

These minutes are subject to formal approval by the Wyoming Zoning Board of Appeals at their regular meeting on January 6, 2014.

MINUTES OF THE WYOMING BOARD OF ZONING APPEALS
HELD AT WYOMING CITY HALL

December 16, 2013

The meeting was called to order at 1:30 P.M. by Chairman VanderSluis.

Members present: Beduhn Dykhouse Lomonaco Palmer
 Postema VandenBerg VanderSluis

Other official present: Tim Cochran, City Planner

A motion was made by Palmer, and seconded by Dykhouse to approve the minutes of the December 2, 2013 Board of Zoning Appeals meeting.

Motion carried: 7 Yeas 0 Nays

A motion was made by Lomonaco, and seconded by Beduhn to change the order of the agenda to hear Appeals V130057 prior to hearing the request for interpretation.

Motion carried: 7 Yeas 0 Nays

PUBLIC HEARING:

Appeal #V130057 P.P. #41-17-29-278-016
Cheryl A. Barr
4661 Caspian Dr. S.W.
Zoned R-2

The application requesting Zoning Code Section 90-47 (3) limits fences to a maximum of 36 inches (three feet) in height in the front yard area was read by Secretary Lomonaco. The petitioner proposed retaining the existing fence of 48 inches (four feet) in height. The petitioner requested a variance of an additional one foot to the three foot fence height limitation. There were a letter from Chuck and Ruth TenBrink, 2460 Chassell St., and an e-mail from Mr. & Mrs. Parnell, 2541 Chassell. Both were in support of the request. There was also a letter from Robyn Oakes, 2501 Chassell St., and two e-mails, one from Larry and Janet Bennett, 4651 Caspian SW and one from James Wirsing, 4632 Caspian SW. All three opposed the variance request. There also was one anonymous e-mail, which Chairman VanderSluis asked the Board to disregard because it was anonymous.

Chairman VanderSluis opened the public hearing.

Cheryl Barr 4661 Caspian Dr. explained she had put up the fence over nine years ago. At the time she was unaware of the City's ordinance regarding the height of fences in the side yard. She had thought using the side door into the fenced was sensible in order to get to the back yard. She only has the side and front doors. The four foot height was reasonable for the size

of her dogs. Safety was her main objection for her and her dogs. The fence does not obscure any vision. She admitted the dogs do bark, but that she goes out and calms them down when they do. She believed the complaint regarding the violation of the code ordinance was vengeance from a neighbor.

There being no further remarks, Chairman VanderSluis closed the public hearing.

Cochran displayed the City's handout for the approved location and height of fences in secondary front yards. He said fencing is a big issue. He showed an aerial of this lot, and indicated where a higher fence would be allowed. He also reminded the Board that the fencing ordinance has been recently amended in the last two years, and actually the allowed height of a fence in a front and secondary yard had been increased from 30" to 36", and the required setback in the front yard had been reduced from twenty feet to ten. The City only reacts to fence violations on a complaint basis. Corner lots are common. The City wants to maintain a consistency on fence heights by sidewalks. There is nothing special in this situation to make it unique. Staff recommended the variance be denied.

A motion was made by Lomonaco and seconded by Dykhouse that the request for a variance in application no. V130057 be denied accepting staff's Finding of Facts.

1. The property is a corner residential lot, which are common throughout the City. Owners of such properties are entitled to a 36 inch high fence in the secondary front yard. The fence could be reduced one foot in height to comply with the ordinance. Another alternative is to move the fence back 10 feet to maintain the 48 inch height. There are no extraordinary circumstances or conditions applying to the property.
2. The petitioner is entitled to a fence, but not of the height in the present location. The additional 12 inches of fence height is not necessary for the preservation of a substantial property right.
3. The granting of the variance will not diminish the marketable value of adjacent land or unduly increase traffic congestion.
4. The Zoning Ordinance was amended in December 2011 by the City Council to allow greater fence heights in front yards and secondary front yards in residential areas. The petitioner's conditions that apply to the property are general in nature and do not make reasonably practicable the formulation of a general regulation for such conditions.

Lomonaco remembered the Board had denied a variance request for an increased fence height in a front yard for the safety of a resident who had Alzheimer's.

VanderSluis did not think Ms. Barr intentionally violated the ordinance, but never the less the fence is in violation.

Cochran noted Ms. Barr had other options for placement of the fence.

Motion carried: 7 Yeas 0 Nays

REQUEST FOR INTERPRETATION:

Secretary Lomonaco read the petitioner's request for an interpretation of the City of Wyoming Zoning Code Section 90-472 Permitted uses after special approval (I-1 Light Industrial District) and Section 90-507 Permitted uses after special approval (I-2 General Industrial District). The petitioner desires to establish a propane distribution facility.

VanderSluis asked the applicant to summarize the proposed use, and to give his definition of "truck terminal."

Matt Zimmerman, attorney from Varnum, started by explaining Amerigas has an interest to purchase the property located at 2700 Remico for propane distribution. The propane distribution is two different forms. It is brought in by tankers and piped to the terminal. Eight of the existing bays would be used for Amerigas vehicles, which go out to local businesses and pick up empty container, refill them at the terminal and redeliver the containers. There would also be bobtail vehicles which are smaller than the delivery trucks. These would be filled up and sent out to fill on-site tanks which are larger. At the end of the day, the vehicles park at the facility. The prior use was a truck terminal which was pretty much the same as the proposed use except for the product and number of trips made by the vehicles. Dayton Freight handled general commodities, which they delivered and distributed. Mr. Zimmerman handed out a summary of general freight found on the ABF Freight Systems web site. ABF had taken over the business of the original user of the property, Carolina Freight. The web site states "general commodities include all freight except hazardous waste, dangerous explosives, commodities of exceptionally high value, commodities in bulk and those requiring special equipment. ABF's general commodities shipments differ from shipments of bulk raw materials which are commonly transported by railroad, pipeline and water carrier." Mr. Zimmerman explained bulk raw materials as materials such as sand or salt which are transported by ships then off-loaded. He noted some of the same language is included in the Zoning code. The ordinance does not list propane distribution anywhere in the zoning code. Mr. Zimmerman thinks the use is closest to a truck terminal. He cited a similar use (Purity Cylinder) on 28th St. in the same area. He knows that property is zoned I-1 as well. Purity Cylinder's website lists similar services to Amerigas. It would be an indication that the use is acceptable in the I-1. In addition, there is a similar use for medical gas. Both businesses have buildings with loading docks and large tanks. He did not feel propane met the definition of raw materials as defined in the I-2 use, because it is not combined or altered to produce another product. It is not disposal of solid or liquid or hazardous material. Propane is a valuable product. Service stations are allowed in I-1 districts with Special Use. Amerigas is similar to a service station. The product is stored until dispensed to the customer. The Board could say the use is similar to that allowed in the I-1 with special use approval.

VanderSluis asked for clarification from the appellant whether he was asking the Board to literally look at the definitions of 90-472 and 90-507, or whether he wanted the Board to determine whether the Board would agree Amerigas' use would be allowed by definition in the I-1 Zoning District.

Mr. Zimmerman asked the Board to determine whether Amerigas' proposed use would be allowed in the I-1 Zoning District. Interpreting the use is similar to the uses in the I-1 Zoning

District would not open the City to numerous requests for propane distribution. Propane distribution businesses are rare. Also, even if the Board agreed with him, the use would still have to obtain site plan approval from the Planning Commission, and would receive further scrutiny before the use is allowed.

Cochran noted the Board had received a large quantity of information regarding the interpretation request and possible subsequent variance request. He referred them to the aerial pictures they were given of current Amerigas locations. He further explained that I-2 Uses are usually found on Chicago Dr. I-3 uses which are similar to I-1 uses but with stronger restrictions can be found on Gezon Parkway. When zoning requests come in, it is his job to administer the zoning code. In some instances he has to make a judgment call. Sometimes when the use is a close fit to the zoning district, it is allowed. In this case the appellant did not agree with staff's decision. If the Board agrees with staff's determination, the appellant still has the right to ask for a zoning code amendment, which would then clearly define in what zoning propane distribution should be located. This process can take four months or longer. On November 14, 2013 the City sent out a letter that detailed the City's position. This had been discussed with the Community Service Director as well as the Building Official. The City does not feel the use meets the definition of I-1. If the use is more fitting in the I-2 district Amerigas would have to look for other property. If the use is similar to a truck terminal, the appellant will still need to obtain special use approval. Cochran agreed this use is unique, and he would not anticipate the City receiving more requests similar to it.

VanderSluis summarized the issue before the Board. Basically, the Board had to decide whether the proposed use did or did not meet the definition of the zoning code for the use of "truck terminal."

Postema asked whether the Board was determining where Amerigas would be better suited.

VanderSluis thought the Board should keep it simple, and not determine whether the business was suited to the site, but whether the proposed use could be determined to be a "truck terminal." He thought the definition needed to be reviewed as it described the use as a "structure", and a structure is a noun and cannot be a use.

Dykhouse thought the use could be put in any I-2 zoned property with a building. They need loading docks and storage area.

Again VanderSluis asked the Board not to look at the proposed business or the proposed site but just the definition. He also asked the Board to be open-minded, and not to necessarily decide the use by a stereotypical idea of a truck terminal. Further discussion ensued.

A motion was made by Palmer that the use as proposed by the appellant did meet the City's zoning code definition of a I-1 use. The motion was seconded by Beduhn.

Motion carried: 7 Yeas 0 Nays

PUBLIC HEARING:

Appeal #V130058 P.P. #41-17-16-251-033
AmeriGas Propane, L.P.
2700 Remico Avenue, SW
Zoned I-1

The application requesting a use variance to allow I-2 General Industrial Special Approval Use facility to be established on the property was rendered moot by the Board's determination that the use met the definition of truck terminal as permitted with special approval from the Planning Commission under Zoning Code Section 90-472.

There were no public comments at the meeting.

The new business items were discussed by Cochran and the Board members.

Canda Lomonaco
Secretary

CL:cb