

BOARD OF ADJUSTMENT MINUTES
April 24, 2024 – 2:00 P.M.
Commission Chambers

PRESENT: Michael Bomar, Vice Chair
Joe Moholland, Member
Dan Small, Member
Denise Chase, Member
Kathy Garchow, Member

STAFF PRESENT: Kristin Coman, Community Development Director; Matthew McConnell, Assistant City Attorney; Ginny Bodkin, Deputy City Clerk

Vice Chair Bomar called the meeting to order at 2:00 P.M.

1. Approval of the Agenda -

Motion: Member Moholland moved, and Member Chase seconded the approval of the April 24, 2024 agenda as presented; the motion carried unanimously by a voice vote.

2. Audience Comments – There were no comments.

3. Approval of Minutes – March 27, 2024

Motion: Member Chase moved, and Member Small seconded the approval of the March 27, 2024 meeting minutes as presented; the motion carried unanimously.

The Deputy Clerk duly swore in all those present who would be testifying.

4. Action Items

a. Election of Officers 2024-25

Motion: Member Chase moved, and Member Small seconded the appointment of Michael Bomar as Board Chair for 2024-25; the motion carried unanimously by voice vote

Motion: Member Small moved, and Chair Bomar seconded the appointment of Denise Chase as Board Vice Chair for 2024-25; the motion carried unanimously by voice vote.

b. Case No. 24017 – 7100 Blind Pass Rd.

Practical Difficulty Variance: Sean Neal for Jennifer Gross requests to permit existing non-conforming 6' high fence with existing 3' front yard setback to remain within front yard where a 4' high maximum height is permitted and 10' front yard setback is required (LDC Sec. 6.15).

The Board members individually declared their ex-parte communications and research, including reading staff emails, a letter forwarded by staff, and walking or driving by the property.

Community Development Director Kristin Coman reviewed a presentation of the request for a practical difficulty variance. Her presentation included photos, zoning, request details, code enforcement background, existing conditions, surveys, proof of noticing, and staff comments. Her presentation is part of the meeting record.

Staff recommended approval with the condition of the installation of landscaping in front of the fencing, comprising of shrubs and hedges to visually soften the height, mass, and scale of the fence in conformance at a minimum with Land Development Code Sec. 22.4(2) with landscape inspection completed and approved by Zoning prior to the issuance of a Final Inspection or Certificate of Occupancy. One letter in support was received and is part of the meeting record.

Applicant Sean Neal testified as to the need for the fence and variance and the process of getting permits, etc. during the pandemic. He testified to being willing to the installation of landscaping. Applicant's mother Janice Goss provided additional testimony on the landscaping.

No one was present for or against the variance and the Chair opened board discussion.

Motion: Member Garchow moved, and Vice Chair Chase seconded to approve the variance for Case No. 24017 with the staff recommended condition; the motion carried 5-0.

- c. Case No. 23086 – 2191 E. Vina Del Mar Blvd.
Unnecessary and Undue Hardship Variance: Tyson Rawson, Edge Marine Construction for Peter Eagleson requests to construct a 6' x 12' lower landing on non-conforming existing dock, creating a length of 92'6" where 49' is permitted and 86'6" currently exists (LDC Sec. 6.23(d)(3)).

The Board members individually declared their ex-parte communications and research, including speaking with staff, boating and driving by the property.

Ms. Coman reviewed a presentation of the request, which is part of the meeting record. She reviewed photos, zoning, request details, and prior Board approval in 2021. One neighbor did not sign a Code required letter of no objection, which triggered the request coming for approval. Ms. Coman explained two current permits for additional work on the property, including new pool installation. She reviewed photos of posting of notices and the property and dock area.

Staff found that the applicant has addressed some of the hardship criteria but has not specifically addressed conditions that are peculiar to the property nor demonstrated all criteria for hardship have been met. Due to the lack of support within the submittal documents, staff recommended requesting more information from the applicant and that the applicant verbally address the hardship faced in requesting the installation of the landing and piling in addition to the circumstances to return to the Board requesting additional relief. If the applicant could not provide substantial evidence through testimony, staff found that the proposed variance would not advance the purposes of Land Development Code Sec. 1.1 or granting the variance from the applicable LDC Sec. 6.23(d)(3). Staff recommended denial of the request. No letters for or against the request were received.

Tyson Rawson of Edge Marine, on behalf of applicant Peter Eagleson, testified that the dock was permitted and rebuilt two times previously. The new dock was built in 2022 a foot higher for storm surge protection but now feel a lower landing would provide more safety getting on and off the dock. The members asked questions regarding the request.

Owner Peter Eagleson testified as to there being no code violations on the property. There were no audience comments for or against the variance and the Chair opened Board discussion.

Motion: Member Moholland moved, and Vice Chair Chase seconded to approve the variance for Case No. 23086; the motion carried 5-0.

d. Case No. 23072 – 2007 Pass-a-Grille Way

Unnecessary and Undue Hardship Variance: Kyle Bass, Weber Crabb & Wein, P.A. for Collom Properties, LLC requests the construction of roofed, open porch extension, 12' x 28.67' (overall dimensions), 11'2" high, to create an approximately 300 sq. ft. covered ride wait area that will encroach entirely into the required 25' secondary front setback while maintaining the existing 1.67' setback where 25' is required (LDC Sec. 15.7.(b)(2)).

The Board members individually declared their ex-parte communications and research, including site visits, speaking with neighbors, and reading emails submitted by staff.

Ms. Coman reviewed the staff presentation for this request, which is part of the meeting record. The presentation included zoning, a survey, proposed site plan, request detail, a prior variance approval in 2023 and Conditional Use Permit. Proof of noticing, photographs of the property, variance criteria, Technical Review Committee comments, and staff comments including proposed site plan alterations and other clarifications that should be made regarding the plans.

Staff found that the applicant had addressed some of the hardship criteria but had not thoroughly demonstrated that denial would result in deprivation of an integral and necessary aspect of their business in a manner that creates a hardship. Due to the lack of support within the submittal documents, staff recommended requesting more information from the applicant. If the applicant cannot provide substantial evidence through testimony, staff found that the proposed variance would not advance the purposes of LDC Sec. 1.1 or granting the variance from the applicable LDC Sec. 15.7(b)(2)), Staff recommended denial of the request.

Should the applicant provide additional information to satisfy the Board, staff advised that the following conditions could be considered: 1) the roofed, open porches to be constructed as per the plan submitted may not be later enclosed or utilized as service area without a subsequent variance and shall be used only as a waiting area, 2) a landscaping plan should be submitted and if additional areas can identified, additional plantings should be installed as required per LDC Sec. 22.6. Staff typically requests one square foot of landscaping be provided for each square foot of building floor area added for properties that are deficient to landscaping, when viable, and 3) plans should be amended to reflect any changes requested by the Board or Staff and site improvements should be installed as per approved plans. Three letters of objections were received by staff into the record.

Assistant City Attorney Matthew McConnell provided details to the Board regarding the CUP that was that was approved in September of 2023; there is a federal court case challenging one of the

conditions along with the sign ordinance that is currently in court and not resolved. Ms. Coman and Mr. McConnell answered member's questions regarding permits and lot assembly.

Attorney Kyle Bass of Weber Crabb & Wein, P.A., appearing for applicant Collom Properties, LLC, testified as to the hardship involved, the area of the request, handicap parking, not selling individual lots (and being agreeable to make that a condition), curb stops and striping, unity of title (with overflow parking lot across the street), and agreeing to remove a non-conforming parking space. Members asked further questions and Mr. Bass acknowledged that a separate permit would be required for the roof over the cooler.

Contractor Paul Carr testified on behalf of the applicant regarding striping in the parking lot, landscape plan, making colors more appealing, current open permits, not changing approved plans, and the timing of the project - the parking and covered roof could be completed during the process. Mr. Carr and Bass testified that the proposed site plan is the master plan for the property. There is no mortgage company involved for unity of title.

Applicant Charles Collom testified as to the after the fact permit for the roof over the cooler.

Board discussion followed regarding what conditions could be added to the variance if approved. Mr. McConnell advised that a condition could be crafted to add a check-in date at intervals during the project.

Mr. McConnell reviewed the potential conditions that the Board had considered: 1) the project shall be ADA compliant, 2) a landscaping plan shall be submitted with additional plantings installed as required per LDC Sec. 22.6. 3) the roofed, open porches to be constructed as per the plan submitted may not be later enclosed or utilized as service area without a subsequent variance and shall be used only as a waiting area, 4) plans should be amended to reflect any changes requested by the Board or Staff and site improvements should be installed as per approved plans, 5) a Declaration of Unified Site Plan to be recorded within 45 days, 6) within 120 days (the August Board meeting) from the issuance of the Development Order, the applicant provide an update on the status of all open permits, including conditions in the variance, and the Board may modify the variance at that time. Mr. Bass had no objections to the conditions are read by Mr. McConnell.

Motion: Vice Chair Chase moved, and Member Garchow seconded to approve the variance for Case No. 23072 including the six proposed conditions; the motion carried 4-1 with Member Moholland voting no.

Mr. McConnell spoke regarding a workshop to discuss quasi-judicial procedures; the Board agreed to add 30 minutes to the next agenda for a workshop following the meeting.

6. Adjournment – The next meeting is scheduled for May 15, 2024.

Vice Chair Chase moved, and Chair Bomar seconded to adjourn the meeting at 4:39 p.m.

These minutes were approved at the May 15, 2024 Board of Adjustment meeting.