

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, January 15, 2014

Call to Order

Mr. Brady called the BZA meeting to order at 7:30 p.m.

Those members present: Prue Dana, John Barnhart, Paul Brady, Mike Schnipper

Those members excused: Gary Meyer

Staff members present: Sam Perry, Jung-Han Chen, and Steve McHugh

Staff members excused: Amy Blankenship

Appeal of Administrator Decision*

BZA-12-2013 711 & 711-1/2 S. College Avenue appeal of Administrator Decision Patrick O'Neill, Esq, Applicant (Tabled 12/18/13)

Ms. Dana made motion to remove BZA-12-2013 from the Table. Mr. Barnhart seconded the motion. All were in favor.

Mr. Perry provided a review stating that this was a continuation of the previous appeal of an Administrator's Decision from Mr. Patrick O'Neill on behalf of Mr. Brad Fread. The original decision by the Administrator was to not allow a variance application be placed on the agenda as it is a use request. Mr. Perry referred to the request by the applicant to continue discussions from the last BZA meeting and determined that the new evidence provided was not relevant to the appeal and had no bearing on the decision to not allow it to be placed on the agenda as a variance. Mr. Perry concluded that the City had no further evidence to submit.

Mr. McHugh, Legal Counsel, referred to the supplemental report in the agenda provided by Staff. Mr. McHugh also referred to the documentation in the agenda that was provided by Mr. O'Neill. Mr. McHugh concluded that it still remained the position of the City that this was still a request for a use which is not allowed in the underlying zoning district and, therefore fits in the definition of a use variance and that the City's request of the decision of the Administrator is upheld.

Mr. O'Neill approached the podium and stated that he didn't have anything to add, but only to say he disagreed with the Staff and the legal conclusions.

Mr. Barnhart noted that the evidence spoke for itself; was determined to be a use variance, and that the BZA can't rule on a use variance. Mr. Brady noted that he would vote to uphold the Zoning Administrator's Decision. Mr. Brady agreed it being a use variance. Mr. Schnipper noted that a three-family is not permitted in an R1MS zoning district.

Mr. Schnipper made motion, BZA-12-2013, to uphold the Administrator's Decision based upon City Staff decision and Zoning Code Chapter 1129.11 that use variances are not permitted per the City of Oxford Zoning Code. Mr. Barnhart seconded the motion.

AYE: John Barnhart, Mike Schnipper, Prue Dana, Paul Brady(4)

NAY: None (0)

ABS: None (0)

Approval of Minutes of the December 18, 2013 Regular Meeting

Ms. Dana made motion to approve the minutes as written. Mr. Barnhart seconded the motion. All were in favor.

Annual Election of Officers

Mr. Barnhart made motion to nominate Mr. Paul Brady as Chair of the BZA. Ms. Dana seconded the motion. All were in favor.

Mr. Barnhart made motion to nominate Prue Dana as Vice Chair of the BZA. Mr. Schnipper seconded the motion. All were in favor.

Ms. Dana made motion to nominate Mr. John Barnhart as Executive Secretary of BZA. Mr. Schnipper seconded the motion. All were in favor.

Old Business

There was none.

New Business

Discussion of Revisions to Rules of Procedure

Mr. Perry referred to the BZA Rules of Procedure and reminded the BZA that this was their yearly opportunity to make changes to the BZA Rules of Procedure.

Mr. Perry noted that in recent years, applicants had requested a postponement of their public hearing for various reasons at very short notice. Mr. Perry continued that Staff felt it best if there was a certain amount of lead time for rescheduling due to notifications, etc., that Staff needs to do. Mr. Perry requested the Staff recommendation of seven days' notice.

Mr. Perry referred to a second item by Staff regarding the allowable amount of testimony time for the applicant, noting that at times it can get rather lengthy. Mr. Brady suggested 15 minutes, Staff suggested 10 minutes. Mr. Brady felt 15 minutes would allow the applicant to cover all of the evidence and yet provide some parameters. Discussion followed. Mr. McHugh provided some insight suggesting to start with 15 minutes, add wording into the meeting procedure notation located on the agenda document, and see how that goes.

After discussion regarding adequate postponement time, Mr. McHugh felt 7 days was good; however, there could be extenuating circumstances. Mr. McHugh stated that 7 days could be the general rule and the BZA could make the final decision. It was decided that the BZA Chair and Staff could make a determination on whether to allow for a continuation. Discussion followed on how best to accommodate everyone, including the public, applicant, and staff.

Discussion followed regarding a situation when an applicant requests a continuance when notified at their hearing that a full board was not present. Mr. McHugh reminded everyone that the applicant is given the opportunity at the start of their hearing to decide whether to continue their hearing or ask for a continuance.

All agreed that Staff would bring wording back to BZA next month.

Mr. Schnipper inquired if the creation of a Use definition could happen. Mr. McHugh stated that the Planning Commission could very well amend the code to add the definition of a use variance, especially if

they felt that this type of issue became prevalent; City Council or the Planning Commission could bring up the creation of a use variance definition.

Mr. McHugh suggested that should an applicant request a continuance that the City create a fee for continuance because of costs involved in readvertising, both in the paper and to the surrounding property owners.

2013 BZA Case Summary

Mr. Perry referred to the 2013 Case Summary in the BZA agenda.

Ms. Dana noted her appreciation of the information. Mr. Perry stated the summaries were good for City Council to see as the document provided them information and possible items that need to be re-looked at in the code, for example this evening's discussion of use variances (if they felt it was an ongoing issue).

Adjournment

Ms. Dana noted that she would not be attending the February BZA meeting.

Mr. Barnhart made motion to adjourn the meeting. Ms. Dana seconded the motion. The meeting was adjourned at 7:55 p.m.