

ZONING BOARD OF APPEALS
MEETING MINUTES

May 13, 2008

4:00 P.M.

CALL TO ORDER: Mr. Carlyle Sims, Chairperson called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Rick Barnes, Deland Davis, Mike Fatt, Gentry Hammons, Jim Moreno and Carlyle Sims

Members Excused: Greg Dunn, and John Stetler

Staff Present: Glenn Perian, Senior Planner; Barbara Hobson, Attorney, City Attorney Office and Leona Parrish, Admin. Assistant

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS: None

NEW BUSINESS:

Mr. Carlyle Sims, Chairperson stated the meeting procedure and that everyone present may speak either for or against an appeal. He asked that they come forward and state their name and address for the record as it is being recorded.

Appeal #Z -03- 08: Mr. Glenn Perian stated this is a variance request that was brought back from last months meeting as the address on application was incorrect and required to be noticed for 10 Kulp Ct. It was received from Mr. Dan Rippinger on behalf of Summit Pointe, requesting to allow an 8-10 ft. height chain-link fence between their two properties at 10 Kulp Court to improve their security and help prevent illegal activity. Mr. Perian stated the police department had been contacted to see if it would be beneficial to increase the height of the fence. Officer Duane Knight, Police Department stated it would be helpful in reducing crime activity.

Mr. Dan Rippinger, Facilities Director for Summit Pointe came forward to speak and stated the current fence was broken down and needed to be replaced and they also wanted to prevent through traffic of crime persons selling drugs and fleeing. Stated after last months meeting he had spoken to Mr. Lanuti, who was in opposition and took him to the property location, Mr. Lanuti now agrees and understands which property it is, as it was noted before as the incorrect address and was a miscommunication.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-03-08 VARIANCE TO ALLOW AN 8 FT. - 10FT. HEIGHT CHAIN-LINK FENCE TO BE INSTALLED BETWEEN THE TWO BUILDINGS OWNED BY THEM FOR PROPERTY LOCATED AT 10 KULP CT., SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. James Moreno asked Mr. Dan Rippinger regarding the fence being elevated 3 ft. surface with a gate on the left side missing and not being able to be locked, with having currently a 6 ft. fence, would it not be high enough as it is with a gate installed.

Mr. Rippinger stated there is a gate that is missing because they just rebuilt the garage and had to temporarily remove it and would be reinstalled, but with the fence being higher it would be more effective in helping the police catch criminals.

Mr. Moreno stated with the current fence and ground it is already 10 ft. in height, how would it be more helpful. Mr. Rippinger stated with it being higher it would be more of a visual deterrent.

Mr. Gentry Hammons asked Mr. Rippinger that the application stated 8 ft. – 10 ft., which height was he wanting approved. Mr. Rippinger stated he is requesting 8 ft. height for the fence. He originally wanted it 8 ft. with an additional 1 ft. angled piece at the top.

Mr. Hammons asked what if he did the 6 ft. and then added the angled extension at the top. Mr. Rippinger stated that it would work, but with the cost he would rather go higher than find out later it was not high enough.

Mr. Carlyle Sims asked for the record that regarding the angled top, he is not talking about barbwire. Owner stated no he was not.

Mr. Mike Fatt asked if 7 ft. fence was the highest allowed. Mr. Glenn Perian stated yes, that was correct.

Mr. Deland Davis asked if another type of fence would work instead of a chain-link. Mr. Rippinger stated yes, but being between their two properties they can visually see through from their office location and is also more visually appealing.

MR. CARLYLE SIMS ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN FOR THE VARIANCE; THREE (DAVIS, FATT, AND MORENO OPPOSED; THREE (HAMMONS, SIMS, AND BARNES IN FAVOR: MOTION DENIED.

It was noted for the record from those opposed that this variance did NOT meet the Zoning Board of Appeals Authority checklist for the following reasons:

Condition #1: Did the appellant show that a hardship or practical difficulty would exist absent of the requested variance?

Condition #5: Has the Appellant furnished sufficient documentation to show that hardships or practical difficulties do exist?

Mr. Carlyle Sims stated if they wished to do so, they have an option to appeal to the Circuit Court.

Appeal #Z -04- 08:

Mr. Glen Perian stated this was an appeal from Ms. Sherry Gilmer requesting a variance to waive the side-yard setback for the construction of an two stall attached garage to be built for property located at 318 W. Hamilton Lane.

Mr. Joe Zeigler came forward stated Ms. Gilmer had fallen four feet from her porch on Sunday and was currently in the hospital with a broken leg and was not able to attend. Because he is familiar with her request, she had asked him to come and answer any questions the board might have

Mr. Glenn Perian asked Mr. Zeigler if he had a letter of authority or written approval to act on Ms. Gilmer's behalf. Mr. Zeigler stated no he had received a call from her daughter, knowing he is fairly closely involved on this project and asked that he attend this meeting.

Mr. Carlyle Sims stated the board would need something in writing from the owner. Mr. Perian stated it could be postponed until next month.

Mr. Carlyle Sims stated it is required to have something either from an attorney or in writing from the appellant to make sure this is proper procedure. Mr. Zeigler stated that is fine, that it was confusing as the letter received stated the owner or representative needed to attend the meeting. He understands that he would need to be authorized to represent, asked if it then would be at next months meeting.

MOTION: MR. JAMES MORENO MADE A MOTION TO POSTPONE # Z-04-08 VARIANCE UNTIL PETITIONER OR OFFICIAL REPRESENTATIVE IS PRESENT FOR PROPERTY LOCATED AT 318 W. HAMILTON LN., SUPPORTED BY MR. RICK BARNES.

A VOTE WAS TAKEN: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED.

Appeal #Z -05- 08:

Mr. Glen Perian stated the appellant Mr. Tim Mix is requesting a variance that would authorize the construction of a nonconforming commercial building that was destroyed by fire at 405 Capital Avenue, N.E. That the existing foundation was preserved and the appellants would like to construct the new building on the existing foundation approximately 3 ft. from the front property line. The requirement for front yard setbacks is 20 ft. according to Chapter 1278 for the C-3 "Intensive Business District".

He stated that city records indicate and the plan attached show the adjacent buildings have been built up to the front property line. The desired plan is to maintain the pre-existing streetscape by placing a new hardware building on the same foundation as the destroyed building. Stated the zoning board has the authority to approve. (Mr. Perian handed out a layout of new building.)

Mr. Perian stated that if they were required to move the building back, it would create a hardship because of the placement of dumpsters, etc. He stated a letter was received from the Neighborhood Planning Council strongly supporting this appeal, stating that the community has relied on this business and allowing the reconstruction of the business on the existing foundation will contribute to the overall health of the Capital Avenue, N.E. corridor.

Mr. Mix was present to speak and stated they wished to use the original foundation for the new building. Stated that moving it back 20 ft. would shorten the building and they would have to bring the warehouse to the north up to the fire code and would not have any place to put the dumpsters or snow removal and

would be a hardship on the business. By putting it back in the existing foundation it would blend nicely back with the neighborhood.

Mr. Carlyle Sims asked if they were going to use the original foundation with a fire rated wall. Mr. Mix stated yes that was correct, they would put a two foot wall between buildings.

Mr. Bob Wilkins, 39 N. Union Street, came forward to speak, stated they are about ½ of a block from the building and would like to see it rebuilt. Stated he had four generations of his family that had shopped at the hardware store which started with his grandfather; he stated there should not be any issues with this, that it should be allowed back where it was and asked that it be approved.

Mr. Tim Eldred, N. Union Street, stated he has lived near by for 10 years and that during that time this store has been of a good service to him and a lot of others, he said they should allow the hardware store to be rebuilt.

Mr. Glenn Perian stated we had received documentation on May 7, 2008 from Pastor Keith N. McDonald, Sr., New Birth Bible Church, 360 Capital Avenue, N.E., and on May 1, 2008 from Neighborhood Planning Council #4 strongly noting their approval of this variance request.

Mr. Carlyle Sims asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. DELAND DAVIS MADE A MOTION TO APPROVE # Z-05-08 VARIANCE TO ALLOW THE RECONSTRUCTION OF COMMERCIAL BUILDING THAT WAS DESTROYED BY FIRE TO BE REBUILT ON ORIGINAL FOUNDATION FOR PROPERTY IN THE "C-3 INTENSIVE BUSINESS DISTRICT" LOCATED AT 405 CAPITAL AVENUE, N.E., SUPPORTED BY MR. RICK BARNES.

Discussion:

Mr. Deland Davis noted as Mr. Perian stated, that as the Zoning Board they do have the right to approve, based on the foundation and being more than 60% destroyed. He is in favor of approval.

Mr. Carlyle Sims stated that this is a hardship that is unrelated and have been in business for many years serving the community with a lot of support. He is also in favor.

Mr. James Moreno stated that based on their Zoning Board of Appeals approval list, this variance has met the majority of the required conditions for approval.

MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN ON THE MOTION FOR THE VARIANCE; NONE OPPOSED; ALL IN FAVOR: MOTION APPROVED

APPROVAL OF MINUTES:

MOTION WAS MADE BY MR. JAMES MORENO TO APPROVE THE APRIL 8, 2008 ZONING BOARD OF APPEALS MINUTES AS SUBMITTED, SUPPORTED BY MR.

DELAND DAVIS. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Carlyle Sims asked Ms. Barbara Hobson, City Attorney if she felt the meeting went well. Ms. Hobson stated, yes that he needed to make sure that he signed the Zoning Board of Appeals Authority Checklist for this meeting.

ADJOURNMENT: Mr. Deland Davis made a motion to adjourn the meeting, second by Mr. Gentry Hammons; all in favor. Meeting adjourned at 4:24 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department

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