



City of Harker Heights
Zoning Board of Adjustment Minutes
January 20, 2015
REVISED

Present:	Carl Ford	Chairman
	David Brown	Board Member
	Chris Diem	Board Member
	Brian Brannock	Board Member
	Dietrich Weiss	Board Member
Staff:	Joseph Molis	Interim Director of Planning & Development
	Courtney Peres	Planner/GIS Coordinator
	Steve Philen	Building Official
	Michael Beard	Building Inspector
	Kim Dugger	Administrative Assistant Planning & Development

Members of the Board were sworn in previously before the meeting.

A quorum was established, and the meeting was called to order at 6:00 p.m.

First order of business was election of officers and review of Code of Ordinances. Mr. Brown made the motion to nominate Carl Ford as Chairman and Mr. Diem seconded the motion. Motion passed 4-0. Joseph Molis introduced the staff to the Board and asked if there were any questions about the ZBA portion of the Code of Ordinances that was issued in the packets. Chairman Ford stated that he had previously brought up some questions with the previous Planning Directors and has also addressed the issues with the City Manager. He would like to see some additions to better define the codes. He stated under Conditions and Findings, it states that if the Board Members do not follow and adhere to these conditions by what is in the ordinance, the applicant can grieve the decision and hold the Board personally liable. If held liable, the individual member would be subject to personal liability and would be compelled to provide their own defense. Secondly, Chairman Ford would like Article E 155.221 under Appeals to the Board clarified. He questioned the differentiation from an appeal of the decision of an officer and an application for a variance. Is an application for a variance asking for an appeal from the ordinance or is it something different? Mr. Molis stated it does appear to be the essentially the same thing - an official making the interpretation of the code and by disagreeing with the code, they are asking for a variance and you are in essence appealing a decision made by someone. He interpreted the intent that when a decision is made, for example, the City Council, following a Planning & Zoning meeting. He thinks you can appeal the City Council ruling to this body. Mr. Molis said the City would have to contact the city attorney for clarification. Chairman Ford asked that in the future when we receive information from someone appealing or asking for a variance, that we go ahead and forward to board members as soon as we can so that research may be done and the board is better prepared. Mr. Molis said that staff will start notifying the board in the future as soon as we receive an application. The last concern from Chairman Ford was that the ordinance said the board may compel witnesses. Mr. Molis stated that was correct. Chairman Ford said if you aren't prepared to answer questions, at least send an email or call for a special meeting for discussion. He wanted to know the procedure to call a witness or City employee in to

answer questions – would it have to be by subpoena? Mr. Molis stated he would contact the City Attorney for clarification.

The next item on the agenda was the approval of the minutes from the October 23, 2013, meeting. Mr. Diem made the motion to approve the minutes and Mr. Brown seconded the motion. The motion passed unanimously (5-0).

The case before Zoning Board of Adjustment, Case #2014-01, to discuss and consider a request by Mr. Chris Doose for a variance from the required 25' front yard setback to 15' front yard setback, and a variance from the required 10' side yard setback to a 6' side yard setback on property located at 103, 105 and 107 Stone Canyon Court, described as Lots 8, 9 and 10, Block 12, Tanglewood North 4th Unit, 1st Section. Mr. Molis explained that Mr. Doose is requesting these variances so that he can construct residential duplexes. This property was previously rezoned from R-1 to R-2. Mr. Molis said that because of the extreme topography of the lots, it has created an exceptional situation for these properties. By granting the variances, it would assist in protecting surrounding properties from potential drainage harms resulting in the development of the properties. 72 notices were sent out and only 1 response was received in opposition to the request. Staff recommends approval of the request submitted. Representing the request was Chris Doose. Mr. Diem questioned Mr. Doose with concerns over the drainage. Mr. Doose stated he had an engineer to design the plans and has built a concrete flume and once it is completed it will go all the way up to #107 to help channel and improve the drainage issue. Chairman Ford was concerned about the volume of water running in the flume and feels it will be very problematic and wanted to know if the City was satisfied with this solution and that it would not be creating another problem. Mr. Doose said the last 15 feet will have boulders poured into the concrete and will create a slurry to slow the water down. Chairman Ford then asked if it would create a backup. Mr. Doose explained that he did have an engineer to design the plans and that he has the ability to build on the lots regardless if the setbacks change or not. He explained that the setbacks would help with the building and help with the drainage. Mr. Molis then stated that this did go through the platting process and the City Engineer, Director of Public Works and the Building Official determined that the plans were adequate. Chairman Ford then questioned how Mr. Doose would accommodate parking and wanted to know what the off street parking requirement was. Mr. Doose and Mr. Molis both stated they believed it was 2 ½ cars per unit and there would be adequate room for parking in front of the building. Mr. Diem then asked how big the back yard would be considering the fill zone. Mr. Doose stated with the setbacks, he would be able to provide a back yard before you get to the retaining wall. Behind the retaining wall would be the concrete flume. Chairman Ford then stated to Mr. Doose that by applying all three properties on one request, that it would jeopardize the other 2 properties should they want to disapprove variance on one property then all would be disapproved. Mr. Doose then questioned Mr. Molis if the request had been written that way and Mr. Molis stated yes. Chairman Ford mentioned it would be his opinion to apply separately in the future. Mr. Diem then asked if there had been previous developers who did not want to develop on the property due to the topography concerns. Mr. Molis stated he was not sure what the reason was but that that certain area had been developed in phases and was not sure if that is what was left from a phase or not. Mr. Doose stated he had acquired the property through foreclosure and that he had a strong

reputation for building in challenging areas of the City. He stated once the custom duplexes are built, they will be sold. Chairman Ford then stated when you move so much soil; it ends up being really difficult to get the compaction that you need to provide a foundation that will not make the unit shift. Mr. Doose said he had a geo-technical engineer to do borings on all 3 lots and had a report written. Mr. Doose then filled each lot according to the report and each time they did a lift they used a roller and compacted the soil. He said the topographical on the ground survey is accurate and that the aerial photography topography was not accurate. Mr. Molis stated that the photography topography was fairly accurate but that the on ground survey would be significantly more accurate. Mr. Doose stated the hand marks on the ground reflected his changes. Chairman Ford then opened the public hearing. No one spoke in favor or in opposition to the request. Chairman Ford then stated he would like to see the swearing in of witnesses on the agenda for meetings to come. He said that decisions are based on the sworn testimony and evidence and then asked everyone in the chambers to rise and take the oath. The sworn oath applied to all statements made during this meeting. With no further questions, the public hearing was closed and opened for discussion for the panel. There was no further discussion. Chairman Ford reviewed Section 15, 155.222, D of the City of Harker Heights Code of Ordinances so that when the Zoning Board of Adjustment is reviewing this case that the following six items be specifically reviewed prior to approving or disapproving the request: (1) The application of §155.023 and §155.039 of the City of Harker Heights Code of Ordinances to the property would create a practical difficulty because the property is subject to exceptional physical conditions; (2) The practical difficulties or unnecessary hardship were not created by the applicant; (3) The variance is the minimum needed to prevent a practical difficulty or an unnecessary hardship. Chairman Ford then asked Mr. Doose if this variance was the minimum he could accept in order to build. Mr. Doose replied yes. Continuing, (4) The variance will not impair an adequate supply of light and air to adjacent property, substantially increase congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood; (5) The variance will be in harmony with the general purposes and intent of the Ordinance and the Comprehensive Plan. Chairman Ford then questioned Mr. Molis if the Comp Plan was in harmony and Mr. Molis stated yes. And finally, (6) The property complies with all other aspects of the Zoning Ordinance. Chairman Ford questioned Mr. Molis if the property complied with all other inspections and zoning ordinances. Mr. Molis stated yes.

Mr. Diem made the motion to approve the variance as recommended by the City and based off of the testimony heard and the six qualifying conditions discussed. Mr. Brannock seconded the motion. Voting in favor was: Mr. Brown, Mr. Diem, Mr. Brannock and Mr. Weiss. Vote passed (4-0).

Chairman Ford asked if there was any other business to discuss. Mr. Diem stated he appreciated the detailed work that went into to putting the packets together with the information they needed to answer their questions. Mr. Molis stated that City staff could change internal procedures to help accommodate the requests that were made. He also asked Chairman Ford to forward emails with concerns and issues that were sent to the previous Planning Director since he does not have access to his emails so that he could

address the issues at a future meeting. Chairman Ford said that he had them with him and that we could make a copy. He said he has discussed matters with the City Manager but has not heard back from him since March. He called in September and they told him they were working on it. He said in a couple of more weeks he will be contacting the Council.

Mr. Brown made to the motion to adjourn the meeting and Mr. Brannock seconded the motion. Meeting was adjourned at 6:48 p.m.

Carl Ford

Carl Ford, Chairman

ATTEST:

Kimberly K. Duggan