



**CITY OF HEDWIG VILLAGE, TEXAS
BOARD OF ADJUSTMENT
SPECIAL CALLED MEETING
THURSDAY, JUNE 20, 2019
6:30 P.M. - 955 PINEY POINT ROAD**

MINUTES

1. Call To Order

Chairman Schenk called the meeting to order at 6:30 p.m.

Present: Gary Schenk, Chair
Harlan Bergen, Member
Charles Matthews, Member
Jeremy Sanders, Member
Sam Searcy, Member

Zack Petrov, City Attorney
Kevin Taylor, Building Official
Evan DuVall, Building Official
Lisa Modisette, Assistant City Secretary, Board of Adjustment Secretary

Absent: None

2. Vote for Chairperson and Vice-Chairperson

Member Charles Mathews motioned, Member Searcy seconded, to nominate Gary Schenk as Board of Adjustment Chairperson.

Members Bergen, Matthews, Sanders, Schenk, and Searcy voted "Aye", "Noes" none.

MOTION CARRIED UNANIMOUSLY

Chairperson Schenk motioned, Member Sanders seconded, to nominate Sam Searcy as Board of Adjustment Vice-Chairperson.

Members Bergen, Matthews, Sanders, Schenk, and Searcy voted "Aye", "Noes" none.

MOTION CARRIED UNANIMOUSLY

3. Approval of Minutes

Member Searcy motioned, Member Sanders seconded, to approve the minutes from the February 25, 2019 meeting.

Members Bergen, Matthews, Sanders, Searcy, and Schenk voted "Aye", "Noes" none.

MOTION CARRIED UNANIMOUSLY

Zach Petrov, City Attorney, explained the Board of Adjustment (BoA) is a quasi-judicial board authorized by State law and City Code to hear cases involving appeals of administrative official determinations, special exception requests, and variance requests. The City Board of Adjustment consists of five members with alternatives serving only in the absence of the regular members. All regular members are present at this hearing.

The hearing before the BoA is for a request for a variance from the Planning and Zoning Code. The process for the public hearing will be as follows:

- The Chairperson will open the Public Hearing.
- The applicant will present their case for the granting of the variance request.
- The City's Building Official will give a report on the variance request.
- Members of the public will have an opportunity to speak and address the Board. Those in favor of the variance request will speak first followed by those in opposition. This is not an opportunity for a question and answer session. The public can address their questions and concerns to the BoA so the BoA can then address those questions and concerns to the applicant.
- The applicant will be given an opportunity to speak in rebuttal to comments made by the public.
- The BoA members may ask questions and address concerns to the city staff, the applicant, and any member of the public who spoke.
- The Chairperson will close the Public Hearing after determining there are no additional BoA questions or comments. There should be no additional questions after the Public Hearing is closed.
- The BoA members will deliberate on the variance. The vote must have at least four members in favor of the variance to pass.

Zach Petrov stated there are standards required for the BoA to approve a variance. He stated the BoA may approve a variance if:

- An unnecessary hardship exists for the property owners. The hardship may not be solely financial and cannot be self-created.
- The variance is necessary to secure appropriate development.
- The variance is not materially detrimental or injurious to other property in the area.
- The variance is not contrary to the general spirit or intent of the Code.

The BoA may attach conditions that are reasonably related to the variance request when approving the request.

The burden of proof is the responsibility of the applicant to show the standards for the variance request have been met.

Following deliberations the BoA may:

- Approve the variance request with or without conditions as deemed necessary.

- Modify the variance request and approve as modified.
- Deny the variance request.
- Vote to continue the matter to gain additional information and evidence.

To approve a variance, a modified variance, or a variance with conditions requires a minimum of four out of five votes in favor. Any vote less than the four necessary would be a denial of the variance. All voting should be conducted in the affirmative and will be done by roll call. Making a motion to grant a variance do not indicate a willingness to vote in favor of the variance.

4. Public Hearing on a request for a variance:

Property: 11521 N Lou Al Court, (HCAD #0770950050001)
Applicant: Lush Outdoor/Kyle Walker
Variance request: Variance from Section 505.B(10)(a), Fences, of the Zoning Ordinance of the City of Hedwig Village, in order to allow for a front-yard fence on the property.
Legal Description: Lot 1, Block 5 of Lou Al Courts, a subdivision in Harris County, Texas

5. Discussion and Action: Regarding the requested Variance at 11521 N Lou Al Court (HCAD #0770950050001).

Lush Outdoor Living, Inc., the applicant, spoke on behalf of the resident. The resident did provide written permission to Lush Outdoor Living, Inc. to speak on his behalf.

Lush Outdoor Living, Inc. presented evidence and testimony on behalf of the resident for the approval of a variance to place a front yard fence. The resident has a unique hardship due to the nature of his employment. The resident requests a front yard fence to protect the privacy and safety of his family as well as limit the harassment from passers-by.

The proposed front yard fence would be a Japanese Yew boxwood hedge fence six feet in height. The height would be maintained at six feet. The fence would have three openings, two in the front of the house for the circular driveway as well as one on the side of the house for the driveway. There would be no gate installed at any of the three openings.

Kevin Taylor, Building Official, stated the fence ordinance, as written, defines a fence as “any visible or tangible obstruction to sight or passage of humans or animals interposed between two portions of land or which divides a piece of land into distinct portions.” Therefore the proposed front yard fence was denied by the Building Department and is prohibited by Code.

Several neighboring homeowners spoke against the variance citing various issues such as negatively affecting the neighborhood, the impact the fence would have on the visibility of traffic, and the fence impacting public safety.

One neighbor spoke in favor of the proposed fence citing the property owner's right to safely enjoy his property.

The applicant spoke to the comments and concerns of the residents. The hedge fence would be placed twenty five feet back from the curb. The applicant is willing to work with the City on the placement of the fence to ensure the safety of the citizens. The fence would have to comply with the City's traffic requirements regarding safety and visibility at turns.

The BoA members asked questions of the applicant, the residents, and the Building Official regarding the property, the proposed fence, the traffic issues, and spoke of their own personal experiences in relation to the property, the neighborhood, and the traffic issues.

The BoA members deliberated on the proposed fence and upon a duly made motion and second, the request for a variance for a front yard was denied by a vote of 3-2.

Member Sanders motioned, Member Searcy seconded, to approve the granting of the variance conditioned on Lush Outdoor Living, Inc. full compliance with the safety standards set with that neighborhood.

Members Bergen, Sanders, and Searcy voted "Aye", Members Matthews and Schenk voted "No".

MOTION DENIED

6. Adjournment

Chairman Schenk motioned, Member Sanders seconded, to adjourn the meeting at 8:05 p.m.

Approved and accepted on August 11, 2020.

/s/
Gary Schenk, Chairman

ATTEST:

Lisa Modisette

/s/
Board of Adjustment Secretary