

# Board of Adjustment

## STAFF REPORT



**SUBJECT:** Case No.: V2024-011  
Applicant Rock Creek Property No.1, LLC, is requesting a variance from Section 154.05.6.D.D.7 related to the maximum height of structures for property located at 0 W Cedar St, being Parcel R78345, A0342 HUDSON H C of the City of Stephenville, Erath County, Texas.

**MEETING:** Board of Adjustment – May 9, 2024

**DEPARTMENT:** Development Services

**STAFF CONTACT:** Steve Killen

### BACKGROUND:

The applicant is requesting a variance from the 35' height limitation to allow for the construction of multifamily buildings to a height of 40'. The variances will be necessary for the development to move forward. If approved, the applicant will be requesting a rezone of the property.

### APPLICABLE LAND USE REGULATION:

#### **Sec. 154.05.6. Multiple family residential district (R-3).**

**5.6.A Description.** This residential district provides for medium to high-density city neighborhood development. The primary land use allows for single-family dwellings, two-to-four family dwelling units, and multiple family housing buildings and complexes platted as one parcel and sole source management. All R-3 zoning will be appropriate to a city-style neighborhood. Recreational, religious and educational uses are also permitted so as to contribute to the natural elements of a convenient, balanced and attractive neighborhood. Development within this district is intended to be protected from the encroachment of land activities that do not contribute to the esthetic and functional well-being of the intended district environment.

(D) *Multiple family dwellings.*

- (1) Minimum lot area: maximum density of 24 dwelling units per acre, which includes parking, access and all other area improvements.
- (2) Minimum lot depth: 100 feet.
- (3) Minimum depth of front setback: 25 feet.
- (4) Minimum depth of rear setback: 20 feet.
- (5) Minimum width of side setback:
  - (a) Internal lot: ten feet.
  - (b) Corner lot: 25 feet from intersecting side street.
- (6) Building size: Minimum area of each dwelling unit: 500 ft<sup>2</sup> for one bedroom or less plus 125 ft<sup>2</sup> of floor area for each additional bedroom.
- (7) **Maximum height of structures: 35 feet.**
- (8) Public, semi-public or public service buildings, hospitals, institutions or schools may not exceed a height of 60 feet. Churches, temples and mosques may not exceed 75 feet, if the building is set back from each yard line at least one foot for each two feet additional height above the height limit in this district.

**VARIANCE:**

**Sec. 154.21.1. Board of adjustment—Appeals.**

**21.1.A Creation.** A Board of Adjustment is hereby established as provided in Chapter 211 of the Local Government Code.

**21.1.B Appeals.**

- (1) Appeals to the Board of Adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the municipality affected by any decision of the enforcing officer. The appeal shall be taken within a reasonable time, as provided by the rules of the Board, by filing with the officer from whom the appeal is taken and with the Board of Adjustment a notice of specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken.
- (2) An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal shall have been filed with him or her that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In such case proceeding shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application or notice to the officer from whom the appeal is taken and on due cause shown.
- (3) No appeal shall be taken to the Board until and unless the Enforcing Officer has first refused a permit for plans submitted or has rendered an interpretation of the Zoning Ordinance.
- (4) Every appeal shall be filled on application forms provided by the city, shall be accompanied by the prescribed fee, and shall be complete in all respects before being accepted for filing. The application shall bear the signature of the owner of the property under appeal or shall be accompanied by a letter from the owner acknowledging taking of the appeal. An incomplete application or a communication purporting to be an application and not made in the form prescribed shall be regarded only as a notice of intent to appeal, and shall not be considered or acted upon by the Board.
- (5) Every appeal shall be prepared by the applicant and shall be considered by the Board according to the guidelines contained in this ordinance for the type of appeal under consideration. Where two or more different types of appeals are included in the same application, each set of guidelines shall apply to the consideration of the appeals.
- (6) An appeal shall be filed with the Board within ten days after the date of decision of the Enforcing Officer. Every appeal shall be filed with the Executive Secretary of the Board not later than 15 days prior to the regular meeting date of the Board. Appeals filed after the deadline shall be scheduled for the next regular meeting. When the filing deadline falls on a city holiday the following workday shall be observed as the filing deadline.

**21.1.C Notices.**

- (1) Public notice of any appeal affecting a specific property shall be given as prescribed in the Zoning Ordinance by means of a written notice deposited in the United States Mail, postage prepaid, not less than ten days prior to the date of hearing. The notice shall identify the applicant, the location of the property in question, the nature of the request and the applicable Zoning Ordinance requirements.
- (2) Public notice of any appeal seeking an interpretation of Zoning Ordinance regulations which would apply throughout the city, shall be given by means of a legal advertisement appearing in the official newspaper of the city not less than ten days prior to the date of hearing. Written notice shall also be given to the applicant and his or her agent as provided in division (A) above. The notices shall identify the applicant, the nature of the question involved, and the affected provisions of the Zoning Ordinance.
- (3) Notice of any appeal seeking a special use or variance affecting a specific property shall be given to all persons within 200 feet of the property in question by means of a written notice deposited in the United States Mail, postage prepaid, not less than ten days prior to the date of the hearing.

**21.1.D Withdrawal of Appeal.** Any appeal may be withdrawn upon written notice to the Executive Secretary; but no appeal shall be withdrawn after giving of public notice and prior to Board action thereon without formal consent of the Board.

**21.1.E Appeal After Board Denial.** No appeal that has been denied shall be further considered in a new appeal resulting from the filing of new plans and the obtaining of a new decision from the Enforcing Officer, unless the new plans materially change the nature of the case.

**21.1.F Expiration of Granted Appeal.** Approval of any appeal shall expire 90 days after the Board's decision unless authorized construction or occupancy permits have been obtained or unless a greater time is requested in the application and is authorized by the Board. Any approval may be granted one extension of an additional 90 days on written request filed with the Board before expiration of the original approval. The time limit for every granted appeal shall commence on the first day of the month succeeding the month in which the Board renders its decision.

**21.1.G Interpretation.** The Board of Adjustment shall have the following powers:

- (1) For interpretation of the meaning or intent of the Zoning Ordinance. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this ordinance.
  - (a) *Papers required.* An appeal shall include:
    - (1) A statement by the applicant describing the way it is alleged the regulation should be interpreted, together with diagrams and charts illustrating the erroneous and the proper application of the may or text provisions.
    - (2) A statement by the Enforcing Officer giving his or her reasons for his interpretation of the Zoning Regulations.
  - (b) *Basis for action.*
    - (1) Before acting on an appeal for interpretation the Board shall consider:
      - a. The facts and statements filed in the application;
      - b. The testimony presented at the public hearing;
      - c. The city staff's technical report on the appeal; and
      - d. The Board's independent investigation of the language of the ordinance and of related ordinance bearing thereon.
    - (2) The Board shall make such interpretation as should be made provided the applicant has demonstrated to the satisfaction of the Board that one or more of the following conditions exist and that the decision of the Board would be in the interest of the community and would carry out the spirit and intent of the Zoning Regulations:
      - a. That there is reasonable doubt of difference of interpretation as to the specific intent of the regulations or map;
      - b. That an appeal of use provisions would clearly permit a use which is in character with the uses enumerated for the various zones and with the objectives of the zone in question; and
      - c. That the resulting interpretation will not grant a special privilege to one property inconsistent with other properties or uses similarly situated.

**21.1.H Special Exceptions.**

- (1) Expansion of a nonconforming use within an existing structure a maximum of 20% provided that, in the case of a nonconforming residential use, such expansion does not increase the number of dwelling units to more than the number existing when the use first became nonconforming.
- (2) Expansion of the gross floor area of a nonconforming structure, a maximum of 20%.
- (3) Change from one nonconforming structure that has been totally destroyed, or resumption of a nonconforming use previously abandoned only upon finding that the failure to grant the special exception deprives the property owner of substantial use or economic value of the land.
- (4) In granting special exceptions under this section, the Board of Adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which the nonconforming use may continue to operate or exist before being conformed to the standards of the Zoning Ordinance.

**21.1.I Variance.**

- (1) A variance from the literal enforcement of the Zoning Ordinance in order to achieve a reasonable development of property. Whenever, owing to exceptional and extraordinary conditions, the literal enforcement of the zoning regulations will result in unnecessary hardship in the development of the property, an appeal for a variance may be filed with the Board of Adjustment.

- (2) When a property owner can show that a strict application of the terms of this ordinance relating to the use, construction or alteration of buildings or structures or the use of land will impose upon him or her practical difficulties or particular hardship, the Board may consider and allow variations of the strict application of the terms of this ordinance if the variations are in harmony with the general purpose and intent of this ordinance, and the Board is satisfied, under the evidence heard by it, that a granting of the variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable hardship or difficulty so great as to warrant a variation from the Zoning Regulations.
- (3) The Board may authorize a variance where by reason of exceptional narrowness, shallowness, or shape of specific piece of property of record at the time of the adoption of this ordinance, or by reason of exceptional situation or condition of a specific piece of property, the strict application of a provision of this ordinance would result in peculiar and exceptional practical difficulties and particular hardship upon the owner of the property and amount to a practical confiscation of the property as distinguished from a mere inconvenience to the owner, provided the variation can be granted without substantial detriment to the public good, and without substantially impairing the general purpose and intent of the comprehensive plan as established by the regulations and provisions contained in this ordinance.
  - (a) *Papers required.* An appeal for a variance shall include:
    - (1) A site plan, drawn to scale, showing the location and dimension of the lot and of all existing and proposed improvements:
      - a. When an appeal is based upon hardship resulting from sharp changes in topography or unusual terrain features, the site plan shall include topographic information related to known base points of surveys, and profiles of the particular problem involved, including relationship to topographic features of adjoining properties.
      - b. When an appeal is submitted for variance of side yard or rear yard requirements, the applicant shall provide the same information for the properties adjoining the common lot line as may be applicable to the appealed requirements.
      - c. When an appeal is submitted for a variance from front yard setback, or for side yard setback on a side street, the applicant shall furnish a strip map showing the setback of main walls of all buildings on the same side of the street within a distance of 200 feet of the applicant's property.
    - (2) A statement of facts and reasons why the Zoning Regulations should not be applied to the property in question and how the standards governing the Board's action would be satisfied; and
    - (3) A statement by the Enforcing Officer citing the reasons for refusing to issue a permit under the plans submitted.
  - (b) *Basis for action.*
    - (1) Before acting on an appeal for variance the Board shall consider:
      - a. The facts filed with the application;
      - b. The testimony presented at the public hearing on the appeal;
      - c. The City Staff's technical report on the appeal; and
      - d. The Board's findings in its field inspection of the property.
    - (2) The Board may grant an appeal, subject to such terms and conditions as it may fix, provided the applicant has demonstrate to the satisfaction of the Board that the conditions governing the granting of a variance as set forth in the Zoning Regulations are satisfied and that the decisions of the Board would be in the interest of the community and would carry out the spirit and intent of the Zoning Regulations.

#### ALTERNATIVES:

1. Approve the Variance Request
2. Deny the Variance Request