



City of Pflugerville

Minutes - Final

Board of Adjustment

Wednesday, December 14, 2016

7:00 PM

100 E. Main St., Suite 500

Regular Meeting

1 Call to Order

Present 5 - Member David Prout, Alternate Member Craig Howlett, Alternate Member Beatriz Flores, Vice Chairman Drew Botkin and Chairman Rodney Blackburn

Absent 2 - Alternate Member Eduardo Zamora and Member Brandon Frye

2 Discuss and Consider

- 2A [2016-5442](#) Elect a Chairman and Vice-Chairman to the Board of Adjustment for 2016.

Drew Botkin made a motion to nominate Rodney Blackburn as Chairman of the Board of Adjustments for 2016. Beatriz Flores seconded the motion. All in favor. Motion carried.

Chairman Rodney Blackburn made a motion to nominate Drew Botkin as the Vice-Chairman of the Board of Adjustments for 2016. Beatriz Flores seconded the motion. All in favor. Motion carried.

3 Public Hearing

The Board welcomes comment on the following items. Each person providing public comment will be limited to five (5) minutes and will be asked to state his or her name and address for the public record.

3A [2016-5440](#)

To receive public comment and consider a Variance to Subchapter 11.9 Fence and Wall Standards, for a proposed wood fence to be constructed on vacant property zoned Retail (R) district. (BOA1610-01)

Jeremy Frazzell, Assistant Planning Director, gave an overview of what the purpose is of the Board of Adjustment.

Mr. Frazzell then presented the item and gave a history of the site.

The subject property is located along the south side of E. Black Locust Dr., generally southeast of the Swenson Farms and E. Black Locus Dr. intersection. The south and west property lines of the subject property are adjacent to approximately ten single family homes in the Swenson Farms residential subdivision. The east property line is common with a tract owned by the Pflugerville Independent School District. The north property line is adjacent to E. Black Locust. The property is currently unimproved and zoned Retail (R). Subchapter 11.9 of the Unified Development Code (UDC) identifies fences and walls shall be construction of high quality materials, such as brick, stone, masonry fencing, stained cedar wood, and wrought iron. Table 11.9 specifies which types of fencing materials are permitted and prohibited based on the land use. The property is vacant, without a use, and zoned Retail (R) district which does not permit a single family use. The commercial standards are applicable given the aforementioned status of the property, which does not allow a wood board fence. The applicant has proposed a variance to allow for a six (6) foot tall wood board fence to be allowed to be constructed along the perimeter of the property.

The Board of Adjustment shall consider the following criteria in determining whether a zoning variance request is warranted:

- (a) The variance is not contrary to the public interest;
- (b) Due to special conditions, a literal enforcement of the chapter would result in an unnecessary hardship; and
- (c) By granting the variance, the spirit of the ordinance is observed and substantial justice is done.

Staff provided additional information outlined in the staff report.

Scott Osburn, Assistant City Attorney, gave a brief overview and explained the code/charter to the Board. He recommended that in the event that the Board wanted to deny the variance, then the reasons for denial would need to be stated. In authorizing the variations, the Board shall ensure that the spirit of the ordinances is observed and that justice is observed.

Henry Traugott, applicant, gave a brief overview of his request. He gave a background as to why he is asking for the variance and why they purchased the property. The applicant's insurance carrier said they will not insure his property until a fence was put up around the area. He stated the 2 reasons that he believes that the Board should approve his variance request because it is within the same aesthetics as the fence that is already on site and he received 155 out of 170 signatures from homeowners that are in favor of the variance request. Mr. Traugott stated that he has already spent over \$7,000 on the project (labor and materials) and that if the variance isn't approved, it would cause an undue hardship on him. Mr. Traugott stated that "if and when" in the future they decided to use the land for commercial purposes, he will be more

than willing to tear down the fence and restore it back to the way it was.

Chairman Blackburn asked if the applicant thought about rezoning or resubdividing the lot so that he would be in compliance with the zoning requirements. Mr. Traugott said he talked with Mr. Frazzell about the rezoning but it would require him to connect to the city utilities which would require additional money to be paid out. Chairman Blackburn then asked staff if the applicant would still have to connect to the utility lines if the lot was resubdivided to 1 lot. Staff answered that if it's one continuous property and it's served from the front, his initial thought would be initially be served thru its current conditions. If it remains its own tract, then be resubdivided, then the utility extensions would need to be connected. Chairman Blackburn asked about the time frames that it would take for rezoning and for subdividing. Staff replied that the rezoning is approximately a 90 day process and the resubdividing would take less than a year.

Board Member, Craige Howlett, stated that the applicant took this risk and knew it was a gamble, but now wants the City to grant the variance so the problem can be fixed. He stated that the solution that Chairman Blackburn came up with, in his opinion, is the best but at the same time, if the applicant wishes to make any changes, he will need to take up the burden and not come back to the City and say he needs a variance again. Mr. Howlett asked the applicant if there was any written agreement with the staff that stated he didn't need a permit to build the fence. The applicant said all agreements was done verbally. Mr. Traugott stated that he thought he was doing the right thing by going to the City.

Chairman Blackburn asked what length of time are you asking for in order to make a determination of what you are going to do with the land. Mr. Traugott stated that it will be years realistically. Chairman Blackburn stated that a good option is the rezoning and resubdividing of the land. Chairman asked staff if hardiplanks can be used in place of the pickets and still be considered a masonry fence. Staff replied there is not a specific requirement for a block wall and that other materials can be used. Chairman Blackburn pointed out that the applicant has many other options. Mr. Traugott pointed out that this will only be used as a temporary fix so they can insure the property and he can ensure his property and children are safe.

Board Member, Drew Botkin, stated he would like to hear from the speakers in the audience.

Stephanie Saldana, a resident of Swenson Farms, lives 2 lots over from Mr. Traugott. She stated that she originally stated she was against the variance, but after hearing some of the discussion tonight, she is okay with the variance being granted. She stated that she is still concerned with the upkeep of the fence and changing the variance of the property. She is afraid that the applicant may decide to flip the lot or either sell it for commercial use. She requests that if the Board does approve the variance to please add some additional criteria to make the applicant accountable.

Angela Ward, president of the Swenson Farms HOA, stated that she presents her case as a resident property owner for the past 10 years. She stated that as president of the Swenson Farms HOA she is unable to present a stance in her HOA role. Ms. Ward stated that the applicant is very active in the community

and is great neighbors. She stated that she is grateful for the applicant purchasing the property and is in support of granting the variance.

Paul and Cynthia Ludwig, residents of Swenson Farms, spoke in favor of granting the variance. He stated that they have no issue with the cedar fence and love the continuity of the look of the fence. He believes that the applicant would take down the fence if the property is ever rezoned.

Lou Dienhart, resident of Swenson Farms, spoke in favor of granting the variance. He does not like the idea of the concrete wall, but loves the idea of the cedar fencing since it conforms with the subdivision look.

Jamie Byboth, resident of Swenson Farms, spoke in favor of granting the variance. She stated that the applicants are great neighbors and are excited to see that the fence is going up. She has no concerns since the fence construction looks to be very sturdy.

Mara Sallop, resident of Swenson Farms, spoke in favor of granting the variance. She stated that her house backs up to the applicant's property. She believes the fence is a great idea because she has seen kids that cut thru the property and throw trash on the lot. She personally likes the wooden fence instead of the concrete wall.

Kirya Francis, resident of Swenson Farms, spoke in favor of granting the variance. She has been in the community for 11 years and backs up to the greenbelt. She appreciates the fact that the applicant bought the property. She is concerned with her property value if a retail center was built on the lot.

Matthew King, resident of Swenson Farms, spoke in favor of granting the variance. He believes that the applicant is active in the community and will maintain the fence as he says he will do. Mr. King asked staff could explain to him if the rezoning must come before the variance or can be done after the variance is approved.

Sherry McLeod, resident of Swenson Farms, spoke in favor of the variance. She stated that the community is in favor of the fence being built. She is concerned that if the variance isn't granted, then there will be transients living in the area at times. She stated she believes that what the applicant did is what any reasonable person would do. She asks the Board to grant the variance.

Paul Trylko, resident of Swenson Farms, spoke in favor of granting the variance. He stated that he believes the applicant has met the criteria that goes along with the granting of the variance.

Lisa Traugott, wife of the applicant and a resident of Swenson Farms, requests that the Board grant the fence variance that they have requested. She stated the main point of asking for the variance is to keep the area like it is now. She stated that they do not plan to build a strip center or do anything retail with the lot.

Resident, Tim O'Shaughnessy, spoke in favor of granting the variance. He is asking the board to grant the variance as he and his other neighbors do not want to live near a retail/strip center. He stated that he firmly believes thru the

conversations that he has had with the applicant that the applicant is working for the best of the community by building the fence.

Chairman Blackburn made a motion to close the public hearing. Board Member, Drew Botkin, seconded the motion. All in favor. Motion carried.

Chairman Blackburn stated that he has no problem with the cedar fence if the property was zoned as residential, but with a couple of conditions: Condition #1 - the fence along the applicants property needs to close in his lot and make the secondary lot seperated from his lot; Condition #2 - there needs to be a time limit on how long this variance would be good for; and Condition #3 - Within the time limit, the property needs to be rezoned to residential and the properties to be subdivided to become one lot.

Board Member, Craig Howlett, stated that he believes a 90 day time limit would be good. He stated that if the variance time limit is too long, it would not be good. He does not believe that even if the fence is put up, the destruction of the property is not going to stop. He does not have an issue with the fence, but believes that there are some caveats that need to be put into place. Putting the fence up with create an additional burden on the owner to keep the fence in proper condition.

Board Member, Drew Botkin, believes that the applicant must do his due diligence when buying commercial property. He states that the correct course of action is the rezone the property as residential. He does not see a hardship in what is happening, but more in a lack of understanding from the applicant.

Mr. Howlett stated that the lot across the street from the lot in question is a commercial lot and at any time, a commercial/retail center can be built.

Board Member, Beatriz Flores, asked member Drew Botkin if he would require a time limit to rezone the lot. Mr. Botkin stated yes. He stated that the rezoning isn't the hard part, its the resubdividing. He states that he believes that the applicant should follow the same rules as everyone else meaning deny the variance and have the applicant rezone the property.

Chairman Blackburn agrees with granting the variance but have the applicant rezone the property to residential and put a 3 year stipulation to replat the 2 lots to 1 lot. Mr. Howlett asked what the setback is for residential versus commercial. Mr. Botkin stated that the criteria goes back to the Unified Development Code (UDC) and it's something the Board does not decide. Planning Director, Emily Barron, stated that it is not the applicant's decision to rezone to residential. She stated it is the decision of City Council to approve the rezoning. Staff presented some ideas on the criteria that can be used.

Ms. Florez asked staff if you can approve with provisions. Staff said yes or stated that the Board can set their own criteria.

Mr. Botkin stated that he felt very uneasy with approving the variance because he is afraid that the Board would be setting a precedence. He stated that the true nature of the Board is to make decisions on variance for applicants' who have exhausted all other options. He does not believe that the applicant has exhausted all other options.

Chairman Blackburn asked if the Board can table the action so the applicant can approach City Council for a rezoning request. Ms. Barron, planning director, stated that the action must be taken with 45 days.

Assistant City Attorney, Scott Osburn, reiterated to the Board that there is no time limit or state law that would prevent the applicant from asking for another variance. He stated the Board must either grant, deny or grant with condition limitation/restraints on this motion.

Mr. Botkin, Board Member, made a motion to deny the variance. Ms. Florez, Board Member, seconded the motion. The vote was 3 "nays" (Craig Howlett, David Prout and Chairman Blackburn) and 2 "I's" (Drew Botkin and Beatriz Flores). Motion failed.

Chairman Blackburn made a motion to approve the variance with the following conditions: condition #1 - city council approves to rezone the lot as residential; condition #2 - give applicant 2 years to resubdivide both lots into 1 lot; and condition #3 - if the lot is not rezoned and resubdivided into 1 lot within 2 years, the fence will need to come down and set back.

Chairman Blackburn made a motion to approve the variance with the conditions stated. Board Member, David Prout, seconded the motion. The vote was 1 "I" (Rodney Blackburn) and 4 "nays" (Craig Howlett, Drew Botkin, David Prout and Beatriz Flores). Motion failed.

Mr. Howlett, Board Member, made a motion to approve the current variance with 2 conditions: condition #1 - the variance is only good for 3 years; and condition #2 - a physical separation between all adjoining residential properties, including the applicant's property in the adjacent subdivision, shall be provided until such time that the subject tract is combined with adjacent lot(s) through the subdivision and rezoning process. Chairman Blackburn seconded the motion. All in favor. Motion carried.

4 Future Agenda Items

The next Board of Adjustment meeting will be Wednesday, January 25, 2017 at 7:00pm.

5 Adjourn

Chairman Blackburn made a motion to adjourn the meeting at 10:03pm. Board Member, Drew Botkin, seconded the motion. All in favor. Meeting adjourned.

Rodney Blackburn, Chairman
Board of Adjustment

Respectfully submitted on the 25th day of January, 2017.