

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, October 18, 2017

Call to Order

Those members present: Paul Brady, Roger Ames, Prue Dana, Michael Schnipper, and Rosmarie Shaughnessy.

Those members excused: None.

Staff members present: Sam Perry, and Amy Blankenship.

Staff members excused: Jung-Han Chen, and Stephen McHugh.

Approval of Minutes of the August 16, 2017 Regular Meeting

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

Adjudication Hearings

BZA-2017-11 Courtyards of Miami, 5 E. Central Avenue, Variance to 1143.05(c)(4)A.1, total lot coverage, bike shelters, Carolyn Ostendorf, Applicant

Mr. Ames arrived to the meeting at 7:33 p.m. Ms. Shaughnessy arrived at 7:34 p.m.

Ms. Dana made motion to enter into public hearing BZA-2017-11. Mr. Schnipper seconded the motion. All were in favor.

Mr. Perry was sworn in.

Mr. Perry reported that the installation of two bike shelters took place without a permit. Mr. Perry stated that the applicant was not aware one was necessary. Mr. Perry reported that in speaking with the applicant they discovered there was a lot coverage issue. Mr. Perry noted that a survey was done. Mr. Perry stated that the applicant chose to not remove any existing hard surface. Mr. Perry provided overhead photos.

Mr. Perry provided pictures of the bike shelters and locations on the site.

Mr. Perry reported that the current lot coverage without bike shelters was 55.12%; with shelters increased to 55.97%.

Mr. Perry reviewed the design criteria:

Mr. Perry stated he didn't believe the variance would affect the essential character of the neighborhood;

The owner's awareness, stated she did not;

The owner's predicament appears that the demand for bike use is high, and inadequate storage was present;

The spirit and intent, Mr. Perry noted that the request was for a very small increase in lot coverage;

Mr. Perry stated there was substantial evidence supporting the variance request;

Ms. Shaughnessy inquired if the applicant knew about the lot coverage requirements and if they did why didn't they seek a variance beforehand. Mr. Perry reported the applicant did not know.

Mr. Perry noted that should the variance be approved, the applicant would need to apply for a building permit to assure the structures met the code.

Mr. Perry provided criteria that could sway approval -1. active transportation, 2. Shelters are not located near the street.

Ms. Carolyn Ostendorf, owner and Keith Ledgerwood were sworn in. Mr. Ledgerwood stated that Ms. Ostendorf was not aware that they needed a building permit and that a contractor had built the bike shelters. Mr. Ledgerwood stated that the bike racks existed previously and the only the shelters were constructed. Mr. Ledgerwood stated that there are only two bike shelters and an existing picnic shelter. Ms. Ostendorf apologized for having built the shelters without a permit.

Ms. Dana inquired if they increased the area and if grass previously existed under the bike racks.

Ms. Ostendorf stated yes grass previously existed, and no they did not increase the area and that more people were using

the outside bike racks instead of placing them out in the hallways. Ms. Ostendorf also stated that bushes, trees, and shrubs had been added to the property to increase greenspace. Ms. Ostendorf stated that previously the bike racks sat on grass but now they sit on mulch. Ms. Ostendorf stated that she didn't want to install concrete since finding out there was a problem, but that she actually liked the mulch.

Ms. Dana made motion to reconvene to regular meeting. Mr. Schnipper seconded the motion. All were in favor.

Ms. Dana made motion to approve BZA-2017-11 based upon decision criteria the variance was not substantial and the owner's predicament could not be obviated without the variance, since bike usage was high for the property. Mr. Ames seconded the motion. Mr. Brady added a condition that the applicant will obtain a building permit.

AYE: Ms. Dana, Mr. Ames, Ms. Shaughnessy, Mr. Schnippner, Mr. Brady

NAY: None (0)

ABS: None (0)

[BZA-2017-12, 5745 College Corner Pike, Variance to 1141.01\(b\)\(1\)\(A\), accessory buildings total square foot area, Paul Eichhold, Applicant/Agent](#)

Mr. Schnipper made motion to enter into public hearing BZA-2017-12. Ms. Dana seconded the motion. All were in favor.

Mr. Perry was sworn in by Mr. Brady.

Mr. Perry reported that Gillman's Home Center wished to build an additional dry storage structure at their current location because of increased sales. This property was annexed in 2015, and the zoning code limits the number of accessory buildings. Mr. Perry stated that the structure was well over the allowed square footage. Mr. Perry described the structure's location placement and problems with it. Mr. Perry noted that the applicant was agreeable to moving the structure back a little to not be in front of the existing structure. Mr. Perry stated the applicant was also asked if they were willing to extend the existing hard surface and that they agreed. Mr. Perry stated that essentially the new structure was a polebarn.

Mr. Perry reviewed the decision criteria. Mr. Perry stated that the beneficial use of the new structure was due to the changing markets dictating different storage needs.

Mr. Perry stated the variance was not substantial even though the accessory building was way over the allowed amount. That, the essential character of the neighborhood would not be affected, since the property location was open space. Mr. Perry stated that the applicant was not aware of the zoning restriction, and that the applicant's predicament was affected since currently there is inefficient dry storage. In regards to the spirit and intent, Mr. Perry referred to Section 1123.01(a) of the zoning code to encourage and facilitate orderly efficient and appropriate growth.

Mr. Perry reviewed staff conditions listed on pages 23/24 of the agenda.

Mr. Paul Eichhold and Mr. August Alfred was sworn in. Mr. Eichhold submitted a newer drawing showing the structure being moved as requested by City Staff to match the front setback of the enclosed portion of the main building. Mr. Eichhold stated that they would prefer to not extend the concrete, since it was already graveled and that only staff would have access to the new structure, and that customers would not. Mr. Eichhold described inventory that was currently being stored and having to rent storage trailers because of increased business. Mr. Eichhold continued that in order to continue servicing their customers they needed to house products they are having to order for customers.

Mr. Brady stated that he didn't understand paving if the public wouldn't have access to it.

Mr. Ames made motion to reconvene to regular meeting. Ms. Dana seconded the motion. All were in favor.

Mr. Schnipper stated that if the public wasn't accessing it, and if the applicant could get by with gravel, that would save them substantial money.

Mr. Ames made motion to approve BZA-2017-12 based upon the request was not substantial, would not change the

neighborhood, delivery of services would not be affected and the spirit and intent would be met by granting the variance. One condition is the building would need moved back. Mr. Schnipper seconded the motion.

Mr. Perry spoke. Mr. Perry stated that staff would need to look further into the legalities of the zoning code, referencing the hard surface requirement. Therefore, this could be a separate variance application.

AYE: Mr. Schnipper, Mr. Ames, Ms. Shaughnessy, Ms. Dana, Mr. Brady (5)

NAY: None (0)

ABS: None (0)

BZA-2017-13, 325 Cobblestone Court, Variance to 1143.01(c)(4) lot coverage and 1141.01(c)(4)(A)(1)(2) fence height, Jeff Warnock, Applicant/Agent

Ms. Dana made motion to enter into public hearing BZA-2017-13. Mr. Schnipper seconded the motion. All were in favor.

Mr. Perry was sworn in. Mr. Perry stated that the applicant was constructing a recreational court at a residential property. Mr. Perry displayed the location of the property and an aerial view. Mr. Perry stated that the zoning code permitted private recreational facilities; however, there were some restrictions. Mr. Perry stated the variance requests were for lot coverage and fence height.

Mr. Perry displayed pictures of the recreational court and provided a history of the property. Mr. Perry stated they were requesting a 10' fence and that the allowed fence height was 8'. Mr. Perry stated that a lot coverage increase was requested. Mr. Perry reported that in 2010 there was a minor variance administrative approval for a small addition to the house causing an encroachment. Mr. Perry stated the request was 209 square feet over the allowed lot coverage. Mr. Perry stated the higher fence was for basketballs going outside of the yard. Mr. Perry reviewed the decision criteria. Mr. Perry stated that he did think the fence would affect the neighborhood negatively since the neighborhood was fairly new and would be considered uncharacteristic to have a 10' high chain linked fence. Mr. Perry reviewed staff recommendations, stating that believed there was substantial evidence to support the variance request for lot coverage but not the fence height.

Ms. Shaughnessy inquired if the applicant consulted the neighbors about what they wanted to do. Mr. Perry responded that he believed they had and that staff had placed a sign at the property regarding the hearing and was placed in the newspaper so communication existed. Ms. Shaughnessy inquired about lighting. Mr. Perry responded that there were no plans for any lighting for the court.

Mr. Ames inquired if the chain linked fence could be changed to a 10' tall privacy fence. Mr. Perry reported that would be part of the approval.

Mr. Jeff Warnock, the applicant, was sworn in by Mr. Brady. Mr. Warnock stated he was present on behalf of the owner. Mr. Warnock stated that another neighbor had a sport court as well. Mr. Warnock stated that the family felt this important quality family time.

Mr. Warnock provided a PowerPoint presentation displaying the project requested size court, view of the existing property. Mr. Warnock explained why the owner wanted a 10' fence and referred to an existing retention pond. Mr. Warnock displayed an example of the ten foot black fencing.

Ms. Dana inquired about the location of the fence. Mr. Warnock stated it would be located just in back of the court and located on the back side and the east and south sides.

Mr. Schnipper inquired about the color of the fence. Mr. Warnock stated black. Mr. Ames inquired if the BZA could require it to be chain linked fencing. Mr. Perry stated yes.

Ms. Dana made motion to reconvene to regular meeting. Mr. Schnipper seconded the motion. All were in favor.

Discussion followed regarding increased fence height.

Mr. Ames made motion to approve variance to Section 1143.01(c)4 and 1141.01(c)(4)(A)(1-2) with the condition that the fence be a chain linked fence, based upon decision criteria that the essential character of the neighborhood would not be negatively affected and would be of a beneficial use with the variance approval. Mr. Schnipper seconded the motion.

AYE: Mr. Schnipper, Ms. Shaughnessy, Ms. Dana, Mr. Ames, Mr. Brady (5)

NAY: None (0)

ABS: None (0)

Old Business

Mr. Schnipper inquired about the two properties headed toward legal enforcement. Ms. Blankenship responded that City Legal staff has been involved. Mr. Perry reported that they were working with an attorney regarding the problem property on Fairfield Road.

New Business

Revisions to BZA Rules of Procedure

The BZA reviewed the Rules of Procedure provided in the BZA agenda packet. Discussion followed.

Ms. Dana suggested a correction adding the word "minutes" in describing applicant testimony allowed time.

Ms. Dana made motion to amend the Rules of Procedure to add word "minutes". Mr. Ames seconded the motion. All were in favor.

Discussion took place regarding changing the start time of the meeting to 6:30 p.m. All agreed that if became a problem would look at again.

Mr. Brady suggested changing page 5 of the Rules of Procedure to change the start time of the BZA meeting to 6:30 p.m. Mr. Schnipper made motion to change the start time in the BZA Rules of Procedure. Mr. Ames seconded the motion. All were in favor.

Mr. Ames made motion to approve the Rules of Procedure as amended. Ms. Dana seconded the motion.

AYE: Mr. Schnipper, Mr. Ames, Ms. Dana, Ms. Shaughnessy, Mr. Brady (5)

NAY: None (0)

ABS: None (0)

The BZA approved 5-0-0.

Rules of Procedure and meeting start time will be effective November 1, 2017.

Adjournment

Ms. Dana made motion to adjourn the meeting. Mr. Ames seconded the motion. All were in favor. The meeting was adjourned at 8:28 p.m.