

BOARD OF ADJUSTMENT & APPEALS MINUTES

July 10, 2017

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The City of Foley Board of Adjustment & Appeals held a regular scheduled meeting on July 10, 2017 at 5:30 pm in the Council Chambers of City Hall located at 407 E. Laurel Avenue. Members present were: Vernie Heard, Montie Clark, Jack Kimsey, Jerry Wilkey, Terry Young and George James. Staff present were: Miriam Boutwell, City Planner and Melissa Ringler, Recording Secretary.

Chairman Jack Kimsey called the meeting to order at 5:30 p.m.

MINUTES:

Approval of the minutes for the June 12, 2017 meeting.

George James made a motion to approve the June 12, 2017 meeting minutes. Vice-Chairman Vernie Heard seconded the motion. All members voted aye.

Motion to approve the June 12, 2017 meeting minutes passes.

NEW BUSINESS & PUBLIC HEARING:

1. Barbara Ward- Variance

The City of Foley Board of Adjustments and Appeals has received a request for a variance for Article 6.13 to allow a 9' fence height in a GPH1 zone. Property is located at 1797 Arcadia Dr. Applicant is Barbara Ward.

Ms. Barbara Ward stated she is seeking approval for a 9' fence. She explained she was unaware of the City's regulations and due to the slope of her back yard she is requesting the variance for privacy reasons. She provided pictures to the members showing the fence before she extended it from 6' to 9', views into her yard, the slope in the back yard, other fences that are over 6' and approval letters for immediate neighbors. She stated one of her neighbors does not want the liability or any compromise of her fence and she has worked with her and will put in reinforcement to support the extra weight.

Ms. Deborah Boyer resident of 1875 Arcadia Dr. stated she is the treasurer of the Home Owners Association. She explained the reasoning for the slope in the back yard is for a 5' drainage easement and access for emergency vehicles. She stated she has concerns the large fencing boards could become projectile object during a hurricane or tornado. She explained the Home Owners Association sent Ms. Ward a violation notification and a copy of the covenants.

Chairman Jack Kimsey asked if there are various heights of fencing located in the subdivision.

Ms. Boyle stated there are a few fences that are higher than 6'. She explained the Home Owners Association has just formed and the location of existing fences has been grandfathered. They have let the homeowners know if the fencing in the drainage area becomes an issue it will have to be removed at the homeowner's expense.

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Ms. Ward stated the fence was already on the property when she bought the home. She explained she added extensions to increase the height from 6' to 9'.

Mr. Ron Sherbak resident of 1753 Covington Lane stated he can see the fence from his yard. He explained out of the 151 lots this is the only 9' fence. He stated there are covenants which were recorded in 2007 that state no wall or fence should be over 6' high and lots 54-129 should place fences a minimum of 5' inside the property line due to the drainage easement. He explained unfortunately builders placed many of the fences on the property lines.

Ms. Theresa Carson resident of 1801 Arcadia Dr. stated her fence was already installed when she moved into her home and the placement has been grandfathered by the Home Owners Association. She stated she does not have a problem with the height of the neighboring property owner's fence. She explained her problem is they nailed their fencing boards directly into her fence rather than installing their own post.

Mr. Donovan Broucek resident of 1883 Arcadia Dr. stated the fence is an eyesore and he has to look directly at it.

Ms. Paula Costello resident of 1809 Arcadia Dr. stated she planted six trees which have grown to be 10' tall and that resolved her similar privacy issues. She stated her fence is also in the easement which the builders installed. She explained everyone did not receive a copy of the covenants and the applicant is new to the neighborhood.

Vice-Chairman Vernie Heard made a motion to approve the requested variance. Jerry Wilkey seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

Motion to approve the requested variance passes.

2. Megan Curry & Becky Mohler- UPA

The City of Foley Board of Adjustment and Appeals has received a request for a Use Permitted on Appeal for Article 7.1.2D a childcare/daycare use in a B1 zone. Property is located at 620 N. McKenzie St. Applicant is Megan Curry and Becky Mohler.

Chairman Jack Kimsey asked what the hours of operation would be and the size of the building.

Ms. Mohler stated they would be open from 7:00 a.m. to 5:30 p.m. and the building is 2,600 sq. ft. She explained they would be caring for children ages six weeks to pre-k.

Chairman Jack Kimsey stated there will be many more requirements she will have to meet with the State, Building Department and Fire Department.

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Terry Young made a motion to grant the requested Use Permitted on Appeal. Vice-Chairman Vernie Heard seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

Motion to approve the requested Use Permitted on Appeal passes.

3. Emmanuel's Place- Use Permitted on Appeal

The City of Foley Board of Adjustment and Appeals has received a request for a Use Permitted on Appeal for Article 7.1.2D a childcare/daycare use in a R1C zone. Property is located at 505 S. Juniper St. Applicant is Emmanuel's Place.

Ms. Latedra Bingham stated she is requesting to revert the building back into a daycare. She explained she would be providing care for special needs children ages six weeks to after school care. Hours of operation would be from 6:00 a.m. to 6:00 p.m.

Chairman Jack Kimsey stated the building was a former daycare for many years.

Mr. Joe Bischoff resident of 610 E. Pedigo Ave. explained he has lived across the street for 48 years and there has been a daycare for many years in the building. He stated he has enjoyed the children but does not want the noise. He explained there are a lot of definitions for special needs children and he does not want a large commercial daycare with 150 children if this daycare were to move out.

Chairman Jack Kimsey stated he did not think the building was large enough for 150 children and the applicant still has to meet State, Building Department and Fire Department requirements.

Mr. Bischoff stated if she ties the daycare to a Church she will not have to meet requirements.

Ms. Boutwell stated they will have to meet Fire and Building Department requirements.

Mr. Bischoff asked if the approval would be tied to a special needs daycare so another type of daycare would not be allowed to go into the building.

Ms. Boutwell stated it could be approved as a special needs daycare and if someone wanted to change it then the variance would be negated.

Mr. Herbert Cato resident of 604 E. Walker Avenue stated he has lived at his residence for many years. The building has been three daycares and a homeless shelter in that time which brought a lot of riffraff.

Montie Clark asked the number of children they would be caring for.

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Ms. Bingham stated at this time she is not sure. She explained she has to hire an architect and a lot of required changes to the building will have to be done.

George James made a motion to approve the requested Use Permitted on Appeal for a special needs daycare. Vice-Chairman Vernie Heard seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

Motion to approve the requested Use Permitted on Appeal for a special needs daycare passes.

4. Erby Suits- Variance

The City of Foley Board of Adjustment and Appeals received a request for a variance to Article 6.8.2 accessory structures shall be at least 10 feet from any other structure on the same lot. Property located at 108 Durby Ln. Applicant is Erby M. Suits.

Chairman Jack Kimsey explained the item was carried over from last month in order to receive a report from the Fire Department regarding fire rating the wall of the accessory structure. He explained the Fire Department has provided documentation which shows the accessory structure is not required to be permitted or firewalled.

Ms. Christine stated since the last meeting she has spoken with the Fire Department and the location of the building is not considered a fire hazard. She explained she has sat down with the Home Owners Association members and tried to resolve the issues which they have admitted fault in approving the accessory structure. She stated she feels she should not be penalized for personal opinions on the aesthetics.

Jerry Wilkey stated he has been through the neighborhood which is an upper scale neighborhood and there were fifteen or more accessory structures and all of them were located out of sight of the street. He asked the applicant what the reasoning was for putting the building in its current location.

Ms. Christina explained she chose the location due to the back yard being very wet and unstable and to prevent blocking visibility of neighbor's view of the pond.

Mr. Erby Suits stated he would like to remind the Board the Home Owners Association had all the information and approved the building. He stated one lady got upset and started an uproar.

Mr. Frank Lathrop president of the Home Owners Association stated on the application the applicant completed for the approval of the accessory building it clearly states the request must meet all City regulations and covenants.

Chairman Jack Kimsey asked if the covenants have changed since the approval.

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Mr. Lathrop stated yes they have been revised since this issue. He explained they never envisioned someone putting an accessory building up against their house. He stated the fact is it was constructed and is in violation of the City's regulations and the covenants.

Mr. Suits explained they provided an application to the Architectural review committee with clear drawings and were told it looked good.

Resident stated it was still on skids and the fence had not been installed when they were told the building would have to be moved.

Chairman Jack Kimsey explained the board cannot enforce covenants.

The treasurer of the Home Owners Association stated she understands the applicant is frustrated and upset and was not involved in the approval of the building. She stated the building is out of place.

Ms. Kim Brewer resident of 592 Sheffield Avenue stated the building is hideous and has concerns if it is approved there will be others added in the neighborhood.

Mr. Phil Dawson stated it should never have gotten to this point. He explained the Chairman rescinded the application. He stated the drawing and building were beautiful all matched but showed a red square of location of building and did not state it would be 3' from the home and wasn't complying with the 10' requirement.

Mr. Suits stated they came to his home and measured and said it looked fine.

Ms. Christine explained the covenants do not specifically state 10' it reads must meet City regulations.

Mr. Tom Henry resident of 1790 Edinburg stated out of the 110 lots only 12 or 13 accessory buildings can be seen from the road and each comply with the covenants. He commended Mr. Wilkey for his observation of the buildings. He explained there is a misconception if this is granted by the board it has control over the HOA ability to enforce.

Jerry Wilkey made a motion to deny the request. George James seconded the motion. Roll call vote: Vernie Heard, aye; Montie Clark, aye; Jack Kimsey, aye; Jerry Wilkey, aye; Terry Young, aye; and George James, aye.

Motion to deny the requested variance passes.

ADJOURN:

Meeting adjourned