mailbox.

Commissioner Vandersteel: Basically Option 2.

Commissioner Tullos: Does that require a variance?

Commissioner Maccini: If you touch it, you lose the grandfathering. Just the house you don't.

Commissioner Tullos: A variance would be required?

City Administrator Wood: Other than repair work.

Commissioner Vandersteel: Any reconfiguration would lose grandfathering and requires a variance? Why are we allowing a second driveway?

Commissioner Maccini: You'd have two variances.

Chairman Meisel: Option 3 has not been properly noticed.

Assistant City Attorney Mueller: I think the agenda and notice is sufficient.

Commissioner Vandersteel: Notice spoke of removal of tree and curb cuts.

Chairman Meisel: If there were no tree issue, what is the reason for granting 2 cuts? I'm not seeing it.

Commissioner Vandersteel: That was my first thought. We discourage that. If it was new, we wouldn't have it. Well, we have parking issues. If you have enough imp to handle.

Doug: There is a tree issue.

Commissioner Tullos: I'm not comfortable about option 3. The basic point if they do anything to the driveway, it would be against the city policy to get rid of two curb cuts.

Chairman Meisel: Once you touch it it's gone, as it stands right now. As soon as we talk about shifting, the gf disappears. The tree is another matter.

Commissioner Vandersteel: We have to talk about hardship. The hardship of having a second driveway is a luxury.

Chairman Meisel: The fact that other properties have been configured is not a relevant issue. I'm trying to stay inside the law.

Leanna: When you're talking about the existing, if we don't mess with it, can we resurfaced it?

Commissioner Hoestenbach: Configuration and touching are two different things.

Chairman Meisel: If it's in the same place you haven't changed it. I defer to the city.

COMMISSIONER HOESTENBACH MOVES TO RECOMMEND DENIAL OF BOTH VARIANCES DUE TO LAKE OF HARDSHIP. COMMISSIONER TULLOS SECONDS. UNANIMOUS (5-0) DENIAL.

5. Adjournment by Chairman Robert Meisel.

Meeting is adjourned at 7:50 p.m.