

**MINUTES  
OF THE  
MEETING OF THE  
BENBROOK ZONING BOARD OF ADJUSTMENT  
TUESDAY, AUGUST 26, 2008**

The Regular Meeting of the Zoning Board of Adjustment of the City of Benbrook was held on Tuesday, August 26, 2008 at 7:30 p.m. in the Council Chambers at 911 Winscott Road with the following members present:

Bill Collins  
Jacquie Messer  
Lizabeth Sowell  
Connie Gotcher  
Clark Penas

Also Present:

Ed Gallagher, City Planner  
Sue Clark, Recording Secretary  
Brandon O'Donald, Board Alternate  
Kyle Carr, Board Alternate  
John Brasher  
Dr. Cary Burton  
Joe Martinez  
Sydney Fielder  
Tammy Kendall

**I. CALL TO ORDER**

Chair Messer called the meeting to order at 7:30 p.m.

**II. CONSIDERATION OF MINUTES**

**Regular Meeting – April 22, 2008**

Dr. Collins asked that the minutes as presented show the addition of comments made by the applicant addressing the architect's familiarity with the Benbrook Sign Ordinance. Motion by Mr. Penas to approve the minutes as amended. Second by Ms. Sowell. The Chair called the question.

Vote on the Motion:

Ayes: Ms. Sowell, Mr. Penas, Ms. Gotcher, Dr. Collins, and Ms. Messer

Noes: None

Motion carried 5 – 0

**III. OATH OF OFFICE**

Sue Clark, Notary Public, issued the oath of office to Kyle Carr – Alternate D.

#### IV. REPORTS OF ADJUSTMENT ITEMS

**ZBA – 08 – 02      Request for a variance to Section 25 – D; Signs Allowed on Private Property of the Benbrook Zoning Ordinance Number 808, as amended, to authorize a 96 square-foot, 12-foot high, Freestanding Monument Sign on Lot A, Block 2, Trail Ridge Subdivision (6970 F.M. 2871 – Trinity Hills Baptist Church)**

The Chair introduced the item and asked for a presentation from the applicant.

John Brasher, 9813 Westpark Drive, said he is representing Trinity Hills Baptist Church and the sign committee in the variance application. Mr. Brasher said the documents prepared for the Board, shows that by increasing the size and height of the sign, it will improve the driving safety for people looking for the church. He said it is a primary consideration due to the speed limit, the geography of the terrain, the slope of the hill, and the utility poles. It is a potential danger for people trying to locate the church and see the sign.

Mr. Brasher said that currently the ordinance allows for 80 square feet maximum area for a sign and 6-foot maximum height. He said they are proposing a sign 96 square feet in area and 12-foot high.

Mr. Brasher said the following items are important to describe the terrain at the frontage of the church:

1. F.M. 2871 is peaking at the crest of a hill at the church; the church property is on top of that hill.
2. At the south driveway the roadway is slightly below the church property while at the north driveway, the roadway is over 30 feet below the church property.
3. F.M. 2871 makes a slight curve as it ascends the hill before it straightens to approach U.S. Highway 377.
4. The utility easement in front of the church is populated with telephone poles and other utility equipment.
5. The speed limit on the road is 55 miles per hour.
6. F.M. 2871 is heavily traveled.
7. The sign cannot be located any closer to the roadway than 50 feet and the selected sign location is an additional 20 feet away due to utility easement limitations.

Mr. Brasher went over the pictures that had been submitted to the Board and described the site limitations if the sign conformed to ordinance regulations and read the ordinance requirements for the Board to issue a sign variance.

Discussion followed between the Board and the applicant on the setback and location chosen for the sign. The Chair asked for a report from Staff.

Ed Gallagher said the ZBA – 08 – 02 application is presented by Trinity Hills Baptist Church for a sign variance on the church property at 6970 F.M. 2871. The site, Lot A, Block 2 of Trail Ridge Subdivision, is zoned “CF” Community Facilities District. The applicant proposes a six-foot height variance to the six-foot height allowed by the Ordinance, to allow a 12-foot high monument sign. Also, the application includes a 16-square-foot variance to the 80-square-foot sign area maximum to authorize the proposed 96-square-foot sign.

The application notes visibility of a conforming sign is affected by topographic changes and curves in the F.M. 2871 roadway, and utility poles and facilities as hardships. Part of the application material is a target test showing a conforming 6-foot high sign from both northbound and southbound approaches on F.M. 2871.

Mr. Gallagher said the target test submitted with the application indicates merit for the proposed height variance for the 12-foot high sign. However, a 10-foot high sign may also provide sufficient visibility.

The identification portion of the sign is 61.36 square feet and conforms with the Ordinance maximum area for a freestanding sign. The application includes an area variance for a base under the 61.36 square-foot identification portion of the sign but does not appear to add visibility except to support the proposed height.

Mr. Gallagher said the Zoning Ordinance provides for and authorizes the Board to grant a variance when in a specific case, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured. He said the Ordinance provides authority to the Board to grant a variance where literal enforcement of the Ordinance would result in an unnecessary hardship. The Ordinance notes a hardship is intended to include a change in elevation or curve in a roadway which obstructs the visibility of a sign.

The Ordinance also provides that the Board may attach appropriate conditions and safeguards to any approvals. It is Staff’s opinion that any approval of the variance application should include any conditions the Board determines appropriate.

Mr. Gallagher said the Zoning Board of Adjustment may authorize a variance from the zoning regulations when, in its opinion, undue hardship will result from requiring strict compliance with the Ordinance. In granting a variance, the Board should prescribe only conditions that it deems necessary and desirable to protect the public interest. In making its findings, the Board should take into account the nature of the proposed use of the land involved, existing uses of land in the vicinity, and probable effect of such variance upon traffic conditions and upon the public health, safety, convenience, and welfare in the vicinity.

Mr. Gallagher said no variance should be granted unless the Board finds:

- A. that there are special circumstances or conditions affecting the land involved such that the strict application of the provisions of the Zoning Ordinance would deprive the applicant of reasonable use of his land, including sight visibility conditions; and
- B. that the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and,

- C. that the granting of the variance will not be detrimental to the public health, safety, or welfare, or injurious to other property in the area.

Variations may be granted only when in harmony with the general purpose and intent of the Zoning Ordinance so that the public health, safety, and welfare may be secured and substantial justice done. Mr. Gallagher said pecuniary hardship to the owner, standing alone, must not be deemed to constitute undue hardship.

If a variance is granted, the Board should specify the reasons that a hardship is present and why a variance should be granted, so that they can be included in the official minutes. The Board may impose conditions and safeguards upon the issuance of a variance.

Mr. Gallagher said Staff recommends the Zoning Board of Adjustment should determine if circumstances justify the proposed variance request (ZBA – 08 – 02) to authorize the proposed 12-foot high, 96-square-foot area monument sign on Lot A, Block 2, Trail Ridge Subdivision.

The Chair asked for any comments or questions from the Board for the applicant or City Staff.

Dr. Collins asked the applicant if they would consider minor changes to their request so that it would comply more with the Ordinance. He said if the Board approved a variance to allow the sign to be 10 feet high instead of 12 feet high and the name section be 8 feet wide by 8 feet tall, the sign would comply with two out of three requirements of the Ordinance.

Mr. Brasher said they would take whatever the Board allowed.

The Chair asked for any further comments or questions from the Board. There being none, the Chair opened the public hearing at 8:00 p.m. and asked if anyone wished to speak for or against the item.

Dr. Cary Burton, a member of Trinity Hills Baptist Church, a board certified ophthalmologist, said he thought the 12-foot height requested would be safer than 10 feet high and asked that the Board approve the variance as requested.

There being no additional speakers, the Chair closed the public hearing at 8:03 p.m. and asked for any comments or questions from the Board for the Staff or the applicant.

Lizbeth Sowell said she wanted to make it clear to the applicant that he was requesting for double the height allowed by the Ordinance. She said the Ordinance is there for a reason and they do not want to see multiple sizes of signs on F.M. 2871.

Mr. Brasher said the actual sign area is in compliance with the Ordinance and what they are asking for is basically a masonry pedestal for the sign to sit on that would make it more visible.

Motion by Dr. Collins to approve the variance request, ZBA – 08 – 02, to allow a sign 10 feet in height, not 12 feet as requested and allow 8-foot in width, because of the elevation of the property and other structures that are present in the easement that would obstruct the view of a conforming sign. Second by Ms. Gotcher. The Chair called the question.

Vote on the motion.

Ayes: Ms. Sowell, Mr. Penas, Ms. Gotcher, Dr. Collins, and Ms. Messer

Noes: None

Motion carried 5 – 0

**ZBA – 08 – 03 Request for permit to reconstruct a pre-existing Non-Conforming Use being a fence in the required Front Yard non-conforming with Section 26, B, 3, a – Fence Regulations, Use Regulations, Placement of Fences, Front Yard of the Zoning Ordinance of the City of Benbrook, Ordinance Number 808, as amended, to permit a four-foot (4') high fence thirty feet (30') beyond the front yard setback requirement along the Mary's Creek Drive frontage of Lot 10, Block 3, Russ Lo Valley Addition (4013 Dawn Drive)**

The Chair introduced the item and asked for a presentation from the applicant.

Joe Martinez, 4013 Dawn Drive, said he and his wife purchased the house in 1972 and at that time there were no ordinances controlling where fences were placed on a property in Benbrook. When he purchased the home, there was a chain link fence around the entire east part of the property. Mr. Martinez said he considers the front of the property to be facing west on Dawn Drive and the back facing east on Mary's Creek Drive.

Mr. Martinez said the flood waters from Mary's Creek have, over time, torn down the legal, nonconforming fence around his property. He said that he talked to City Staff about replacing the fence at his expense and the Staff advised him that the City would be rebuilding the creek channel and he should wait until that work was complete because the City would replace anything removed for the project. All fencing would be replaced with chain link, four feet to six feet high and Mr. Martinez said he did not want chain link and he would pay the difference in the cost for wrought iron. He said the height of the fence to be replaced was not discussed.

Mr. Martinez said the existing Ordinance will not allow any fencing higher than 30 inches in front of the building line. He is requesting the variance because he wants to replace the fence and gate with 4-foot material in front of the building line for security and liability purposes.

The Chair asked for any comments or questions from the Board for the applicant. There being none, the Chair asked for a report from Staff.

Ed Gallagher said the ZBA – 08 – 03 consideration submitted by Joe Martinez is for the reconstruction of a non-conforming fence in the Mary's Creek Drive front yard of Lot 10, Block 3, the Russ Lo Valley Addition, an "A" One family district neighborhood. Lot 10, along with three other lots in Block 3, is a through lot with front yards and a 30-foot platted building line on both the Dawn Drive and Mary's Creek Drive frontages of the lots. He said all of the houses on each of the through lots are oriented to Dawn Drive with the applicant's house at 4013 Dawn Drive.

The four-foot fence in question was constructed in the 1960s along the north and south side lines of the lot and extended to and along the east line of Lot 10, adjacent to the Mary's Creek Drive street right-of-way. When the fence was constructed, there were no regulations regarding the placement of fences. In February of 1978, Ordinance Number 510 prohibited fences in front yards of single-family residential districts, and also defined a fence as being greater than 30-inches in height. With the 1978 Ordinance approval, the applicant's four-foot fence in front of the building line became a legal non-conforming fence.

Mr. Gallagher said, as a result of flood events in recent years, portions of the legal non-conforming fence were destroyed. When the applicant approached the City about reconstruction of the fence, the City Staff advised Mr. Martinez that the planned drainage improvements project would result in wasted effort and expense on the property owner's part. He said the remainder of the fence was removed with the current drainage project. With the drainage project nearing completion, the applicant is requesting authorization to reconstruct the destroyed non-conforming fence.

Procedurally, consideration of the reconstruction of the non-conforming fence differs from variance considerations in that the demonstration of a hardship is not required. Mr. Gallagher said the focus of the ZBA – 08 – 03 non-conforming consideration is “due regard for the property rights of the persons affected when considered in the light of the public welfare and the character of the area surrounding the designated non-conforming use and the conservation and preservation of property”.

Staff recommends that the Zoning Board of Adjustment authorize the reconstruction of a four-foot high fence in front of the platted 30-foot building line in the previous location on the east front yard of Lot 10, Block 3, Russ Lo Valley Addition.

The Chair asked for any questions or comments from the Board.

Dr. Collins said the regulations for gates and garage doors, under “A” Single Family Zoning calls for a 20-foot setback from the right-of-way and it is almost a traffic hazard when parking in a street to open and close gates. He said his only concern is that Mary's Creek Drive is not a very busy street but in the country and in other areas around the city, there is space to pull off the road and out of traffic to open and close gates.

Clark Penas asked the applicant if he has ever had any difficulties or complaints about opening or closing the gate. Mr. Martinez said no and when the gate is built, it will open to the inside and be automatic so that it will open before he gets to the gate.

Discussion followed on the location of the proposed fence and the location and height of fences on the surrounding properties.

There being no further comments or questions, the Chair opened the public hearing at 8:45 p.m. and asked if anyone wished to speak for or against the item.

Sydney Feeler, 4009 Dawn Drive, said he lives in the house to the north of Mr. Martinez and he requests that the Board approve the variance and allow Mr. Martinez to install the 4-foot fence and gate. Mr. Feeler said most people are installing four-foot fences on their properties down the channel and it looks very nice.

Tammy Kendall, 4100 Mary's Creek Drive, said she is Mr. Martinez's neighbor to the south and she was required to put a four-foot fence on her property and she chose to pay the difference between chain link and wrought iron. She said she has seen people walking their dogs on Mr. Martinez's bridge and she thinks the Board should approve the variance for the four-foot fence and gate so he can keep people off the bridge for security and privacy.

There being no further speakers, the Chair closed the public hearing at 8:50 p.m. and asked for any comments, questions, or a motion from the Board.

Motion by Mr. Penas to approve ZBA – 08 – 03, by authorizing the issuance of a permit to reconstruct a pre-existing, non-conforming four-foot fence at its previous location, which will allow the property owner to exercise the property rights rightfully due to him. Second by Ms. Sowell. The Chair called the question.

Vote on the motion.

Ayes: Ms. Sowell, Mr. Penas, Ms. Gotcher, Dr. Collins, and Ms. Messer

Noes: None

Motion carried 5 – 0

**V. PRESENTATION BY BOARD MEMBERS**

None

**VI. PRESENTATION BY CITY STAFF**

None

**VII. ADJOURNMENT**

There being no further business on the Board agenda, Chair Messer declared the regular meeting adjourned at 8:55 p.m.

APPROVED 11-25-08, 2008

/S/ Jacquie Messer  
Chair