

BOARD OF ADJUSTMENT

APRIL 27, 2011

MEMBERS PRESENT:
LES CLOW
DON MUELER
BRIAN WING
CAMERON MCCALL
KATHLEEN GALARZA
ANASTASIA TUTSON (alt)

ABSENT:
CARRAH ROY

STAFF PRESENT:
GARRY ADAMS,
ASST. BUILDING OFFICIAL
TERESA NOBLE,
ADMINISTRATIVE ASST.

Les Clow called the meeting to order at 5:30 p.m., and introduced the Board members and explained the purpose and authority of the Board.

The next item was the approval of the minutes from the January 26, 2011 meeting. Don Mueller moved to approve the minutes as read. Second was made by Cam McCall, the minutes were approved unanimously.

Don Mueller moved to approve the minutes of the January 26 Work Session as read. Kathleen Galarza made the second. The Work Session minutes were approved unanimously.

Chairman Les Clow moved that the Board hear Item #11-03 first, as Item #11-02 was expected to be lengthy. Brian Wing made the second, the motion carried.

Item #11-03 A request by the McKinney Habitat for Humanity for a 200 sq. ft. variance to the lot size, a 10' variance to the lot width, and a 7' variance to the side yard setback at the corner on the property located at **412 Carver Street**.

Blain Pounds of Habitat for Humanity addressed the Board. Dennis Fuller of Habitat accompanied Mr. Pounds. Mr. Pounds stated that if these variances are granted, Habitat will be building their 70th home in McKinney. This home is on the corner of Carver and Roosevelt. Although the requested setback at the corner will be 8', it is actually 19' 3 ¾" from the home to the curb. The home will be sponsored by Bank of America. There was no one else to address this item. Brian Wing moved to grant the variances as requested. Second was made by Cam McCall. The motion carried unanimously.

Item #11-02 A request by Amy Goodwin to appeal the interpretation of the plat and plat notes by the Chief Building Official that the Tree Preservation and No Build Zone identified therein prohibits the construction of a fence on the rear property line of the properties located 501 Park Lane Drive and 409 Park Lake Drive, being Block A, Lots 16 and 17, Kings Lake Phase II.

Amy Goodwin addressed the Board to present her request. She stated that she lives at 501 Park Lake and owns the adjoining lot, 409 Park Lake. She advised that it is a gated community. She stated that not allowing her to have a fence on her property line poses three specific problems for her: she is denied exclusive possession of her property, trespassing problems, and her property is primarily used by Autumn Ridge residents.

Ms. Goodwin stated that she had photos of her rear property, the common area and the fencing that she would like to present to the Board. Board Chairman, Les Clow advised Ms. Goodwin that the appeal was to the interpretation of the plat notes, and the Board would not need to review the photos.

Ms. Goodwin stated that she felt the Autumn Ridge residents had use of her property and the appearance that it was part of their property. She felt she has a right to fence her property on the property line.

Ms. Goodwin stated that the City would not assist her in her attempts to change the plat. She felt that there needed to be a replat and that it should be at the City's

expense. She is asking the Board of Adjustment to overrule the Chief Building Official's interpretation, prohibiting her to move her fence to the property line.

Don Mueller asked Ms. Goodwin if she looked at the plat at the time of her purchase of the property. He advised Ms. Goodwin that as she had purchased the properties with the easements, Tree Preservation and No Build Zone, and plat notes clearly stated on the plat, this appears to be a self-imposed hardship.

Ms. Goodwin stated that this is not an issue of disclosure, however, she did not know about the easements. She stated that even so, the City cannot give away property.

Next to speak was Kim Sherman, 505 Park Lake Drive. Ms. Sherman stated that she felt the Goodwin family does have a liability due to the trespassers. She states that the fence should be allowed to be moved and the property replatted.

Allen McCormick, 6301 Avalon Woods Drive, addressed the Board. He advised that he is on the Architectural Review Committee and that he backs Ms. Goodwin's request. He states this is a strong infringement of her property rights. He added that Homeowner's Association does not disapprove. He stated that no legal decision was ever made regarding the challenge. He requests the City re-examine the placement of the fence to see if the location is correct.

Andrew Shull, 405 Park Lake Drive, stated to the Board that they all wanted the same thing. The question is where the fence goes. He stated the No Build Zone would still exist, the fence would only be in a different location. The view would still be the same for the residents.

George Balsam then addressed the Board. He stated he is a member of the Autumn Ridge Homeowner's Association. The Association consists of 17 families. He stated that the fence restrictions were clearly described on the plat and the interpretation of the Chief Building Official was correct. The notes depict what was settled out of court. This was a result of a compromise by Autumn Ridge residents, who actually wanted no fence at all. The property was surveyed for the placement of the fence, and it was there when Ms. Goodwin was buying the property. He reiterated that the Chief Building Official's interpretation was correct and that a fence should not be allowed in the No Build Zone. He added that the common area should be available to all Stonebridge residents.

Dianna L. Talcott, 408 Treeline Drive, addressed the Board. She stated she had been dealing with this issue from the beginning. She stated that she chose her lot because of the trees and the common area in the rear. She said that she does not have a fence, and the fence is not the property line, the survey is. She added she custom built her home with a tree view. She stated that she was involved in the five year law suit that resulted in the current plat. She stated that she completely agrees with the Chief Building Official's interpretation of the plat notes.

John Landreth, 600 Golden Leaf Lane, addressed the Board. He stated that he is part of the ARCH group. He stated that the language is very clear and that the Chief Building Official has the interpretation right.

John Glascock, 6103 Crimson, addressed the Board. He advised the Board that the five year long law suit was a hardship on all the residents. Most of the residents didn't want any fence in the Tree Preservation and No Build Zone. That was the developer's idea. He added that he agrees with everything on the face of the plat.

Kirk Ferguson, 604 Golden Leaf Lane, addressed the Board. He stated that he lives in Autumn Ridge and he agrees with everything said by the Autumn Ridge residents. He stated that he feels Ms. Goodwin made several errors in her presentation. For instance, the law suit mentioned was on record, Cause #416140103. He stated that Autumn Ridge was sued, and had to counter sue. A "Compromise Settlement Agreement" was reached, allowing the current fence where it stands. He also stated that the City has the interpretation of the plat exactly right.

Ron Mason, 6203 Crimson Drive, addressed the Board. He stated the he moved there in 2005. He stated that he loved the trees and the greenbelt, but he did look at the documents and talked with his neighbors before purchasing the property. He stated that he agrees that the City has the interpretation correct.

Tony Able, 6107 Crimson Drive, addressed the Board. He stated that he received a letter from the Homeowner's Association stating that there would always be a common area. He did not want to see a fence in the Tree Preservation and No Build Zone.

Lesya Perry, 412 Treeline Drive, addressed the Board. She stated all the residents fell in love with their properties based on what they saw. She asked why we should change it now.

Last to address the Board, was Alan Lathram, City Attorney. He stated that the item before the Board was not a variance, but an appeal to an interpretation of what was found on the face of the plat. He stated that he heard no evidence that the interpretation by the Chief Building Official was in error. He advised that the Board of Adjustment cannot change the use, the zoning, or the language on the plat. He stated that Ms. Goodwin had been advised of the process to do that. He stated to clarify, the role of the Board is to determine if the Chief Building Official is error in his interpretation. Did he interpret the language on the plat correctly or incorrectly.

Kathleen Galarza moved to close the public hearing. Second was made by Brian Wing. The public hearing was closed.

During a short discussion, Don Mueller stated that the plat notes were very black and white, and included there would be no fencing in the common area. There was nothing to indicate that Ms. Goodwin shouldn't have known that on the property she purchased. He added that he supports of the interpretation of the Chief Building Official.

Chairman Les Clow asked for a motion to uphold the interpretation of the plat by the Chief Building Official. Brian Wing moved that the Board of Adjustment uphold the interpretation of the plat notes by the Chief Building Official, that the Tree Preservation and No Build Zone identified therein prohibits the construction of a fence on the rear property line of the properties located 501 Park Lane Drive and 409 Park Lake Drive, being Block A, Lots 16 and 17, Kings Lake Phase II. Second was made by Cam McCall. With a unanimous vote, the Board upheld the interpretation of the plat notes for Kings Lake, Phase II, by the Chief Building Official.

Kathleen Galarza moved to adjourn the meeting. Second was made by Don Mueller. The meeting adjourned at 6:40 p.m.

Les Clow, Chairman