

North Little Rock Board of Adjustment

Minutes

February 25, 2010

The regular meeting of the North Little Rock Board of Adjustment was called to order by Chairman Carl Jackson at 1:31 P.M. in the Planning Office (Conference Room B).

Members Present

Mike Abele
Tom Brown
Andy Hight
Carl Jackson, Chairman
Jimmy Phillips

Members Absent

None

Staff Present

Robert Voyles, Planning Director
Wade Dunlap, City Planner
B. J. Jones, Secretary

Others Present

Bill Brown, City Attorney's office
James Coughlin, 3625 Lakeview Rd
Tommy Bond, 2601 TP White Dr, Jacksonville, AR
Angelica Rogers, 3700 Avondale, NLR
John Rogers, 3700 Avondale, NLR
Charles Morris, 2015 McCracken, Stuttgart, AR
Pat Bond, 2601 TP White Dr, Jacksonville, AR
Debi Ross, 3521 Lakeshore, NLR
Steve Giles, atty, 425 W. Capitol, ste 3200, LR, AR
Mike Halferty, 3531 Lakeview
Steve Sparr, 2521 Calico Creek Dr, NLR
David Burton, 3325 Lakeview Rd, NLR
Charles Kitzsche, 3513 Lakeview Rd, NLR
Barbara Taylor, 3701 Lakeview Rd, NLR
Karen Kinslow, 3711 Lakeview, NLR, AR

Approval of Minutes

Chairman Jackson called for approval of the minutes. Mr. Brown made a motion for approval with Mr. Phillips seconding. The motion passed unanimously.

Old Business

None

New Business

1. BOA CASE #1440 – Mr. Stephen Giles, representing the property owner, John Rogers at 3700 Avondale, legally described as Lot 1R, Block 202 Park Hill Addition. The request is to allow an 8' front yard and side yard fence in an R-1 zone.

Chairman Jackson stated the case number, the applicant's name and acknowledged that the applicant is represented by Mr. Stephen Giles, attorney.

Chairman Jackson also asked that anyone wanting to speak regarding the case be sworn in with the applicants.

Mr. Dunlap showed photographs of the property. He showed video of several different view points on the property where the fencing is requested.

Mr. Abele asked if the orange posts indicated the gate placement.

Mrs. Rogers replied in the affirmative.

Mr. Voyles noted that the property line goes up the hill.

Chairman Jackson asked if other markers in the photographs indicated the property line.

Mr. Giles replied in the affirmative.

Mr. Brown asked if that portion of the line is where the requested eight foot fence would be installed.

Chairman Jackson asked for clarification on which portion of the site is considered the front of the property.

Mr. Voyles showed how the house is situated on the site, explaining that the front corners of the house indicate where the front yard begins. He noted that this Board is being asked to allow fencing higher than three feet facing Avondale. He asked the Board to consider that the house is on a hill and noted that the fence line in question would also be a back fence line for the neighbors, which would allow an eight foot fence as a back yard fence.

Chairman Jackson clarified that this Board could not give approval for a fence in the City's right of way.

Mr. Giles acknowledged that he understood that and was not requesting such.

Mr. Voyles explained that the City did not want to consider the issue of the right of way until this Board had decided if the height variance would be allowed. He added that, depending on the decision of this Board, the City might consider the issue of the right of way.

Chairman Jackson asked if anyone is present at this meeting from the City's legal department.

Mr. Voyles replied in the affirmative.

Mr. Abele expressed concern for the neighbors in the rear of the Roger's property.

Chairman Jackson clarified that this Board does not approve anything in the right of way.

Mr. Voyles asked Bill Brown to come to the front.

Mr. Bill Brown declined. He indicated that he is not here to give legal advice to the Board, only to help Mr. Voyles clarify the situation.

Again Chairman Jackson asked to have the property lines clarified.

Mr. Voyles indicated that the property line is twelve to fifteen feet from the sidewalk.

Mr. Giles added that the distance from the sidewalk varied as the sidewalk curved with the curves of the street.

Chairman Jackson insisted on knowing where the front property line is located.

Mr. Giles explained that the property line is ten to twelve feet above the grade of the street.

Mr. Voyles explained that the matter had been to Planning Commission for review. He added that the Planning Commission had required the gate to be set back and that the Fire Marshal had requested a setback of thirty feet from the curb.

Chairman Jackson asked if the orange stakes for the gate indicated the front property line.

Mr. Giles response was “mostly”.

Chairman Jackson was not satisfied with that response and insisted that the matter could not proceed until someone could show the location of the front property line.

Mr. Giles insisted that he could not show the line exactly. He indicated that there was no exact location.

Chairman Jackson explained that it must be established that the fence is on the owner’s property.

Mrs. Rogers explained that Thomas Engineering is working on verifying property lines. She added that at the time the request was made, the fence was on the property line, but due to extreme weather conditions and extensive rains, there could possibly be some alterations necessary.

Chairman Jackson explained that if the request was for the applicant’s own property, the Board could address the matter. He asked if a representative from the Fire Marshal was present at the meeting today.

Mr. Dunlap replied in the negative and noted that notice of today’s meeting had been sent to the Fire Marshals. He read an email from the Fire Marshals indicating they are satisfied that requirements have been met for fire department access.

Chairman Jackson asked the applicant to state a hardship to justify their request.

Mr. Giles explained that the property is unique. He explained that it is a five acre property for single family use, which preserves green space for the neighborhood. He added that the hilly terrain creates unusual circumstances for a family with young children that must be protected from access to the lake and street. There is also the added consideration of the wastewater pump station in the area.

Mrs. Rogers emphasized that the most important issue is the safety of her children. She displayed pictures of her children. She noted that due to the slope of the property, any fence less than eight feet could be compromised at various places. She explained that Mr. Rogers traveled quite a bit and dependable fencing would allow her peace of mind. She added that there had already been a drowning in the family and she was especially concerned about that risk. She also expressed concern for the safety of her neighbors regarding the steep cliffs. Mrs. Rogers explained that they had already been the victims of curiosity seekers and vandals. Vandalism has already resulted in \$30,000.00 in damages to the home. Vandals had used the building materials on the property to damage the home and even started a fire.

Mr. Abele questioned the type of fencing proposed and asked if the same fencing would be installed in the side yard going up the hill.

Mr. Giles responded that the side yard and rear fence could be eight foot without the approval of this Board. He noted that the eight foot fence going up the hill would be vinyl clad chain link fencing. Fencing along Avondale frontage is to be iron.

Mr. Abele asked if there would be another gate.

Mr. Giles replied in the affirmative.

Mr. Abele commented that the Roger's pool could not be seen from the easement. He explained that one of the neighbors had allowed him to look at the site from above. He noted that the Rogers had taken the hill out, creating a cliff, which caused concern to him for the neighbors. He asked if a retaining wall was planned.

Mr. Giles explained that engineers have prepared a plan to stabilize the area and prevent slough off. The plan includes a fencing covered with plantings for relief of excavation.

Mr. Hight sited similar projects at Mulberry River with chain link fencing.

Mrs. Rogers agreed that their plan was similar and they had in fact gotten the idea from various road construction jobs.

Chairman Jackson asked for comments from neighbors in attendance at today's meeting.

Mr. James Coughlin noted that most neighbors do not have a problem with the fence proposed, in fact, they are glad and welcome the Rogers to the neighborhood. The main concern from the neighbors relates to the easement. They do not want the easement taken away. He wants information from the

manufacturer when the gate is installed. He insists on a battery backup and wants a key operated backup switch. He explained that he is in the habit of fishing at all odd hours and does not want to have to answer to anyone for his access.

Mr. Rogers agreed that the neighbors would have access.

Mr. Giles reported that he could address easement concerns but Mrs. Rogers had the information regarding the fence and gate access.

Chairman Jackson asked if anyone else wanted to speak to address concerns.

Mrs. Rogers reiterated that the intention had never been to try to take the easement from the neighbors. She reassured that the gate system did indeed have battery backup and fail safe opening.

Mr. Giles added that there would be a lock box also.

Mrs. Rogers referred to the access the police and fire departments would have to the property and added that the neighbors would be issued a "clicker" for the gate also.

Mr. Coughlin objected. He emphasized that he was a "low tech" guy and wanted a key for a lock.

Mrs. Rogers responded that she would have to address that matter with the fence company.

Mr. Coughlin expressed that he would like for the access for the neighbors to be resolved before the fence is approved.

Mr. Hight interjected that access matters are between the owners and not a matter for this Board.

Mr. Voyles noted that the easement is a private one.

Mr. Phillips formed a motion to approve the applicant's request.

Mr. Hight seconded the motion.

Mr. Brown expressed concern about the precedent that would be set by approving this request.

Mr. Hight replied that this case stood on its own merit, considering the geology. He believes that in this case, an eight foot fence prevents falls and limits liability.

Mr. Brown was still concerned that approval set a far reaching precedent. He expressed concern that those that were denied a front yard fence might win in circuit court.

Mr. Voyles noted that those along the back would be allowed an eight foot fence, as it would be their back yard fence. Considering the request is for the same line, the request seems reasonable.

Chairman Jackson noted that he has a motion and second to approve an eight foot fence for the front and side yards.

Mr. Abele questioned the neighbors' access to the gate.

Mrs. Rogers responded that it is a private easement.

Mr. Coughlin noted that the easement is for all the neighbors.

Bill Brown advised the Board to vote on the motion in front of them.

Mrs. Halferty stated that the sidewalk on Snake Hill is often covered with dirt. She asked where the fence would be in relation to the sidewalk.

Chairman Jackson stated that the fence would be on the property line.

Tom Brown interjected that he did not have a problem with the eight foot side yard fence, but that he did oppose the eight foot front yard fence and they would not be getting his vote of approval.

The motion passed with four affirmative votes. Mr. Brown voted against the motion.

Chairman Jackson reminded the applicant to get their permit.

Administrative:

BOA CASE #1439 – Mr. Tommy Bond, Bond Consulting Engineers, representing Transplace Services; Requesting to reconsider/expunge the vote from the previous meeting and hear the request to allow a 6' chain link fence with 3 strands of barb wire in an I-2 zone. Legally defined as Lot 1, Eanes Subdivision.

Chairman Jackson stated the case number, the applicant's name and swore in the applicant and his legal representative.

Chairman Jackson stated that the Board had addressed this case at the previous meeting. He added that this case is not valid for discussion and that in thirty years on this Board, he has never expunged a case.

Mr. Brown agreed. He added that the case had been scheduled for the previous month's meeting and the applicant had not been in attendance. Furthermore, the applicant had obviously been aware of the meeting considering the letter he had addressed to the Board last month. Considering that the Board has already addressed this matter, Mr. Brown formed a motion to deny the applicant's request for reconsideration.

Mr. Hight seconded the motion.

Mr. Abele agreed that the applicant had made a mistake.

Chairman Jackson interrupted to note that two mistakes had been made. Besides failing to appear at last month's meeting, the applicant had begun to build without obtaining a permit or a variance from this Board.

Mr. Abele suggested that the applicant be granted some leeway by this Board.

Mr. Voyles explained that the applicant intended to appeal the Board's decision and that the City attorney had suggested that they ask this Board to reconsider. Mr. Voyles also wanted to clarify the facts that the request had been heard by the Planning Commission, that there was to be no barb wire, and that the fence must be set back thirty feet. He reminded the Board that the site is extremely isolated and recognized that the applicant made a mistake in forgetting the previous meeting.

Tom Brown reminded Mr. Voyles that the request had already been denied.

Mr. Voyles notified the Board that the applicant had filed an appeal.

Bill Brown explained that when the case goes to circuit court, the applicant might be allowed to present all new evidence. He reminded the Board of others that have called to postpone their case.

Tom Brown responded that if the applicant had called and asked to postpone, the Board might reconsider, but the applicant did not call to postpone, he just failed to appear.

Chairman Jackson called for a vote on the motion to deny the applicant's request. The motion passed with four affirmative votes. Mr. Abele voted against the motion.

Mr. Dunlap reminded the applicant that they would still need a permit to erect a fence.

PUBLIC COMMENT/ADJOURNMENT:

Mr. Phillips notified the Board that this would be his last meeting. He will be serving as an Alderman and does not believe he should serve in both positions.

Mr. Hight moved for the Board to adjourn at 2:38pm. There was no dissent.

PASSED: _____ RESPECTFULLY SUBMITTED:

CARL JACKSON, CHAIRMAN

ROBERT VOYLES, DIRECTOR