

MINUTES OF MEETING

HOOVER BOARD OF ZONING ADJUSTMENT

Date: February 6, 2020
Time: 7:00 P.M.
Place: Hoover Senior Center
Present: Mr. Curtis Jackson
Mr. Jim Brush
Mr. Lawren Pratt
Mr. Dan Mikos
Mr. David LeCompte
Mr. TJ Dolan
Mr. Kyle Puchta

Absent:

Also Present: Mr. Mac Martin – City Planner
Ms. Vanessa Bradstreet – Zoning Assistant

1. CALL TO ORDER

The meeting was called to order by Mr. Mikos.

2. The secretary had the roll call and a quorum was present.
3. Approval of Minutes for the January 2, 2020, meeting.

Mr. Mikos asked if there were any additions or corrections.

Mr. Puchta stated that he was not present at the meeting, but on the very last page, it says that he seconded a motion.

No further changes were suggested.

The minutes were unanimously approved.

4. BZA-0220-02 - Mr. Richard A. Johnson, II representing NSH Corporation, d/b/a Signature Homes, is requesting a variance reducing the twenty-foot (20') front building setback along Brock Circle to ten feet (10') to allow the construction of a rear yard fence to enclose a pool to be located at **2501 Scarlet Lane**. The property is owned by NSH Corporation d/b/a Signature Homes.

Mr. Richard Johnson, representing NSH Corp., d/b/a Signature Homes, 3545 Market Street, Hoover, AL 35226, described the variance. Mr. Johnson stated he was at this meeting appealing an administrative decision of the Zoning Ordinance involving fences. Mr. Johnson stated they had a lot at the Brocks Point community located off Hwy 41 across from Shoal Creek. Mr. Johnson explained this particular lot may well meet the standards of both the through lot and a corner lot. Mr. Johnson stated in the package, there was a survey of the lot. Mr. Johnson stated in his opinion

by putting a pool in the rear of the house, they created a rear yard in a situation where it might not have otherwise been created.

Mr. Johnson stated in doing so, they sold the customer on a “fence configuration” that they probably could not build without a variance. Mr. Johnson stated there were some mitigating circumstances regarding this particular case as follows: he stated there exists to the back of this lot a common area that was elongated along Brocks Circle that was 300’ in length. Mr. Johnson stated what they were asking to do was set the fence corner 10’ into the 20’ building setback that would leave the fence corners he calculated some 22’ from the back of the curb. Mr. Johnson went on to say the alignment of the fence would not interfere with any possible alignment along Brock Circle on that side of the street because that common area exists 300’ past it.

Mr. Johnson added that in addition the street would receive a very low traffic flow, had a posted speed of 25 mph, so in their opinion, it would not be a vehicle impediment to traffic. In addition, the ARC at the request of the City, filed a variance with the Probate Court. Mr. Johnson stated that document was submitted timely but after the initial application.

He added that there was something that he mentioned in the Work Session that he found to be true. There were two cases in 1997 regarding such fences that he found astounding because of the magnitude of the litigation that followed them. They both involved lots on Shades Crest Road where a fence was to be constructed. They either were denied a variance or did not seek a variance. He stated that he thinks it goes to establish a corner lot or a through lot being worthy of a hardship. He stated that he did not find in the records that it was indicated that the hardship did not exist. Both cases were handled by prominent attorneys and were appealed to the Alabama Supreme Court, sent back down to the appellant division and were ruled in favor of the residents after a year of litigation. He stated that his point is that in such cases as these, the hardship standard of proof exists for a corner or through lot. He stated that he hopes that the mitigating circumstances pertaining to them may influence the Board’s vote.

Mr. Mikos asked if the fence was already built. Mr. Johnson stated that the fence was constructed properly outside of the 20’ building setback.

Mr. Mikos asked if there were any further questions from the Board.

Mr. Brush asked what the issue was with the homeowner, other than the argument that he made about the other cases. Mr. Johnson stated that it varies. They do not have enough space around the pool and there was not enough space for them to enjoy their backyard the way they intended. They presented that rather than pushing the fence back into the setback even more, they were bringing the fence back within the property lines some five or more feet simply to reduce the amount proposed to intrude into the setback.

Mr. Brush stated that he understood that the fence that was existing was in compliance.

Mr. Johnson stated yes.

Mr. Brush then stated that he could move the corner of the fence and instead of having a 90-degree corner, it would be two 45 degrees, and then he could move it back enough to put it within the line.

Mr. Johnson stated that they would have to add to the normal cement of the post if it did not move. It is their intention to enclose the pool, which is the purpose of the fence.

Mr. Mikos stated 95% or more of the pool deck area is not encroached by this.

Mr. Brush stated that his view of the common area behind it was that some of it may never be used. He does not know what the agreements are regarding maintenance, but it could be covered with trees and not be seen. There was nothing at this corner but grass and that was never going to change.

Mr. Johnson agreed that it would not be seen. Mr. Johnson added that the HOA and the ARC agreed and allowed them to come forward with the variance request. The residents of the neighborhood have also agreed with this condition and had no issue with this request.

Mr. Mikos stated that they have recently done four of these cases and have denied all of them. He stated that if they begin changing the rules then they would be stuck with them. There was no hardship other than the road being round. If it were a square road it would probably be alright, but they did not put the road in. He asked if there was any further discussion for this case.

There were no comments from the Board.

Mr. Mikos asked Mr. Johnson if he had anything else to say about the case.

Mr. Johnson stated that this neighborhood walks and talks like a PUD. It is zoned PRD. Everything around it is a part of the Greystone PUD other than across the street, which is Shoal Creek. That might have some impact.

Mr. Mikos stated that if it was a PUD, they would not be here. He asked if there was anyone in the audience that wished to speak to this request. Nobody raised their hand.

Mr. Mikos asked for a motion. Mr. Brush made a motion to approve BZA-0220-02. Mr. Puchta seconded the motion.

Mrs. Bradstreet performed a roll call vote.

Mr. Jackson – Naye
Mr. Pratt – Naye
Mr. LeCompte – Naye
Mr. Brush – Naye
Mr. Puchta – Naye
Mr. Mikos – Naye

The motion was unanimously denied.

5. BZA-0220-03 – Mr. Ken Harden, Harden Properties, LLC, is requesting a landscape variance for property located at **2142-2146 Tyler Road**, Bluff Park Village. The property is owned by Harden Properties, LLC, and is zoned C-2 (Community Business District).

Mr. Harden, Chapel Road, stated that he could answer any questions and that he had his landscape architect, Mr. Bob Kirk, who could describe the content of the case.

Mr. Bob Kirk, Robert Kirk & Associates, Old Rocky Ridge Road, stated that he was the landscape architect.

Mr. Kirk stated that as far as the interior variance goes, he would like to tie it to the surrounding natural area. There were many trees blown over and from his perspective, those should be cleaned out. He stated that new trees could be grown there to act as a buffer.

Mr. Kirk stated that he would let Mr. Harden discuss the dead tree situation and he would address Mr. Mikos' question.

Mr. Harden asked if he knew the exact location of the trees that he is speaking of.

Mr. Mikos stated that it was on the backside of the property where the power lines were.

Mr. Harden stated that on the backside of the property there were 5 acres owned by the Bluff Park United Methodist Church. From the curb to the back of his property, there was an area that he kept maintained. Mr. Harden stated he kept the grass cut on the bottom part of it. Mr. Harden explained that the property went up an incline that was very rocky and the power company would come in every three years and spray all of the vegetation which helped keep it down. The trees were actually up on the Bluff Park United Methodist Church property. As they fell down onto his grassy area at the bottom, he had been removing them to keep the grass cut there. Mr. Kirk can explain the soil consistency or the lack of soil and the difficulty of having anything grown there.

Mr. Mikos stated that it was hard for him to discern what was Mr. Harden's property and what was not. Mr. Harden stated that he could show him a survey that would help distinguish it. Mr. Mikos stated that he wanted to see the survey. They spent several minutes researching the survey and pointing out property behind property lines, etc.

Mr. Harden described the survey of the land and environmental factors that have affected it.

Mr. Mikos stated that he was looking for Mr. Harden to start re-establishing a buffer because there were many trees that were down back there. Mr. Harden stated that he should keep in mind that it has to be so many feet away from the power line because they spray that whole embankment every three years. Mr. Harden explained that the erosion was being addressed next week at a meeting with Chris Reeves, City Engineer, and Josh Welch.

Mr. Allan Rice, 100 Municipal Lane, stated that the BZA board members could include a provision in their variance to work with the City Landscape Architect, Ms. Nelson, on the replanting plan that she could do in that area since she is not present. Mr. Rice stated he felt that would be fair and did not think that it would be an unusual extension on their development agreement partnership with Mr. Harden to help on that. The City was excited about what Mr. Harden was doing. The Council had already approved the agreement. The gathering area was done at the request of the City, which had impugned his ability probably to more fully meet his interior landscaping. He did some of these things at their request to make it look like more of a neighborhood village type of redevelopment. He was working with some existing islands and existing constraints.

Mr. Mikos stated that no one had discussed giving the variance for the interior part. He thought that everyone was in agreement that it would be a better shopping center in dealing with it. His main concern was to get it cleaned off of all of the dead trees that were on his property and look at planting new trees, not necessarily large trees, small trees that could grow.

Mr. Rice stated that Mr. Colin Conner, City Arborist, already had an existing seedling program that made trees available to the public.

Mr. Greg Knighton, Economic Development, 100 Municipal Lane, stated that he had a long discussion with the Landscape Architect that afternoon and she stated she would be glad to work with him. She had concerns with removing any vegetation because of increasing further erosion problems in the area whether it was native or invasive species.

Mr. Mikos stated that the goal was to make Hoover look better and he thought that the additions to the shopping center were exactly that.

Mr. Martin stated that he also met with the Landscape Architect prior to this meeting concerning this very issue. First, she suggested that any clean up or removal of trees that were dead on Mr. Harden's property be done without equipment to prevent more damage up there. Secondly, she echoed the issues with the soil and typography that were raised by the applicant and if there was anything to go back in its place, it would need to be very small.

Mr. Harden stated that he wanted the City and the Board to be aware that if the back was left natural with what belongs to the church, it was going to be unusual that one part of it was natural and unattractive and the other was nice and fresh. They would do what they could, but he could not do anything about what belongs to the church.

Mr. Pratt asked if they knew if the neighborhood behind them had any intentions to put up a privacy fence that would screen some of those blown down trees from the rear.

Mr. Martin stated that he would have to check since he did not have the plan with him.

Mr. Harden stated that it is a very steep, rough, and rocky terrain.

Mr. Mikos asked Mr. Harden if he would be opposed to cutting down the trees.

Mr. Rice stated that maybe they could phrase up something in their motion that states that he is subject to a plan by the City Landscape Architect and Urban Forrester, because neither one of them was present. He thought those were the people that really needed to weigh in on erosion. He stated that he hears Mr. Mikos' concerns on the dead trees and he thought that he should let Ms. Nelson and Mr. Connor develop an approved plan for that.

Mr. Pratt asked Mr. Kirk what portions around the perimeter were irrigated. Mr. Kirk stated nothing.

Mr. Pratt asked him what about the driveways and the front.

Mr. Kirk stated that there was an existing irrigation system in the front of what is there now. They are going to irrigate some new islands to keep that going.

Mr. Pratt then asked about the gathering area. Mr. Kirk stated that there was some existing irrigation around part of the perimeter from when it was last operated. Mr. Pratt asked if it was from Clearbrook or from Tyler. Mr. Harden answered both.

Mr. Harden added there was nothing around the back perimeter at all. Mr. Pratt stated he was more interested in what was on the Tyler and Clearbrook side.

Mr. Mikos asked if anyone else on the Board had any further questions.

No further questions were asked. Mr. Mikos asked for a motion.

Mr. Brush made a motion to approve BZA-0220-03 as amended by the agreement that the City and the property owner come to an agreement about how to handle their concern with the Landscape Architect and Urban Forrester.

Mr. Pratt stated that he would like to add an amendment to that to prevent having to come back for a review of the records. He believes that it should be submitted to the Landscape Architect and Urban Forrester for review and approval, which they would typically do anyway, but also with the understanding that there would be replacement with species that would propagate future growth. Mr. Pratt stated that he would like to add this additional comment to amend the motion previously made.

Mr. Mikos asked for someone to read it back.

Mr. Martin stated that they have a motion to approve the BZA case with the condition that a clean out and a replanting plan be submitted to the Urban Forrester and Landscape Architect of the City for their approval and that they work with the developer to make sure it takes place in its possible fashion.

Mr. Pratt stated to add "in replacement with species that would propagate future growth".

Mr. LeCompte seconded the motion.

Mrs. Bradstreet performed a roll call vote.

Mr. Jackson – Aye
Mr. Pratt – Aye
Mr. LeCompte – Aye
Mr. Brush – Aye
Mr. Puchta – Aye
Mr. Mikos – Aye

The motion was approved unanimously. Mr. Mikos stated that the variance had been approved with those stipulations and added that the Board's concern was to make the City of Hoover look better, and he hoped that was Mr. Harden's concern as well. Mr. Harden agreed.

With no further business, the meeting was adjourned.

Vanessa Bradstreet, Secretary, Board of Zoning Adjustment