

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, March 18, 2009

Call to Order

The March 18, 2009 meeting of the Board of Zoning Appeals was called to order at 7:33 p.m.

Those members present: Gary Meyer, George Prentice, John Barnhart, Bill Houk, and Todd Hollenbaugh

Those members excused: None

Staff members present: Kathryn Dale, Jung-Han Chen, Rob Jacques, and Lynn Taylor

Staff members excused: None

Mr. Meyer made motion to reorder II. Executive Session and place after IV. Approval of Minutes. Mr. Barnhart seconded the motion. All were in favor.

Adjudication Hearing

BZA-04-2009 - 946 Silvoor Lane, Variance to Section 1141.01(a)(3)A.1. fence height in front yard, Clive Getty, Applicant

Mr. Hollenbaugh recused himself from this case as he is a neighboring property owner. Mr. Meyer conducted the hearing.

Mr. Prentice moved to enter into public hearing BZA-04-2009. Mr. Barnhart seconded the motion. All were in favor.

Ms. Dale provided a report of this variance request stating that the Applicant wished to install an 8-9 foot high decorative fence along the front property line. It was also noted that there was a small section of a 9-foot high mesh deer fence along the northern property line that would project into the front yard as well.

Mr. Meyer swore in Clive Getty, 946 Silvoor Lane, Applicant.

Mr. Getty provided his reasoning for the variance to install a barrier to keep out the deer. Mr. Getty described the increase in the deer population. Mr. Getty stated he had spent a substantial amount of money and time on his landscaping and the deer were eating it. Mr. Getty described some of the landscaping he has lost. Mr. Getty stated he has had to remove landscaping due to the damage from the deer. Mr. Getty described the fence he wished to install.

Mr. Houk referred to the aerial view photograph provided in the meeting packet. Mr. Houk inquired about the very back fencing in the photograph. Mr. Getty stated it was existing fence that he planned to replace in the future. Mr. Houk referred to an area of fencing that seemed to be 4 ft. in height and questioned its effectiveness. Mr. Getty stated he hadn't had problems with deer in that particular area.

Mr. Barnhart inquired about having a deer problem when the property was purchased. Mr. Getty stated initially he didn't have a problem; however, it continues to worsen. Mr. Getty stated he installed plantings that deer were not attracted to. Mr. Barnhart inquired about if he had used liquid fence. Mr. Getty stated no.

Mr. Prentice felt his variance was reasonable.

Todd Hollenbaugh, 949 Silvoor Lane, confirmed what Mr. Getty stated, and felt the variance was reasonable.

Mr. Houk moved to reconvene to regular meeting BZA-04-2009. Mr. Barnhart seconded the motion. All were in favor.

Mr. Houk noted that the practical difficulty was clear, and that there was no opposition by the neighbors. Decision Standards were discussed: a. NA; b yes; c-no opposition by neighbors okay; d-no effect; e-wasn't aware deer would be a problem; f-no; g&h-no. It was noted that staff recommended three conditions: that, the proposed work be constructed as approved with this appeal and that no changes or modifications be made without the consent of this Board; that, the proposed work complied in all other respects with all applicable codes, ordinances, and the City of Oxford Zoning code; that, the proposed work be completed within one year of this decision.

William Houk moved to approve BZA-04-2009 - 946 Silvoor Lane, Variance to Section 1141.01(a)(3)A.1. fence height in front yard, Clive Getty, Applicant and meet the three conditions listed in the Staff Report.. John Barnhart seconded. The motion passed with the following roll call:

AYE: Gary Meyer, William Houk, George Prentice, John Barnhart (4)

NAY:None (0)

ABS: Todd Hollenbaugh (1)

[BZA-03-2009 - 210 S. Poplar, Appeal of Administrator's Decision, Scott Webb, Applicant, Agent](#)

Mr. Barnhart moved to enter into public hearing BZA-03-2009. Mr. Meyer seconded the motion. All were in favor.

Staff provided an overview of this case. Ms. Dale noted there were two separate parts of this case; the first was to determine if email exchanges between Staff and the Applicant constituted an Administrator's decision. Ms. Dale referred to 1129.11(a)(4) and stated that the appellant must state how the administrative action affected the appellant and whether the decision given to the Applicant was made in error; the second part of the case was if the Applicant needed to request a variance.

Mr. Scott Webb, Applicant, was sworn in by Mr. Hollenbaugh. Mr. Webb stated he wished to not pursue the variance this evening; just sticking with the Administrator's appeal. Mr. Hollenbaugh confirmed that Mr. Webb was withdrawing 1141.03(e)(4).

Mr. Webb testified that he felt the decision made by the Zoning Administrator was in error because 1141.03(e)(4) did not specifically state that a two-family dwelling had to have a single shared entrance.

Mr. Webb provided a powerpoint presentation showing an approved site plan.

Mr. Hollenbaugh clarified that it was not an approved site plan. Mr. Jacques reiterated that this Board didn't approve the use.

A lengthy discussion took place between Mr. Webb and the BZA regarding Mr. Webb's PowerPoint presentation.

Mr. Webb, in referring to his PowerPoint presentation, stated he presented a site plan that met the code.

Mr. Jay Bennett, legal counsel, was sworn in by Mr. Hollenbaugh. Mr. Bennett is the Agent, Attorney for the owner. Mr. Bennett spoke about "standing" since a decision was made in regards to Section 1129(a)(4) and referred to the emails included in the meeting packet. Mr. Bennett referred to his client having to spend more time and money in regards to staff's emails and was adversely affected by them. Mr. Bennett disagreed with BZA's primary entrance definition. Kathy referred to the floor plan provided by the Applicant in the meeting packet which showed a "principal entrance".

Several of the BZA stated they couldn't find where staff said to the Applicant, "you must apply for such and such variance".

The BZA questioned why the variance had been withdrawn. Mr. Bennett provided an explanation of why the Applicant withdrew the variance request.

Mr. Webb referred to staff and some of the BZA wanting to require one principal entrance; however, the code didn't require ONE principal entrance.

Mr. Houk inquired if the BZA could modify the Administrator's decision.

Mr. Houk made a motion to modify the Administrator's decision.

Discussion followed. No other BZA member seconded this motion. Mr. Houk withdrew his motion to modify the Administrator's decision.

Mr. Prentice made a motion to deny the Applicant's appeal of the Administrator's decision; that the emails between staff and Mr. Webb are in evidence from page 49 through page 64 of the agenda, do constitute a decision by staff, the decision of interpretation was correct and supported by emails. Mr. Meyer seconded the motion. The motion passed with the following roll call:

AYE: Gary Meyer, William Houk, George Prentice, John Barnhart, Todd Hollenbaugh (5)
NAY: None (0)
ABS: None (0)

BZA-03-2009 - 210 S. Poplar, Variance to Section 1141.03(e)(4) Principal Entrance and Section 1141.03(j) Residential Building Additions, Scott Webb, Applicant, Agent (Postponed)

At the Applicant's request, Variance to Section 1141.03(e)(4) Principal Entrance and Section 1141.03(j) Residential Building Additions, was withdrawn.

Approval of Minutes of the December 17, 2008 and February 18, 2009 Meetings

Mr. Meyer moved to approve the minutes of the December 17, 2008 meeting as written. Mr. Barnhart seconded the motion. The motion passed 4-0-1 (Mr. Houk was absent).

Mr. Barnhart moved to approve the minutes of the February 18, 2009 meeting as written. Mr. Houk seconded the motion. The motion passed 3-0-2 (Mr. Meyer and Prentice were absent).

Executive Session Election of Officers

Mr. Barnhart moved to adjourn to Executive Session for the Election of Officers at 9:14 p.m. Mr. Houk seconded the motion. All were in favor.

Mr. Barnhart moved to reconvene to the regular BZA meeting at 9:20 p.m. Mr. Houk seconded the motion. All were in favor.

Mr. Hollenbaugh announced the re-election of officers: Mr. Prentice, Recording Secretary; Mr. Meyer, Vice-Chairman; and Mr. Hollenbaugh, Chairman.

Old Business

Mr. Meyer referred to the illegal parking in yards he has witnessed at student housing. Several other BZA members noted their seeing as well. Mr. Meyer inquired as to whom should be looking into. Staff to investigate this issue. (Note: Staff has been in contact with the Landlord at 302 and 302 1/2 Main Street (Main Desire) regarding parking illegally. The Landlords have been in contact with the Tenants regarding this problem).

New Business

Mr. Meyer inquired about the size of a sign located at a Gardenia Drive construction site. Ms. Dale to look into. [It is noted that Ms. Dale has been in contact with the contractor]

Adjournment

Mr. Barnhart moved to adjourn. Mr. Meyer seconded the motion. The meeting was adjourned at 9:26 p.m.