

CITY OF FISHERS
BOARD OF ZONING APPEALS - FALL CREEK DIVISION
CITY HALL AUDITORIUM
MINUTES
June 24, 2021

APPROVED

The Fall Creek Board of Zoning Appeals convened at 6:00 p.m.

A roll call was taken. Members present: Steve Richards, Joel Fenske, Chris Huck and Rich Bassett. Others present: Rodney Retzner, Megan Schaefer, Kelly Lewark, Tracy Gaynor, Robert Becker, James Dolan, Vasilis Makris, Ron Hicks, Brad Dick, Jeff Kucic, Andrew Sherrod, Charles McDaniel, Carolina Rashidfarokhi, Shelley Hall, Erney Nickou, Jennifer Davisson, Matthew Martella, Kelley Barron and David Woods.

Mr. Richards confirmed quorum and called the meeting to order.

Election of Officers, Appointments, and Designations:

- I. Election of President - Mr. Bassett made a motion to appoint Mr. Richards as President, seconded by Mr. Fenske. Motion approved 4-0.**
- II. Election of Vice President - Mr. Richards made a motion to appoint Mr. Bassett as Vice President, seconded by Mr. Huck. Motion approved 4-0.**
- III. Appointment of Secretaries - Mr. Richards made a motion to appoint Megan Schaefer, Ross Hilleary, Andrew Magee, Jonah Butler, Tyler Folk and Bre King as Secretaries, seconded by Mr. Huck. Motion approved 4-0.**
- IV. Appointment of Recording Secretary - Mr. Richards made a motion to appoint Kay Prange and Kelly Lewark as Recording Secretaries, seconded by Mr. Fenske. Motion approved 4-0.**
- V. Designation of Fall Creek BZA Legal Counsel – Mr. Richards made a motion to designate Krieg DeVault as Legal Counsel, seconded by Mr. Bassett. Motion approved 4-0.**
- VI. Designation of FCBZA Legal Publications – Mr. Richards made a motion to designate the Noblesville Times and The Current as the official publications, seconded by Mr. Fenske. Motion approved 4-0.**

Mr. Richards made a Motion for the approval of the December 2020 minutes, seconded by Mr. Fenske. The Minutes were approved 4-0.

Public Hearings:

a. Case # VA-21-22 Geist Lake Forest

Consideration of a Development Standards Variance from Article 6.2. Accessory Structure Standards of the City's Unified Development Ordinance (UDO) to allow for the expansion of an accessory structure. The improvements exceed the scope of the initial variance, 19-V-09F, approved July 23, 2009.

Robert Becker who represents Taso's Toys, LLC presented a video outlining their variance request. He mentioned there were several neighbors attending in support. He stated Taso's Toys and Vasilis Makris comply with all the standards set by the City of Fishers besides this matter. They don't believe they need to enhance the lean-to right now, However, if RREF chooses to remove the forested area and fill the ravine, they would be open to screening the lean-to, perhaps with an ivy fence

Mr. Richards opened the meeting to Public Comment.

Brad Dick (Bose, McKinney & Evans) who represents Geist Lake Forest Neighborhood and RREF presented their concerns to the board. He stated according to IC-36-7-4-918.5, Taso's Toys has the burden to prove:

- 1) The approval will not be injurious to the public health, safety, morals and general welfare of the community.
Issue/Concern: the lean-to was constructed without a permit and could not be structurally sound. There are numerous wires hanging that can cause a fire hazard.
- 2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
Issue/Concern: their client's properties will suffer devaluation due to the owner refusing to clean the property, looks like a junkyard. They only cleaned up the property after the City got involved. The lean-to is located only 1-2 feet from the property line. Lighting is uncovered and pointing at Lot 5. There are very large commercial type signs hanging in the lean-to.
- 3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property.
Issue/Concern: the owner will not suffer a significant financial injury due to using scrap metal materials for the lean-to. The problem is self-created since they added the lean-to without a permit. The original structure along with the lean-to exceeds the square footage allowable (approx. 6,000 sq. ft. for main building + 3,000 sq. ft. for lean-to).

Mr. Dick stated because of these concerns, their clients request the FCBZA to deny this variance.

Ron Hicks (15478 Martha Street) – stated he believes the petitioner's lean-to is not an eyesore. There's nothing dangerous going on at the property. He believes RREF wants them removed entirely. He is in support of the structure. There were 5 other neighbors in attendance that felt the same way.

Carolina Rashidfarokhi (15518 Provincial Lane/15676 Bodrum Dr) bought 16 acres that abut this property (Luciana Estates). She noted that owners of Lot 7 (Webbers) were not able to attend but submitted their comments beforehand. She stated the lot should be developed as residential according to the Comp Plan. As is, it does not meet architectural standards.

Jeff Kucic (11088 Preservation Pt.) – a Fishers resident and a licensed real estate broker representing the developers. He stated there is a negative impact trying to sell acreage home sites with this structure in view. He feels it devalues the surrounding properties.

Charles McDaniel, co-owner, RREF – he shared the foreclosure timeline of the properties and believe Dr. Makris was still the owner at the time the lean-to was constructed. He also noted the trash that was removed from Lot 4 is now behind lot 5.

James Dolan (10670 Red Berry Ct) – potential buyer of Lot 6. He would like to build on Lot 6 but is concerned with the biohazard signs, warnings about camera usage and a gun range. He would like to know what the ultimate use is for Lot 4.

Andrew Sherrod (10651 Florida Rd, RREF) – took down the gate and wants to redo the entrance, also plans to build on one of the lots. Wants to know the intent on Lot 4.

Ernie Nikou (petitioner/owner of Lot 4) – bought the property as an investment. He enjoys cars and likes to shoot. He has not shot out there for a year. When he did, he would always shoot in a safe way. He uses the building for his toys. He is working with city to get it cleaned up and it will get better. He does not want to get pushed out by developers.

Dr. Vasilis Makris – he stated he has been a Fishers resident since 1992. The housing market caused him hardship at the time. He pointed out there a ravine next to the lean-to and nothing can be built next to it. The building was properly

permitted and the property was all his when building was built. The leftover building materials will be removed within 90 days. He is asking the FCBZA to approve the variance as it was an honest mistake not to obtain a permit.

Mr. Richards closed the Public Comment portion of the meeting.

Megan Schaefer presented the staff report. A variance (19-V-09F) was approved for the accessory structure in 2009, which allowed it to be built before the primary structure. The accessory structure satisfied the minimum setback requirements imposed at the time of construction. All six parcels were under the same ownership at that time. Ms. Schaefer asked the board to focus on the lean-to only for the purpose of this request. She stated that the lighting and signage on Lot 4 is non-compliant and would need to be removed but does not affect this variance request. Ms. Schaefer noted in order to bring the property into full compliance, they would need approval of this variance request or to remove the lean-to expansion.

Mr. Bassett noted the illustrations from the variance in 2009 look very similar to what is built today.

Mr. Fenske asked if someone from the City looked at the structure for safety. Ms. Schaefer stated, no, there is no record of staff inspecting the lean-to.

Mr. Richards asked Mr. Kucic about the valuation. Mr. Kucic stated if it was eliminated, Lot 1 & 2 is approximately \$450,000, Lot 3 could go for \$900,000 and Lots 5 & 6 for \$550,000. Mr. Fenske asked Mr. Kucic for clarification if they are talking about the lean-to or the entire building. Mr. Kucic stated the lean-to.

Mr. Richards asked if they can ask that the building be enclosed. He would like to see all parties work together for a resolution. Mr. Retzner said the Board can add that as a condition of approval. Ms. Schaefer stated that enclosing the building would bring the property farther into non-compliance.

Ms. Schaefer noted if the variance request is denied, and the lean-to is removed the concrete slab would remain. Mr. Richards asked if that changed what can be parked or stored on the concrete slab. Ms. Schaefer said that outdoor storage is not permitted in residential areas but cars that are operational are allowed. The board asked if City staff would inspect the structure if the variance is approved. Ms. Schaefer recommended adding that as a condition, if the board decides to approve the variance. The petitioner stated he would be fine with any safety inspections. Dr. Makris noted the structure is built soundly.

Alan Townsend revisited the three criteria on granting the variance. He does not believe the petitioner can satisfy all three criteria, even if they screened the lean-to. He noted their investigation into this matter is not complete due to the structure being built first and a primary structure has yet to be built.

Ms. Schaefer stated she would need to research more to see if there were architectural standards back in 2009. She advised the board if they were to approve the lean-to with screening, they would need to be as specific as possible as far as design. She added that screening on Lot 4 is impractical whether there is a lean-to or not.

Mr. Becker noted they would entertain any conditions.

Mr. Richards excused RREF to go outside and discuss among themselves about options that may satisfy them.

The petitioner decided to request a continuance to the next meeting.

Mr. Fenske made a motion to continue VA-21-22 to the next meeting scheduled for July 29, 2021, seconded by Mr. Huck. Motion approved 4-0.

As there was no other business, the meeting was adjourned at 8:09 p.m.

Respectfully Submitted by:

Kay Krantz
Kelly Lewark, Recording Secretary

(for)