

CITY OF AURORA
OHIO
BOARD OF ZONING APPEALS
Meeting Minutes
May 12, 2010

The Aurora Board of Zoning Appeals met in a regularly scheduled meeting Wednesday, May 12, 2010 in the Council Chambers at City Hall. The meeting was called to order at 7:30 p.m. by Chairman Don Arbuckle.

ROLL CALL: Present: Scott Friedler
Peter French
Bernard McCarrell
Terese Fennell
Don Arbuckle
Absent: Tony Gramm
Also Present: Chad Murdock, Legal Advisor
Denise Januska, City Planner
Susan Dombeck, Clerk

WORK SESSION:

Mr. Arbuckle explained the procedure for the work session and meeting.

OLD BUSINESS:

There was no old business.

NEW BUSINESS:

RYAN AND ERIN TONG, 1016 AURORA HILL DRIVE [1004005]

A variance from Section 1155.06 of the Aurora Codified Ordinances to allow an accessory structure to be built 23 feet high instead of the maximum allowed 15 foot height

Mr. Arbuckle reviewed the variance request.

GARY LUCAK, 636 ROBINHOOD DRIVE [1004006]

A variance from Section 1153.04(e)(2)(A)(2) of the Aurora Codified Ordinances to allow a solid privacy fence to be erected rather than a fence with the minimum required uniform openings aggregating at least 50% of the surface

Mr. Arbuckle explained the requested variance.

MISCELLANEOUS:

There was no miscellaneous discussion.

MEETING:

Mr. Murdock gave the oath to the staff and audience members that planned to speak during the meeting.

AMENDMENTS TO THE AGENDA:

There were no amendments to the agenda.

APPROVAL OF MINUTES:

MOTION: To approve the minutes of the April 14, 2010 meeting as printed.

Mr. McCarrell moved for approval; Mr. French seconded, and the motion carried, 4-0-1, on a roll call vote.

Yeas: Mr. McCarrell Mr. French, Mr. Friedler, Mrs. Fennell
Nays: None
Abstentions: Mr. Arbuckle

OLD BUSINESS:

There was no old business.

NEW BUSINESS:

RYAN AND ERIN TONG, 1016 AURORA HILL DRIVE [1004005]

A variance from Section 1155.06 of the Aurora Codified Ordinances to allow an accessory structure to be built 23 feet high instead of the maximum allowed 15 foot height

Michael Wyles, of Welcome Home Builders, represented the applicant and said that the project is two phased, one part being an addition and the other an accessory building. Mr. Wyles explained that the house is on a slab and has a very small amount of storage. There is an existing accessory building on the property which is to be removed when the new one is constructed. The new building would have a room on the upper level for storage while a trailer, lawn equipment, etc. would be stored on the ground level rather than outside on the property.

Per an inquiry by Mr. Arbuckle, Mr. Wyles explained that storage area in the house is limited because they are putting in new furnaces and restructuring the entire roof, so there will be beams, columns, furnaces and air conditioner space used in the attic area.

Mr. Wyles said that when the addition and accessory building were designed they were unaware of the change in January to the zoning regulation that limited the building's height to 15 feet instead of 25 feet. The information received from the building department listed the allowed building height to 25 feet, and when they submitted the application in April the information still hadn't been updated. Mr. Wyles stated that the FHA loan and whole design process was based

on the incorrect information received.

Mr. Arbuckle questioned when the code change went into effect, and Mrs. Januska confirmed that it was effective on January 20, 2010. Mr. Arbuckle noted that a few months passed before the submittal took place. Mr. Wyles replied that they designed the plan with the information on the web site and the application information that was provided by the city. He pointed out that even until this April, when their plan was submitted, the incorrect information was still on the web site and being provided with the applications. Unfortunately the plan had already been designed and the financing secured.

Mr. Arbuckle asked about the existing accessory building, and Mr. Wyles explained that it needs a new roof and is in disrepair. Mr. Arbuckle asked if a smaller structure was considered, and Mr. Wyles said that it was considered, but the proposed building does meet the applicant's storage needs. He added that the FHA loan was processed and is on hold at this time pending the city's approval.

Mrs. Fennell began a conversation on the loan, and Mrs. Tong explained that it is a reconstruction loan that was approved contingent on the plans and a budget that is appropriate for the specific project. She added that if the submitted plan is not approved, then they would have to reapply for the loan under the new design plan and new budget. Further discussion followed. Mrs. Tong told the members that she had a printout she made from the building department's web site on April 13 which states the allowable height for an accessory building is 25 feet.

Mr. Arbuckle wondered if additional storage space could have been incorporated into the design of the addition. Mr. Wyles explained that they designed both structures at the same time within the budgeted amount. He stated that it is more economical to build an accessory building with a storage room on an upper level that it is to put in a basement or add a structure to the existing house.

With regard to the addition, Mr. McCarrell asked if all the additional space would be livable or if some would be for a garage. Mr. Wyles answered that there would be a one car garage added.

Mr. French asked for the height of the existing accessory building, and Mr. Wyles responded that it is approximately 14 to 15 feet.

Mr. Arbuckle mentioned that one letter was received objecting to the variance request.

Andy Dorner, of 1016 Colony Drive, said that his property abuts the Tongs' property. He said that the proposed structure would be located closer to his house than it would be to the applicant's house. He stated that the Tongs' property has a gas well and a battery pack. Mr. Dorner added that he is not permitted to have open flames on any of his equipment when he is close to that area. He stressed that it is a safety issue.

Mr. Dorner stated that he has more lawn maintenance equipment than the Tongs have, and he did not feel the issue is one of storage. He commented that the windows in the proposed structure will be directly facing his teenage daughter's room. Mr. Dorner did not feel that the proposal is for an accessory building. He thought that the building would be large enough to put

a business office upstairs, and he questioned whether that would be allowed. He said that the applicant told him that propane would be used for that building. Mr. Dorner described the existing gas well as so volatile that he cannot go within a certain distance with equipment having an open flame. He then questioned the use of propane for the proposed building. Mr. Dorner said that he would have no problem with the plan if the structure were within the code and moved closer to the applicant's house. He did not like the proposed location of the building since it was much closer to his house than the applicant's. Mr. Dorner did not feel such a large building should be allowed, and he felt it would take away from the rural feeling of his property. A short conversation followed regarding the layout of the plan.

Mr. Arbuckle told those in attendance that the only thing to be considered by the board is the height of the building. The other issues are not under the board's authority. He stressed that the board is to address the variance and only the variance even if other issues are raised.

Mr. Wyles noted that the plan does meet the setback requirements. They added extra windows to the structure, mostly for the city's architectural review. After some discussion, Mrs. Tong offered to have the windows shown on the upper level moved down to the lower level.

Mr. Arbuckle suggested that the applicant speak to the neighbors in attendance and consider having the variance request tabled until the issues can be addressed.

Mr. Wyles said that all of the other code requirements have been met. Mr. Arbuckle raised the issue of a business office being located on the second floor of the proposed building. Mr. Tong stated that he has only one mower and a trailer, and has no intention of going into the landscaping business.

Tom Russo, of 1050 Aurora Hill Drive, said he is the applicant's neighbor to the west. He said he has no problem with adding a building, but presented some photographs from his yard to show how the building would affect his property and the view. Mr. Russo wondered why such a large building is needed for storage. He also objected to placing the building over a gas line. Mr. Tong said the gas line would be moved by the company, but Mr. Russo stated that the pipeline company would probably not move those lines.

Mr. Tong said that there really are no major safety issues. He said that the gas line is located where the building is to be built, but that the company who installed it agreed to move it. Per an inquiry by Mr. Arbuckle, he stated that he did not have that in writing.

Mr. Arbuckle reiterated that one negative letter was received. Mr. French noted that the application statement said that the applicant spoke with other owners and received verbal approvals. He asked for additional information regarding the statement.

Mr. Dorner explained that he gave the applicant a verbal approval to construct an accessory building when they first moved to the property. He was unaware of their plans for such a large building.

Mr. Wyles told the board that the Tongs did go to several neighbors and five of them signed a document approving the proposed building. He added that, regarding the location of the building, since many of the neighbors object to the proposed placement, the applicants are willing

to reconsider the location.

Dewey Dewitt, of 1010 Colony, felt that the code should be followed and was against granting the variance.

Joann Dorner, of 1005 Colony, said that when she saw the submitted plan she thought that the accessory building looked like a house. She said the proposed building will be in close proximity to the residence of Andy Dorner. Ms. Dorner reminded the members that she wrote in her letter that she was against granting the variance.

Heidi Liston, of 986 Colony, said that her family has many pieces of lawn equipment but manages to keep them in their shed with the trailer stored behind the shed. She did not think that there was any need for such a large, high accessory building. She asked the board members to reconsider and deny the variance request because the proposed building does not belong there.

Mr. Russo asked if he could see the document containing the signatures of neighbors. Ms. Liston also requested to see the document. Mr. Wyles then submitted it to the board for acceptance for the record.

MOTION: To accept the document with the five signatures regarding the Tong variance request.

Mr. Friedler moved for approval; Mrs. Fennell seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. Friedler, Mrs. Fennell, Mr. McCarrell; Mr. French, Mr. Arbuckle
Nays: None

Mrs. Fennell read aloud the signatures on the document. There was a conversation on the location of the properties owned by those who signed the document. Ms. Liston added that some of those that signed have similar accessory buildings on their properties. A brief discussion on neighborhood buildings followed.

Ms. Liston questioned the research done by the applicant's contractor with regard to the zoning regulations. Mrs. Tong explained that the day they submitted their application in April they acquired a new, blank application from the city that still had the incorrect zoning code information attached. She commented that it was a miscommunication and an unfortunate event, but there were web site and paperwork errors by the city.

Mr. Arbuckle commented that the city could not escape some of the problem because of the time frame involved for giving incorrect information. He added that it is the responsibility of the applicant to make sure they have the proper information; however, he thought that this situation could be debated.

There was a discussion on the size of neighboring accessory buildings and whether certain neighbors would be able to view the proposed building from their property.

Mr. Arbuckle explained that this board does not set precedents. He said that each variance request is reviewed individually and each decision is made on its own merits.

Mr. Friedler asked if the size of the accessory building could be reduced while storage space is added to the home project while staying within the allowed loan amount. Mr. Wyles explained that the budget would not allow that type of change. A conversation on possible options followed.

Mr. Arbuckle began a conversation on the loan requirements, and Mrs. Fennell did not feel that the loan was something this board should take into consideration. She pointed out that this board should only be concerned with the height of the proposed building.

Barb DeWitt, of 1010 Colony Drive, said that the structure will not enhance the property value as much as adding to the house size. She felt that it would alleviate many of the problems the neighbors have with the plan.

Mr. Arbuckle asked the applicant to consider relocating the structure since that is a major concern with the neighbors. He pointed out that the building is within the setback requirements so this board cannot address that issue, only the issue of the building's height.

Mr. French stated that the applicant can request that their plan be tabled and return with a different variance or make changes to the plan that would not require any variances. Mr. Arbuckle suggested that the applicant consider having the request tabled to revisit the plan. Mr. Friedler noted that once the vote is taken by the board, and if it is a denial, the applicant cannot return with that same design again. Any other requests should be substantially different than the plan denied. Mr. Friedler reiterated that once the vote is taken it is a dead issue.

Mr. Tong decided that he wanted the board to vote on his request.

Mr. Arbuckle began reviewing the variance checklist. On whether the property value would remain the same, Mr. Arbuckle said that the variance would not make a difference on the value. Regarding the variance and whether it is substantial, Mr. Arbuckle said it could be considered substantial by some and not others. He reminded the others that the applicants were caught in the middle with the zoning change, but it is their responsibility to make sure the code is followed. Mrs. Fennell spoke of the neighbors' views that the variance is substantial. She pointed out that the current shed is within the code's maximum height and yet the applicants are able to store what they own. Therefore, she felt that the requested variance is substantial. Mr. French noted that the city changed the code for maximum height because it was thought that the previous allowed height was substantial.

With regard to the character of the neighborhood, Mr. Arbuckle said that there are many large structures throughout that neighborhood. Mr. Friedler stated that, according to comments made by some of the residents, adjoining properties would suffer a detriment if the variance is granted. Referring to the delivery of government services, Mr. Arbuckle said that the variance is not an issue. Mrs. Fennell asked about the gas line issue, and Mr. Friedler commented that this board does not address those types of safety issues. He also noted that the well in question is a privately owned well and is not applicable to that point.

Mr. Arbuckle said that with the code changed during the preparation of the plan the applicants couldn't have known of this zoning regulation when they purchased the property.

Whether or not the predicament can be solved through some method other than the variance, Mr. Arbuckle said that one way would be to lower the height of the proposed building to comply with the code. He added that if the applicant still needs that amount of storage space they can add it to the footprint for a larger, lower building.

Regarding the spirit and intent of the zoning regulation being observed and substantial justice done if the variance is granted, Mr. Arbuckle stated that justice would enter into it because of the confusion of the change in the rules and regulations.

MOTION: To grant to Ryan and Erin Tong, for the property at 1016 Aurora Hill Drive, in a R-4 district, an 8 foot variance from Section 1155.06(e)(2) of the Aurora Codified Ordinances, which limits the height of accessory buildings in a residential district to 15 feet, to allow the construction of an accessory building 23 feet in height, as shown on the application.

Mr. Friedler moved for approval; Mrs. Fennell seconded, and the motion **WAS DEFEATED**, 0-5, on a roll call vote.

Yeas: None

Nays: Mr. Friedler, Mrs. Fennell, Mr. McCarrell, Mr. French, Mr. Arbuckle

GARY LUCAK, 636 ROBINHOOD DRIVE [1004006]

A variance from Section 1153.04(e)(2)(A)(2) of the Aurora Codified Ordinances to allow a solid privacy fence to be erected rather than a fence with the minimum required uniform openings aggregating at least 50% of the surface

Mr. Lucak said that they live on the corner of Robinhood and Sussex, which is the side entrance to the Hawthorn development. There is much foot traffic in that area as well as autos travelling in and out. He stated that they would prefer a solid fence to keep some of the noise and the visual field out of their yard. He said they would have no problem with the code requirement if they were on a lot other than a corner lot, but having much of both types of traffic is the reason they would like some type of buffer for their yard.

There was a conversation on the location of the existing fence and the property that the city since vacated to the applicant relative to the proposed location of the new line of fencing.

Mr. Arbuckle wondered how much additional privacy a four foot high fence would give the applicant. Mr. Lucak said that if he could have a six foot high fence he would, but since his yard is considered a front yard because of the corner lot situation and another street is involved, the maximum height for a fence is four feet. A discussion followed on the fence and how it would be as a buffer.

Mr. Friedler asked if any thought was given to a natural barrier, and Mr. Lucak noted that he does have a pet that he would like to have enclosed in the yard.

Mr. Arbuckle asked about the plans for landscaping the fence. Mr. Lucak said that some sort of shrubbery would be put in so it would not just look like a bare wall. They want to plant something that would change colors, etc. throughout the year so the neighbors would not have to look at just a solid wall. Per an inquiry by Mr. McCarrell, Mr. Lucak said he did speak to a few of the neighbors about his plan but did not collect signatures.

Mr. Arbuckle wondered if any other type of fences were considered and mentioned a board on board type fence. Mr. Lucak replied that he was told by the city's staff that a board on board type fence is not considered 50% open because it looks solid when viewed straight on, so he did not give thought to using that type of fence. Mr. Arbuckle said that, while it is not 50%, it is a better alternative than the submitted plan. Mr. Lucak told the members that if using that type of fence is necessary for an approval, than he would be willing to use it.

Mr. Arbuckle said the board received one letter which was just received, so a motion must be made to accept it into the record.

MOTION: To accept the letter submitted May 10 for the record.

Mrs. Fennell moved for approval; Mr. Arbuckle seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mrs. Fennell, Mr. Arbuckle, Mr. Friedler, Mr. McCarrell, Mr. French
Nays: None

Mrs. Januska explained that she forwarded a copy of the letter to Fire Chief Barnes, who contacted the writer. She said that some of the things stated in the letter are incorrect and that it is not the way the city's code reads.

Mrs. Fennell raised the subject of the reference to the fence in the letter. Mr. Arbuckle then explained that the writer made clear that there was no objection to the requested variance, but did go on about other issues, none of which have anything to do with this board.

Arlene Garrison, of 684 Robinhood Drive, stated that she had no objection to the proposed fence.

Keith Sidley, of 430 Walnut Ridge, said that the house behind the applicant is for sale and he felt that the new owners should be given a chance to give an opinion. He commented that he prefers natural barriers and feels they should be considered, but he didn't want to state whether he was for or against the variance request.

Mr. Arbuckle began a brief conversation on the preference for a board on board fence.

George Garrison, of 684 Robinhood Drive, said that he had no problem with the request.

Referring to the checklist, Mr. Arbuckle said that a denial of the variance would have no economic affect on the property. He did not feel that the variance was really a substantial one. Mr. Arbuckle noted that, regarding the character of the neighborhood, a few residents felt the fence would be an improvement for the property.

Mr. Arbuckle stated that the delivery of government services would not really be affected. He pointed out that the applicant has been at that property for some time and nothing indicated that he knew of the zoning restrictions at the time of purchase. Mr. Arbuckle said that the predicament can be solved by the applicant changing the type of fence, but then he would lose a chance at privacy and a sound buffer.

Mr. Arbuckle thought that the spirit and intent behind the zoning regulation would be observed and substantial justice done if the variance is granted. He commented that it would be a plus for the neighborhood and nothing was heard from anyone objecting to the request.

MOTION: To grant to Gary Lucak, for the property at 636 Robinhood Drive, in a R-4 district, a 50% variance from Section 1153.04(e)(2)(A)(2) of the Aurora Codified Ordinances, which requires each section of fence to have uniform openings aggregating at least 50% of the surface, to allow the construction of a solid stockade-type fence, as shown on the application.

Mr. Friedler moved for approval; Mr. McCarrell seconded, and the motion carried, 5-0, on a roll call vote.

Yeas: Mr. Friedler, Mr. McCarrell, Mrs. Fennell, Mr. French, Mr. Arbuckle
Nays: None

MISCELLANEOUS:

There was no miscellaneous business.

ADJOURNMENT:

Mr. Friedler moved to adjourn at 9:10 p.m.; Mr. French seconded, and the motion carried, 5-0, on a voice vote.

Don Arbuckle - Chairman

Susan Dombeck - Clerk
AUDIO TAPE ON FILE