

The City of Foley Board of Adjustment & Appeals held a meeting on May 11, 2020 at 5:30 p.m. in the Council Chambers of City Hall located at 407 E. Laurel Avenue. Due to COVID-19 we will accept email comments ([mringler@cityoffoley.org](mailto:mringler@cityoffoley.org) or [acole@cityoffoley.org](mailto:acole@cityoffoley.org)). Or you may call 952-4011 and Melissa or Amanda can take your verbal comments. These will be entered into the meeting minutes. The BAA members will be conducting the meeting via teleconferencing. If you wish to participate in this manner dial 1-614-954-1470 PIN 659 644 407#. If you choose to attend the meeting please follow social distancing rules.

Members present via teleconference were: George James, Montie Clark, Jack Kimsey, Keith Jiskra and LuAnne McCarley. Absent member was Terry Young. Staff present were: Miriam Boutwell, City Planner; Amanda Cole, Planning and Zoning Assistant; and Melissa Ringler, Recording Secretary.

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

Chairman Jack Kimsey welcomed new member LuAnne McCarley.

**MINUTES:**

Approval of the minutes for the April 13, 2020 meeting.

Keith Jiskra made a motion to approve the minutes with a typo correction on page 3. George James seconded the motion. Roll call vote: Montie Clark, aye; Jack Kimsey, aye; George James, aye; Keith Jiskra, aye; and LuAnne McCarley, aye.

**Motion to approve the minutes for the April 13, 2020 meeting passes.**

**NEW BUSINESS & PUBLIC HEARINGS:**

**1. Gary & Vivian Clem- Variance**

The City of Foley Board of Adjustment and Appeals has received a request for a variance for Article 14.1.4 D, to allow a 3'3" +/- rear yard setback for a pool enclosure in a R-1C zone. Property is located at 1079 Tampa Ave. Applicant is R. Gary and Vivian Clem.

Chairman Jack Kimsey stated per the applicants request the item has been withdrawn.

**2. Aaron Bynum- Variance**

The Board of Adjustment and Appeals has received a request for a variance for Article 14.1.2 C, to chickens in a R-1A zone. Property is located at 312 W. Fig Ave. Applicant is Aaron Bynum.

Mr. Aaron Bynum stated he does not intend on having any more than 10 chickens and there will be no roosters.

Staff stated a letter of support had been received from a neighboring property owner.

Keith Jiskra stated he would hate to see a precedent set. He explained it could open things up for requests for goats, pigs and other animals.

Montie Clark made a motion to deny the requested variance. Keith Jiskra seconded the motion. Roll call vote: Montie Clark, aye; Jack Kimsey, aye; George James, aye; Keith Jiskra, aye; and LuAnne McCarley, aye.

**Motion to deny the requested variance passes.**

**3. Joanna Mayes- Variance**

The City of Foley Board of Adjustment and Appeals has received a request for a variance for Article 9.1 to allow an accessory structure in a required front yard, to allow an accessory structure to be less than 10' from any other habitable structure on the same lot, and to allow a coffee shop/ café in a PO zone. Property is located at 358 N. Alston St. Applicant is Joanna Mayes.

Mr. Sted McCollough explained this lot is a little unique in that the front door/entrance faces N. Alston St. He explained the Zoning Ordinance defines the front yard as the portion of property facing Rose Ave. He explained they will be adding an accessory structure on the North side of the property which is considered the front yard.

Mr. Montie Clark asked if parking has been addressed.

Ms. Mayes stated the building was previously a business and already has parking spaces.

Staff explained parking will be reviewed before the building permit is issued and the required number is based on seating.

Keith Jiskra stated a letter of opposition was received from a residence living across the street.

Staff explained the property is currently zoned commercial and was previously a business.

Keith Jiskra made a motion to approve the requested variance. George James seconded the motion. Roll call vote: Montie Clark, aye; Jack Kimsey, aye; George James, aye; Keith Jiskra, aye; and LuAnne McCarley, aye.

**Motion to approve the requested variance passes.**

**4. McConnell Rentals- Variance**

The City of Foley Board of Adjustment and Appeals has received a request for a variance for Article 15.1 D, side yard abutting street in a R-3 zone. Property is located at the NW corner of N. Poplar St. and E. Violet Ave. Applicant is McConnell Rentals.

Chairman Jack Kimsey asked if the property line is along the existing tree line.

Ms. Miriam Boutwell explained there is a large right of way due to the bike lane. She stated looking at the imagery it appears the property does start at the tree line.

Chairman Jack Kimsey asked if the lot is 50' wide.

Ms. Boutwell answered yes the lot is 50' wide.

Montie Clark made a motion to approve the requested variance. Keith Jiskra seconded the motion. Roll call vote: Montie Clark, aye; Jack Kimsey, aye; George James, aye; Keith Jiskra, aye; and LuAnne McCarley, aye.

**Motion to approve the requested variance passes.**

**5. Vosloh Properties, LLC.- Use Permitted on Appeal**

The Board of Adjustment and Appeals has received a request for a use permitted on appeal for Article 13.1.2 D, to extend the previous approval to allow a church in a PUD zone. Property is located at 22394 Miflin Rd. Suites 303, 304 & 305. Applicant is Vosloh Properties LLC.

Mr. David Vosloh owner of the building stated the church has had overwhelming success. He explained Mr. J.P. Wilson did a sublease through an existing tenant Mr. Frank Smith. He stated the church grew in a matter of weeks to 700 members. He explained the church has purchased a building on County Rd. 12 which is currently being renovated. He stated due to a delay in the purchase and delays due to the corona virus the construction is projected to be completed at the end of August. He stated the previous approval from the Board of Adjustment and Appeals will expire before that time and they are requesting the approval be granted through September.

Ms. Boutwell explained the Fire Department has limited the number of members attending service at a time.

Mr. Vosloh stated they are currently holding three separate services.

Keith Jiskra asked if all the services are held on Sundays.

Mr. Michael Smith stated all services are held on Sunday.

Keith Jiskra asked if the restaurant located in the development is open on Sundays.

Mr. Vosloh answered no, the restaurant is not open on Sundays.

Keith Jiskra stated a call of opposition was reviewed from the restaurant owner.

Chairman Jack Kimsey stated he visited the facility on County Rd. 12 and it appears there is construction being done with a lot left to do before completion.

Montie Clark stated at the previous meeting they were told the restaurant owner, building owner and church were to have a discussion to work out issues. He asked if that meeting had taken place and about the outcome.

Mr. Vosloh stated there have been discussions. He stated he talked with the restaurant owner today and he did not indicate his opposition. He explained the owner did discuss he is currently only set up to do takeout orders and is doing better than expected.

Keith Jiskra stated the restaurant owner stated on Sundays the parking is full due to the church which is preventing people from being able to park and come to his restaurant.

Mr. Frank Smith stated the restaurant owner was brought into a meeting before the Church leased the space. He explained the restaurant owner had no issues and was not going to be open on Sundays. He stated once the church opened he started opening on Sundays. He is currently closed on Sunday and Mondays.

Mr. Michael Smith stated there are 10 spaces that are reserved for the restaurant and parking attendants make sure the spaces are not occupied by the church members.

Keith Jiskra stated he is ok with the approval until the end of July but feels August is too long.

Ms. Boutwell stated there is a partial temporary certificate of occupancy that might could possibly be issued but have no idea what the status of construction will be at any given time. She stated they would have to meet certain building and fire code requirements if this became an option.

Mr. Michael Smith stated a couple of months will not give them enough time to complete the construction. He stated he feels the requirements would not be able to be met for a partial certificate of occupancy.

Keith Jiskra made a motion to approve the requested use permitted on appeal through July 31. LuAnne McCarley seconded the motion. Roll Call vote: Roll call vote: Montie Clark, aye; Jack Kimsey, aye; George James, aye; Keith Jiskra, aye; and LuAnne McCarley, aye.

**Motion to approve the requested use permitted on appeal through July 31 passes.**

Mr. Smith asked if they could come back in July to request more time for the approval.

Chairman Jack Kimsey stated yes they could come back in July.

Mr. Michael Smith stated the approval for the parking area has not been completely approved by the City. He stated there is a drainage ditch through the back of the property and issues they are working through. He stated he is confident the issues will be resolved. He stated they have to find the right solution before they can start and that has not been given at this time.

Mr. Vosloh stated he would like to ask the Board to pass a statement that would allow the Community Development Department the authority to extend the approval in July. He stated the church will be kicked out July 31 which is made up of a lot of City of Foley residents. He explained Mr. J. P. Wilson is the pastor for the Foley Fire and Police Department and serves the community. He stated the church being kicked out could be bad publicity and asked the members to reconsider.

Mr. Jiskra stated it sounds like a threat is being made.

Chairman Jack Kimsey stated he does not have the authority to allow the Community Development Department to extend the approval.

When the Board completed discussion on item # 5. Ms. Boutwell stated Mr. Brynum (item #2) had a few comments for the Board members.

Mr. Bynum stated he is the owner of 312 W. Fig Ave. He explained he understands some of the withholdings regarding setting a precedence for all types of livestock. He stated he would not have any roosters and no more than 10 chickens. He explained he has spoken with both of his neighbors who have no problem with him having chickens. He stated he wants to instill in his children if you want something you have to physically work for it like mending fences and feeding the chickens. He stated if it is a number issue he could get less than 10 chickens.

Chairman Kimsey stated the thought process of the board members is if we approve the request we could see more requests from other homeowners.

Mr. Bynum stated he provided on his application his family reasons for the request.

The applicant told Ms. Boutwell he previously had chickens at this address when they were allowed in the zone.

Mr. Jiskra asked if they could be grandfathered.

Mr. Bynum stated he no longer has the chickens due to his dog. He explained during his due diligence he learned they were no longer allowed.

Montie Clark asked when the changes to the Ordinance were made not to allow chickens in the zone.

Chairman Jack Kimsey stated the Board cannot change their decision at this time.

**ADJOURN:**

Keith Jiskra made a motion to adjourn at 6:15 p.m. Montie Clark seconded the motion.

**Motion to adjourn at 6:15 p.m. passes.**