

MINUTES

BOARD OF ADJUSTMENTS

REGULAR MEETING

Tuesday, March 17, 1992

10:00 a.m.

Members present: Joyce Rigler, Don Hawkins, Lewis Ozuna, Ben Turbeville, and Robert Boone.

Members absent: David Wright and Bill Harris.

Staff present: Gene Cravens, David Hall and Pat Payne.

Visitors: List.

The **first item** of business was calling the meeting to order at 10:07 a.m by Chairman Don Hawkins.

The **second item on the agenda** was consideration and approval of the minutes from the regular meeting of January 21, 1992. A motion was made by Robert Boone and seconded by Ben Turbeville to approve the minutes as presented. Motion carried by the following votes: Ayes: Ozuna, Rigler, Hawkins, Boone, and Turbeville. Nays: None. Absent: Wright and Harris.

The **third item on the agenda** was consideration of and action on a request by Kenneth H. Mitchell, Jr. for a twenty (20") inch variance to the requirements of the Zoning Ordinance, Section No. 9-104 B.(4), for a five-foot fence in the front yard of his property located at 1533 Burns City Road (fence is already in place).

NOTE: A copy of petition of neighborhood property owners objecting to the variance request at 1533 Burns City Road is attached herewith to these minutes.

Mr. Hawkins asked Mr. Mitchell if he wanted to speak in behalf of his request. Mr. Mitchell replied he would and began by saying that he wanted the fence to contain goats in, in order to keep the grass from getting too high. He explained the type of fence he wanted, being pipe with steel wire panels to replace the barbed wire already there along with temporary panels.

Mr. Cravens explained that forty inches is the maximum height for a fence [subsurface structure] in the front yard, and Mr. Mitchell wants a five-foot high fence.

Mr. Hawkins asked why the height increase request. Mr. Mitchell said he has a chow dog that will go over the forty inch fence and also the goats and horses will jump over the lower height.

Photos of the site were handed out to the Board members for their review.

Mr. Mitchell claimed that the area is zoned Agriculture, but Mr. Hawkins clarified that the area is, in fact, zoned Single Family Two.

Joyce Rigler was concerned that the animals Mr. Mitchell was keeping in the front yard are too close to the adjoining property owner's front yard. She said she was also concerned about the odor in the neighborhood caused by the animals. She asked Mr. Mitchell how many animals he was keeping in the yard. He replied that at the present time there are two, but from time to time there are about twenty goats when the grass gets too high to graze it down. He said he wasn't aware of an odor problem.

Mr. Cravens continued to explain the fence requirements of the Zoning Ordinance and also the setback requirement for front yards in the SF-2 zoning districts.

Mr. Hawkins asked if anyone was present to speak in opposition to the variance request. Mr. John Webster spoke, stating that he lives next door and understands that Mr. Mitchell has a farm outside the City limits and doesn't understand why he doesn't take his animals out there. He also said he doesn't see the need for a higher fence. There is also land behind the property in question Mr. Mitchell could use for pasturing his animals.

Mr. Henry Kuhn, Jr. spoke next, saying he also lives next door and he and his wife feel that the fence is an eyesore to their neighborhood and the animals do smell. He continued by saying they do not go along with the request for the five foot fence in the front yard.

Mr. Hawkins asked Mr. Cravens if staff had comments on the request. Mr. Cravens said that as far as reasons to grant the variance, the (1) the lot is not configured in any way different to the other lots in the area to provide for special circumstances that might exist; (2) the lot is not preventing Mr. Mitchell from enjoying the same rights and uses of his property as the surrounding property owners.

Mr. Hawkins said, according to the guidelines of the Zoning Ordinance, he didn't feel that there are any grounds to grant a variance, in his opinion.

Mr. Mitchell said the fence across the road from him is five feet tall. However, the fence is a nonconforming use and has been there for some time. Mr. Hawkins explained that the Board is restricted within a certain framework of the law in granting variances on property, and variance are basically set forth to allow the Board to grant a variance to the Ordinance where the property itself has such configuration that it can't be used as other properties in the neighborhood can be used under the Zoning Code; that is not the case in this particular problem.

Mr. Hawkins asked if anyone else on the Board had further comments. There were none.

After no further comments or discussion, a motion was made by Joyce Rigler and seconded by Ben Turbeville to **deny the request for the 20" variance**. Motion carried by the following votes: Ayes: Rigler,

Boone, Ozuna, Turbeville and Hawkins. Nays: None. Absent: Wright and Harris. Abstentions: None.

The **fourth item of business** was consideration and action on a request by Kenneth H. Mitchell, Jr. for a thirty two (32") variance to the requirements of the Zoning Ordinance, Section No. 9-104 B.(4), for a six-foot fence in the front yard of his property located at 1932 N. Weaver Street.

Mr. Hawkins asked Mr. Mitchell if he wanted to speak on behalf of his request. Mr. Mitchell explained that the area is where his office and business property are located. Also, he continued by saying that he uses it for agricultural purposes also and one of the main reasons he wants to put the fence around the front yard is that he has problems with theft. Mr. Mitchell also explained how he would set the fence and the gates. Further discussion ensued regarding the placement and height of the fence. Mr. Mitchell said part of the fence would be similar to the Midwest Supply which is to the south, on the corner of Weaver and Summit. Mr. Mitchell was told that where their fence was located was their side yard, not front yard.

Mr. Hawkins asked Mr. Cravens what the City's position is on the request. Mr. Cravens replied that it is the same as the request previously heard, as far as configuration of the lot in that it is not unique to justify a variance. Mr. Hawkins agreed and explained this further to Mr. Mitchell.

After no further discussion, a motion was made by Joyce Rigler and seconded by Robert Boone to **deny the variance request for fence height** at 1932 N. Weaver Street. Motion carried by the following votes: Ayes: Turbeville, Boone, Ozuna, Rigler and Hawkins. Nays: None. Absent: Harris and Wright. Abstentions: None.

After no further business, the meeting was adjourned at 10:44 a.m.