

BOARD OF ZONING ADJUSTMENT MINUTES
MEETING OF MAY 8, 2006 - 2:00 P.M.
MOBILE GOVERNMENT PLAZA AUDITORIUM

MEMBERS PRESENT

Reid Cummings, Chairman
William Guess
Martha Collier
Vernon Coleman

MEMBERS ABSENT

Stephen J. Davitt, Jr.
Sanford Davis
J. Tyler Turner

STAFF PRESENT

Frank Palombo, Planner II
Mae Sciple, Secretary II

OTHERS PRESENT

John Lawler, Assistant City Attorney

Chairman Cummings noted the number of members present constituted a quorum and called the meeting to order.

The notation *motion carried unanimously* indicates a consensus, with the Chairman voting.

APPROVAL OF MINUTES:

March 6, 2006, and April 3, 2006.

There was no action taken on the minutes.

PUBLIC HEARINGS:

#5352/5307

(Case #ZON2006-00752)

Pete J. Vallas, A.I.A. (Mr. & Mrs. Christopher B. White, Owners)

159 Hillwood Road

(Southwest corner of Old Shell Road and Hillwood Road)

Fence Height Variance to allow the construction of an eight-foot tall masonry wall setback a minimum of ten feet from the Old Shell Road (side street) and Hillwood Road (front) property lines; a 20-foot side yard setback is required along a side street (Old Shell Road), and a 25-foot front yard setback is required along Hillwood Road in an R-1, Single-Family Residential District.

Mr. Cummings stated that the Board had previously approved the requested variance. The period of time to act on that approval had expired, and the applicant was submitting a new application.

Pete J. Vallas, A.I.A., was present representing the applicants. Mr. Vallas said the Board had approved this application before Hurricane Katrina, but due to the storm the project got delayed.

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They were now requesting the same variance as previously approved, but he noted there was concern from some of the neighbors, which he would like to clear up. Mr. Vallas explained that the White's first acquired the property, known as the Walker House, at the corner of Hillwood and Old Shell Road and planned to use that as their primary residence. At that time the variance was requested to build an 8-foot wall along Old Shell Road. Since then, however, the White's purchased the house south of the Walker property, which was the Luscher's home, and planned to sell the Walker property. When they submitted the previous request for a variance they also submitted an application to have the property divided into three lots, which was tentatively approved by the Planning Commission. Their plans have changed now, and the approval of the subdivision has expired. They now plan to keep the Walker property and the Luscher property as their home and combine it into one larger property. Mr. Vallas said this would be a win-win situation for the neighborhood because there could have been three houses on that corner. The White's plan to keep the former Walker property as their side yard. They would like to build a wall along Old Shell Road, which would be their side street, set back 10 feet from the road. Mr. Vallas said this was really a moot point because there was a thick legustrum hedge and other plantings along Old Shell Road which the wall would sit behind. The wall would not be seen, but would just help buffer the traffic noise. The wall would make a slight turn at Hillwood and then stop. It would not come down Hillwood Road. Mr. Vallas said this was the same request they had previously made and which was approved by the Board.

Mr. Cummings noted that the staff had recommended one additional condition of approval, that being that the property remain as one lot of record and that the three-lot subdivision not be finalized.

Mr. Vallas said they would agree to that condition.

Mr. Cummings asked if there was anyone present who wished to speak either for or against this application.

Joe Hopkins, a resident of #3 Springhill Trace which adjoins the subject property, asked what the relationship of the new wall would be to the existing wall of Springhill Trace. He also asked if the wall would go down Hillwood, and what it would be constructed of.

Mr. Palombo pointed out the location of the proposed wall, which they were requesting be setback 10 feet, rather than 20 feet as required. Mr. Palombo noted that Springhill Trace was a PUD.

Mr. Vallas pointed out that the Springhill Trace wall was not shown, but it was actually closer to Old Shell Road than the proposed wall would be. The wall would not go down Hillwood, come around the bend and stop at an existing old historic stone marker. As to the construction material, the wall would be concrete block with stucco on both sides, just like the Morrisette's wall across the street. The Morrisette development was a PUD, so their wall may be taller than 8 feet, which was what the applicant proposed.

Mr. Hopkins was also concerned as to the future use of the vacant lot.

Mr. Vallas said the White's would actually live in the Luscher's house. They were going to construct a pool, and the old garage building would be turned into a pool house. The old Walker

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house would be used as a guest house. Both structures would be painted the same color, and a landscape architect had been hired to landscape the properties as one property.

Joelyne Trehern was present and stated that she lived at #1 Springhill Trace. Ms. Trehern said it was extremely difficult trying to access Old Shell Road due to the tremendous amount of traffic on that street, and she did not feel a 10-foot setback was adequate for the proposed wall.

Mr. Cummings asked if understood that the proposed wall would be further away from Old Shell Road than the wall currently in place for Springhill Trace.

Mr. Vallas said that was correct.

Ms. Trehern asked what the setback guidelines were for walls in the City.

Mr. Cummings stated that the applicant could by right put a 6-foot wall on the setback line. The applicant, however, was requesting an 8-foot wall with a setback of 10 feet, and that was the reason for the variance. This was not a PUD, so that was the reason it was being heard by the Board of Adjustment as opposed to the Planning Commission. Mr. Cummings also pointed out that if the variance were granted in accordance with the staff recommendations, the 3-lot subdivision that was previously approved by the Planning Commission would not be finalized. If the owners decided to resubdivide the property in the future, then the variance at that point would become null and void and technically speaking the City could require that that wall be torn down.

Leo Trehern asked if this variance would be the same as approved previously.

Mr. Cummings said the variance would be the same, with the exception of the one additional condition as previously stated.

Addressing Ms. Trehern's concern about the problem trying to access Old Shell Road with the heavy traffic, Mr. Vallas pointed out that the wall in front of Springhill Trace was closer to Old Shell Road than the proposed wall would be. That wall and the existing hedge was what was blocking the view. The proposed wall would be behind the hedge, so it would in no way obstruct the view.

In further discussion it was asked if the proposed wall would tie into the existing the Springhill Trace wall. Mr. Vallas noted that along the east property line of Springhill Trace there was a wood fence, and their wall would just touch that wood fence. It would not affect the Springhill Trace wall because that would require them to go beyond that 10-foot setback.

Asked the approximate height of the hedge, Mr. Vallas said it was approximately 20 feet tall. The White's had received a complaint from the City and were to have trimmed the hedge by today's meeting, but he did not know if it had been done yet.

Mr. Cummings asked if anyone on the Board had any questions of the applicant.

Ms. Collier said there were two issues here. One was how high this wall should be, and the other was how far it should be set back from the public road. It was her opinion that the Board would

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be breaking both the fence setback and fence height rules if they granted this variance. Ms. Collier said she was going before another board today to request permission to build a concrete wall on part of her property, and she would not even consider going five or six feet. As far as setbacks, Ms. Collier said she would comply with whatever the City required. In this case, it would be 25 feet. She asked why the City had these rules if people were not going to be required to comply with them. The Variance Board was here to give a variance if indeed there was a good reason; a hardship. She asked if there was indeed a hardship in this case.

Mr. Vallas said they felt the hardship in this case, as outlined in the application, was that when the existing residence on this property was built it was facing a very quiet, residential street of Old Shell Road. Old Shell Road was no longer that quiet residential street, but a major thoroughfare. The whole nature of Old Shell Road was not what it once was. Mr. Vallas said no one wanted to face Old Shell Road across a three- or four-foot picket fence or a little planting. Everyone wants to buffer that noise. The neighbors of his clients have a wall for the same reason. The family across the street, the Morrisette's, have what he had been told was a taller wall that was granted by the City. Mr. Vallas noted that these walls were all up and down Old Shell Road. That was the nature of Old Shell Road, and he did not see why his client should be denied the right to buffer the sound and the danger of the traffic from their property if they chose to live there. Mr. Vallas felt they were doing an incredible service for the neighborhood in that they were not cutting this property up into three properties resulting in an increase in traffic. They were just trying to keep it a single-family home, but they would like to protect their three children and their dog from the traffic and the noise just like everyone else has done. They were not asking for anything more than neighbors to either side had been granted. The wall they were asking for would not even be seen, as it would be behind an existing hedge.

Ms. Collier said she understood that the applicant wanted a buffer from the traffic, but felt they should go by the rules the City had made, which require a 20- or 25-foot setback, depending on which of the two streets you were looking at.

Mr. Vallas said they had made an application to the Board, and it would be up to the Board to decide whether to grant them a variance or not. All they could do was to ask for what they wanted.

Mr. Cummings stated that certainly the applicants were within their rights to request a variance. They did that once before and were granted the variance. The hurricane and other delays got in the way and kept them from moving forward with their plans. This was simply a re-application of something that was previously approved. Mr. Cummings pointed out that the one difference between this proposal and the recommendation from the staff and the application they saw before, was that if it was approved, inclusive of the five conditions recommended by the staff, the entire piece of property, including the Luscher's, which was now additional property, would so far as the variance was concerned, remain as a one-lot subdivision.

Mr. Lawler pointed out that there was a court authority for the proposition that to allow fences for one and not allow them for another was something that the Board could not do. Mr. Lawler noted that there does seem to be a history of what was happening on Old Shell Road in this regard. Also in this case, you have the history that this very same application was approved at another time. Mr. Lawler said that unless there was some compelling reason or there had been

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some change in circumstances between the previous request and this request, the Board was bound by the ruling that was made.

Ms. Collier asked what about if the side street had changed.

Mr. Lawler said it would have to be a change that was material that affected the application.

Mr. Lawler further advised the Board that in this particular instance if the Board did not intend to approve the variance, they would be working with less than a quorum. It takes four votes to pass an application. If, for instance, Ms. Collier felt she was going to vote against it, the applicant should be given the opportunity to request the application be held over until the next meeting when a full Board was present so a motion to approve would not have to get every single vote to prevail. Mr. Lawler said the applicant was not advised of this, and perhaps he should have been.

In light of Mr. Lawler's remarks, Mr. Vallas requested that this application be held over until the next meeting so that he could have the opportunity for the full Board to hear his application.

Mr. Cummings asked Mr. Lawler if the Board could infer from his comments, based on the fact that previously this application was approved, and based on the fact that there was no compelling reason at that point nor had the Board been privy to any kind of reason today to deny it, that if this application were denied and the applicant appealed to the Circuit Court, the Court would uphold the ruling.

Mr. Lawler said that in his opinion if this application were denied and appeal was made to the Circuit Court, the applicant would prevail. There were walls up and down Old Shell Road and to single this one out and not allow it would lend great weight to the case they could make in court. Mr. Lawler cited a similar case that was heard by the Supreme Court case where the Court ruled in favor of the applicant.

Ms. Collier said she understood, but she could not be responsible for what Boards did before.

Mr. Lawler said the applicant had asked for a holdover. He was not advised at the beginning of the meeting that he needed the affirmative votes of all the members present today in order to prevail. Mr. Lawler felt it was only fair that he be allowed to have a full Board hear his application.

Mr. Cummings said the Board would entertain a motion to hold this matter over until next month's meeting.

Mr. Guess so moved, with Mr. Coleman seconding the motion.

There being no further discussion, Mr. Cummings called for the vote. The motion carried.

OTHER BUSINESS:

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There being no further business, the meeting was adjourned.

APPROVED: June 5, 2006

Reid Cummings
Chairman

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