



Variance Review Board
City Council Chambers

City Hall
315 E. Kennedy Blvd., Third Floor
Tampa, Florida 33602

ANY PERSON WHO DECIDES TO APPEAL ANY DECISION OF THE VARIANCE REVIEW BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT THIS MEETING WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, MAY NEED TO HIRE A COURT REPORTER TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND SECTION 286.26, FLORIDA STATUTES, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS MEETING SHOULD CONTACT THE CITY CLERK'S OFFICE AT LEAST FORTY-EIGHT (48) HOURS PRIOR TO THE DATE OF THE MEETING.

IF YOU DECIDE TO APPEAL A DECISION OF THE VARIANCE REVIEW BOARD, YOU WILL NEED TO APPLY TO THE CITY OF TAMPA CITY CLERK'S OFFICE NO LATER THAN SEVEN BUSINESS DAYS AFTER THE ORAL DECISION IS MADE. YOU WILL NEED TO OBTAIN A COMPLETE COPY OF THE RECORD FOR YOUR APPEAL.

MINUTES

(As of March 9th, 2010)

MEETING DATE: March 9, 2010

MEETING TIME: 6:30 PM

I. ROLL CALL: Sue Lyon, Randy Baron, Antonio Amadeo, Randy O'Kelly, Steve Labour, Lucinda Utter

Staff Present: Eric Cotton (LDC), Joel Sousa (LDC), Ernie Mueller (Legal, Mary Danielewicz-Bryson (LDC), Roger Kirk (Transportation).

Mr. Amadeo called the meeting to order at 6:30 and introduced members and staff. He went over procedures and rules.

Joel Sousa informed the board that case number VRB 10-23 is mis-noticed and the case is to be heard April 13, 2010.

II. APPROVAL OF MINUTES FOR February 9, 2010

Motion to approve the minutes was made by Randy O'Kelly

Motion 2nd by: Randy Barron

All in favor: Sue Lyon, Randy Barron, Antonio Amadeo, Steve Labour,
Lucinda Utter

Opposed: None

Motion Carried 6-0

III. OLD BUSINESS: Cases Continued/ Mis-Notice

PETITION: VRB10-20
PETITIONER: Lambo One, LLC
AGENT: Anne Pollack
LOCATION: 1248 E Fowler Ave.
REQUEST: To increase the sign area from 50 SF to 114.65 SF;
To increase the sign height from 17' to 20'; to
reduce the sign setback from 15' to 12.6' (E. Fowler
Ave.), and reduce setback from 15' to 9.5' (N 14th
Street).
PURPOSE: To add a non-activated electronic message sign.
NEIGHBORHOOD: University Square Civic Assn.
***Petitioner was approved for a continuance to
the March 2010 hearing, from the February 2010
hearing due to some unresolved issues.***

Joel Sousa introduced the case and stated that the case was approved for a continuance to this meeting and showed aerial photo and pictures.

Anne Pollock, petitioner went over particulars of the case. Current owner purchased in 2009 and opened business. The City only allows the copy to change on a non-conforming sign. She stated that the petitioner wants to add non-activated messaging sign (copy not to change more than every 5 minutes) at 50 square feet. The petitioner is not asking for anything regarding electronic portion. However, they must make the sign conforming in its current condition. She explained that there are a multitude of variances because height is related to setback and because it's located on a corner they need height and setback on 2 streets. Property has multiple hardships including visibility and safety issues. She explained these (i.e. size of street does not allow travelers to see the sign). She showed pictures and showed other signs that are bigger. This is the 3rd business in 4 years and property owner has had problems getting people to business. She stated that there was a banner that has been taken down. The property owner thinks an electronic sign is needed. She explained safety issues (easier to find business, no u-turns). She explained economic aspects. She stated that the option is to remove the existing sign and install a new sign smaller than all signs in area and that replacement costs make it difficult. She stated that the hardship is not the result of property owner. Granting the variance will not interfere with safety and would improve the area by allowing rehab and will modernize it. The owner wants to meet city design requirements. Spoke with several neighbors and the association – no opposition. Approval results in substantial justice being done and will help drivers focus attention decrease safety concerns. Failure could cause detrimental affect crucial to his business. Majority of signs in area are bigger. She stated that the owner Phil Pavone is here to answer questions.

Randy O'Kelly made a motion to receive and file pictures that Anne Pollock showed during her presentation. Randy Barron 2nd the motion, motion passed with all in favor.

Steve Labour asked if the sign and shape to remain and the reason for variance is electronic component addition which is causing the need for the variance. If not making legal would electronic component be allowed. Is that square feet allowed and follow code. He questioned argument about illegal signs and the great cost for a legal sign. Won't cost of electronic component be same. Anne explained electronic component is same that there is additional cost to replace entire sign. Steve asked if the Electronic component is so compelling, is it to draw attention that you need it. Anne stated that it is brighter and focus's attention and show images of sales.

Sue Lyons asked from 50 to 114 square feet. Ann not increasing sign wants approval for what is there today. Sue asked if it can stay if there is no electronic component. Ann stated yes.

Lucinda Utter asked about other signs on the site being illegal. Ann stated that they were there and they are coming down.

Antonio Amadeo asked a question about cost. There was discussion regarding cost and if owner has bid or price on cost or is he just thinking it's less expensive. Anne stated that it would be retrofitted with minor changes to meet design guidelines and stated that the owner does not have direct estimate do not have actual cost has estimate for electronic component only. Needs to add sign structure to pole even if he did not add sign. Questioning hardship on cost issue if do not know cost. Antonio Amadeo asked the owner if he has estimate. Phil Pavone, 1248 E. Fowler has a verbal from a few sign companies. Adding electronic is about 20,000.00 needs to add support beams. Electronic portion signs use existing wiring and ampere capacity is ok. Changing whole sign needs footings, and must buy structure doesn't have exact figure.

Ernie stated that the variance makes the sign a legal nonconforming sign - conforming to height, square feet and setbacks. Stay focused on that.

Comments Randy Baron stated that the sign code changed more variances are coming. Whole purpose is when signs come down put smaller ones up. He understands hardship. Policy decision of city is now circumvented. If someone else's sign comes down they have to comply. Competitive advantage. Wants to let city council know to let nonconforming signs have 50 square feet of message sign. He stated that he hasn't heard much of a hardship.

Antonio stated that the board has not closed.

Antonio asked if there was any public comment seeing none he closed the public hearing.

Steve Labour addressed the hardship regarding the cost. More cost is the cost of doing business doesn't want to get involved in policy discussion. He did not hear a hardship. If they want electronic on that sign they can have it by making it legal. This board member is not supporting motion to make legal. Doesn't say you can't have it, you can not on this sign

Lucinda Utter did not hear evidence that it is unique. The other three (3) business there did not see that sign was blocked. Cant support.

Sue Lyons stated that she also can't support the variance.

Motion to Deny Made By: Steve Labour

Motion 2nd by: Lucinda Utter

All in favor: Sue Lyon, Randy Barron, Steve Labour, Lucinda Utter

Antonio asked the board to be specific about criteria not met. Make clearer.

Steve stated that they legally can have electronic component law allows it but does not want to make this sign legal.

Randy Baron stated that there is no testimony that there is blockage and it is like all other signs on Fowler nothing unique about this location that requires a variance for this sign.

Opposed: Antonio Amadeo

Motion Carried 5-1

V. **NEW BUSINESS**

A. **TREE & LANDSCAPE / TRANSPORTATION / SIGN VARIANCES**

PETITION: VRB10-21
PETITIONER: Rueben Dario Pena
AGENT: Donald McLellan
LOCATION: 9402 N Nebraska Avenue
REQUEST: To install 10-foot high electrical security fence
PURPOSE: To install 10-foot electric fence used as a monitored security system inside of an existing 8-foot chain link fence
NEIGHBORHOOD: Sulpher Springs Action League

Joel Sousa introduced case showed aerial photo and showed pictures of property and fence.

Steve Michelini stated that there is no residential property adjacent. Area characterized by hardware store, tire shops, wrecker companies, hotels, convenient stores. It's a high crime area. Described activity and documents provided showed. Has special police patrol 10 crimes each day in this area. Heavy commercial properties all along Nebraska Ave. Code states that you must demonstrate need per code. In a matter of 4 months 98,000 lost inventory. Insurance company assisted police

reports, when rates went up stopped reporting incidents. The owner must have insurance, policies more expensive. He showed additional pictures. Of surrounding business and described adjacent businesses. How do you keep business viable and protect them. The petitioner had guard dogs and had alarm systems. Electric fence is a deterrent. 4000 events.

Owner spoke about the fact that the incidents have stopped and they need it to remain in business. They lost a substantial amount \$98,000 in equipment.

Board asked questions.

Randy Baron asked about additional security measures. The owner mentioned additional security measures and gave a quick summary. There were two (2) dogs, a German Shepard and a boxer. The boxer was stolen. Had barbed wire, fence is only 8' tall. Still had robberies. Had friend stayed over night. Randy Barron asked if the losses were before electric fence and asked when did fence go up. Owner stated yes and in 2002.

Michelini march 2002 through June. 2003 burglary intrusion alarms 03, 04, and 06. 2005 good year. Alarm robbery in 2007. owner notified every time alarm goes off. Randy Baron asked when there were losses were those reported? There were two (2) incidents reported insurance went up. Barron asked Mr. Michelini if residential zoning is adjacent. He stated no.

Steve Labour asked about the electric fence and height. What is max height? Joel Sousa stated 8'. Steve Labour asked about crime stats, and if the two pages are only for that property. Does alarm include an actual burglary. Mr. Michelini stated that when alarm goes off intrusion of some sort. Some are deterred. There were thirty-two (32) alarms and only 8 grand thefts. The alarm probably worked. Mr. Michelini stated that the alarm worked with electric fence. If someone gets tangled in fence, they won't come back. Cindy Balm stated that the way the alarm works if the voltage drops it goes off. If limb falls on fence or touches fence, it goes off. It just means voltage was interrupted. Steve Labour asked if there were other reports asked about instances and type. Mr. Michileni stated that in Grid 19 - 619 incidences. Mr. Michelini described incidences. Establishing it is high crime area. Steve Labour stated that is the reason he was asking. Lastly uses around property being an indicator that need

for electronic fence. Steve Michelini stated that it has minimal impact on adjacent properties. Labour last question – open storage if it is in a secure building would they need fence. Michelini stated that that was not before the board. Steve Labour stated that he wants all the facts. The way the code is written today it is pertinent.

Randy O’Kelly – fence installed in 2002. Were they cited by code board?

Antonio Amadeo asked if there was public comment. None

Randy O’Kelly stated that he objects and asked had owner tried CEPTED or did he try to come up with other ways. Owner other than lighting – no. He also stated that the lighting is still up.

Antonio Amadeo asked about other electronic fences. Steve Michileni stated that City Council approved on appeal 3 blocks south.

Antonio closed the public hearing.

Discussion

Ernie Mueller, Senior Assistant City Attorney stated that the standard variance criterion does not apply. Property is zoned CI. VRB may allow fencing where security need is demonstrated by applicant. It must be set back from residential use. Residential use was addressed.

Randy Baron asked if the code stated may or shall. Ernie stated May. Randy O’Kelly – normally not in favor but applicant demonstrated that the need is there.

Randy Baron stated that there is a lot of discretion. At some point city council allows electronic fence. There were previous methods and electronic fence worked and finds security need. Feels electronic fence is a last resort. He is not a fan but the code allows it, f there are no adverse consequences. Given testimony on record inclined to move to approve.

Steve Labour stated he wants grid. Code does not allow electronic fences without variance.

Randy Baron moved to receive and file copy of grid submitted.

Randy Baron stated that it allows it, if there is a security need. Feels it should be last resort. It’s proactive – show need does not state what the need is. It is allowed through variance.

Motion to **Approve** Made By: Randy Barron

Motion 2nd by: Randy O’Kelly, 8’ chain link 10’ for elec. The variance is for current fence in its current configuration.

All in favor: Sue Lyon, Randy Barron, Randy O’kelly, Lucinda Utter

Opposed: Antonio Amadeo, Steve Labour,

Motion Carried 4-2

Condition: If there is residential zoned property to the west that they need to move fence to meet requirements of ordinance.

Ernie stated that it is a requirement of code that if there is residential that the fence must be set back the proper distance, that it can't be done unless that is met. He doesn't want that made a condition of the variance.

Randy O'Kelly stated that property owners need permission before putting fences up.

Sue Lyon must it be 10' can it be 8'.

Ernie Mueller stated that per 27-133 the code states that it may be 10' it could be lower if the petitioner were to agree to it.

PETITION: VRB10-22
PETITIONER: Mullen Avenue LLC
AGENT: Cameron Coe
LOCATION: 3609 W Platt Street
REQUEST: Remove 12" laurel oak tree
PURPOSE: To allow reasonable use for a pool
NEIGHBORHOOD: Bon Air Neighborhood Assn.

Joel Sousa introduced case and stated that Land Development Coordination found it inconsistent with Chapter 13 and gave the reason. Showed aerial and pictures.

Cameron Coe and Adam Mays identified themselves and stated that they were sworn. Cameron gave background of company. Showed photo's of prior home. Had violations. Was a nuisance. He showed pictures of trees that were preserved. Floor plan was reversed to save trees. A 24" and 22" oak. Showed landscaping plan. Two oaks in back yard were city requirements. Cameron mentioned that there were power lines on the rear and that there are gas lines and electric. Spoke to neighbors and home owners association had no opposition. Has a letter from the neighbor that they have no opposition. Will replace the tree or donate to tree fund.

Antonio Amadeo as if there was any objection to receive and file information presented to the board, there being none, and the information was received.

Randy Barron had questions about trees and fitting the pool in the area and saving the tree.

Rand O’Kelly asked about underground utilities. The petitioner showed where the utilities were.

Steve Labour went over the criteria for removal of a tree, it hazardous or reasonable use. Mary Danielewicz-Bryson stated that is the criteria. He further stated that you area asking for the removal based on reasonable use.

There was further discussion as to putting a pool on the property and saving the tree. If a pool can be placed it is reasonable use.

Ms. Danielewicz-Bryson, Land Development Coordination submitted the site plan and permit records for the property. She showed a highlighted plan, illustrating the setbacks of the pool and the protective radii of the trees on the site. She demonstrated how the pool could be developed on the lot and save the tree in question and work around the newly planted trees. Ms. Danielewicz-Bryson stated that LDC Landscape did not support the tree removal since reasonable use on the property has been granted with the approval of the single family home. She showed photo’s of the back yard. She showed a picture of the lanai and that it would not affect the usability of the pool. She explained the difference between a protected tree and a grand tree.

Bill Wermeling, 3707 W. Cleveland St stated he had been sworn in. Stated that per the president and secretary of Bonair – they voted against allowing tree to be cut down. Two grand oaks removed. They do not want the tree cut down.

Cameron Coe state that there were two grand trees cut down one was a violation. The other tree was hazardous and 4-2” trees were replacements.

Antonio Amadeo asked if there was any one in the public that wanted to speak. Seeing none he closed the public hearing.

Board discussion.

Randy O’Kelly stated that he was not inclined to support the petition. Argument about reasonable use does not hold water. There is a house on property there is no right to have pool.

Antonio Amadeo stated that there is a difference between reasonable use and best use. Have best use of back yard. However reasonable use means that you can still have a pool, maybe not the size you want. He understands the proposal and it is the difference between best and reasonable use.

Steve Labour – if we don’t approve variance you can still have pool. For this board member, even if you did not have a pool you still have reasonable use. He thanked the neighborhood association for due diligence in looking after the neighborhood and coming down to express concerns.

Ernie Mueller addressed the board stating the variance is for reasonable use and read from Section 13-45 (g) 2 (b) a grand or protected tree can be removed if it denies or precludes reasonable use of the property. He stated that weather the association approves or disapproves cannot be basis for decision.

Antonio Amadeo asked Steve Labour if he was part of this association. Steve Labour replied no. Steve stated his decision is based upon competent and substantial evidence.

Randy Barron – agree that a pool could be put in but it might be smaller. Putting a pool in cannot be at the cost of taking down a tree.

Motion to Deny Made By: Randy Barron

Motion 2nd by: Randy O’Kelly

All in favor: Sue Lyon, Randy Barron, Antonio Amadeo, Randy O’Kelly,
Steve Labour, Lucinda Utter

Opposed: none

Motion Carried 6-0

B. GENERAL VARIANCES

PETITION: VRB10-23
PETITIONER: Kendel & Josephine Smith
AGENT: Jeremy Brongo
LOCATION: 7609 S Fitzgerald Street
REQUEST: Reduce rear yard from 20' to 13'
PURPOSE: To construct a porch addition
NEIGHBORHOOD: Port Tampa City
Petition was moved to the April 13, 2010 hearing date due to a mis-notice.

PETITION: VRB10-24
PETITIONER: Hayon, LLC
AGENT: Eric Strawn
LOCATION: 1018 N Ward Street
REQUEST: Reduce rear yard setback from 10' to 6'
PURPOSE: To install emergency generator
NEIGHBORHOOD: Carver City/Lincoln Gardens Civic Assn.

Joel introduced case to the board showed the aerial photo and showed pictures of the building and where the generator is going.

Jay Gabler, 2236 W. Lawn Ave., submitted a document to show that he was to represent the petitioner and went over why the generator is needed. Rear setback form 10' to 6'.

Randy Baron asked if there was any other place to put on property. Petitioner stated that the only other place it could go is in the front in a parking space.

Steve asked why it cannot go on the roof.

Jay Gabler stated that it is a 150k generator and it could not.

Steve Labour asked if noisy.

Jay Gabler stated that it is run by natural gas and there was no noise.

Randy Barron asked for the size of the pad and the petitioner stated that it was 3' x 10' size of pad.

Joel Sousa made a comment that the required setback for the generator in the zoning district requires it to meet main structure setback which would be 10'.

Antonio Amadeo closed the public hearing seeing no one for the public to speak on the appeal.

There was further board discussion.

Motion to Approve was made by Randy Barron.

Motion 2nd by Steve Labour

All in favor: Sue Lyon, Randy Barron, Antonio Amadeo, Steve Labour, Lucinda Utter

Opposed: none

Motion Carried 6-0

VI. BOARD ORGANIZATIONAL MATTERS

Randy Baron had a question that due to the series of variance requests on electronic message and non-conforming signs, if the board could send a letter to City Council. The issue of the ordinance is that they must find the sign conforming and that message boards are popular. There needs to be an amendment that 50 square feet of electronic messaging can be added on a nonconforming sign. Maybe, write a letter to city council that the board members uncomfortable with granting variances.

Steve Labour stated that each board member has the right to write and send a letter – however as a board it needs to be unanimous. He stated that he is concerned that the board may become an activist. He stated that all have a right to let City Council know that we feel we are handcuffed. The ordinance is the ordinance and people can ask us

to vary rule if there is a hardship. Steve Labour stated that he does not want the board to have an activist role. If the board chooses to do that it should be unanimous. If we see a series of them and they are denied that will let city council know that we have a lot of these requests. Seeing an uptake of these variances.

Antonio Amadeo asked Ernie if they are having a workshop in the future. Ernie stated that he can check into it. Allison Utter stated that in her opinion there were only three cases. If we see 10 -12 then we can consider it, she does not think we should respond by advising city council.

Randy Baron stated that these are tricky and that you are really looking at height and setback variance.

Steve stated that there are other ways city council can weigh if the ordinance is working. If we deny all and there are appeals that they will become aware of them.

Antonio Amadeo thanked Randy Baron and stated that they should take it case by case.

Antonio asked if there were any additional matters and thanked staff for their hard work and input. He then closed the public hearing at 8:37 p.m.