

Minutes
Zoning Board of Adjustments
January 28, 2019

After determining that a quorum was present, the Zoning Board of Adjustment of the City of Denton, Texas will convene in a Regular Meeting on Monday, January 28, 2019 at 4:30 p.m. in the City Hall Conference Room at City Hall, 215 E. McKinney Street, Denton, Texas at which the following items were considered:

Present: Board Members: Greg Sawko, William House, Jennifer Lane, David Higgins, and Connie Baker.

Alt. Board Members: 1. Maureen Leak, 2. Emily Meisner, 3. Brian Beck

Staff: Jerry Drake, Ron Menguita, Julie Wyatt, Cathy Welborn, Emily Loiselle, Angela Adams, Josh Hamlin, and Selena Dillard

Absent: Amber Briggie, Eric Horton

Ron Menguita opened the meeting at 4:34pm

1. PLEDGE OF ALLEGIANCE

A. U.S. Flag B. Texas Flag

2. ITEMS FOR CONSIDERATION

A. Consider and appoint a member for the Zoning Board of Adjustment temporary Vice-Chair position.

Ron Menguita, Principle Planner, noted that as Chair Briggie was not present there could not be an official Vice-Chair voted on. Chair Briggie asked that the meeting proceed, and to do so a temporary Vice-Chair must be selected.

Board Member Higgins motioned to nominate Board Member Lane, and Alt. Meissner seconded the motion. Board Member Lane accepted the nomination.

Jerry Drake opened the floor for more nominations, there was none.

Motion to elect Board Member Lane as temporary Vice-Chair approved, (7-0) Board Member Lane, "aye", Board Member House, "aye", Board member Sawko "aye", Board Member Higgins, "aye", Board Member Connie Baker, "aye", Alt. Leak, "aye", Alt. Meisner, "aye"

Board Member Sawko asked if Board Member Lane would be temporary or permanent Vice-Chair, Ron responded that the intention was to elect a permanent Vice-Chair, Chair Briggie asked that the vote be conducted next meeting.

1
2 B. Consider approval of the Zoning Board of Adjustment meeting minutes.
3

4 Board Member Sawko moved to approve the minutes, Alt. Meisner seconded the approval.
5 Motion approved (7-0) Vice-Chair Lane, “aye”, Board Member House, “aye”, Board Member
6 Sawko “aye”, Board Member Higgins, “aye”, Board Member Connie Baker, “aye”, Alt. Leak,
7 “aye”, Alt. Meisner, “aye”
8
9

10
11 C. Receive the 2019 Zoning Board of Adjustment Calendar
12

13 Ron Menguita noted that the calendar outlines the dates for the upcoming 2019 calendar, and
14 typically the board meets on the last Monday of every month except for special circumstances.
15 Vice-Chair Lane added that the start time for the meetings will be 4:30pm.
16

17 2. Public Hearing
18

19 A. ZBA19-0001a:
20

21 Jerry Drake reminded the board that a variance request requires 6 votes on the board to approve.
22

23 Board Member Sawko recused himself due to a possible conflict of interest, Alt. Brian Beck came
24 forward to take his place.
25

26 Julie Wyatt, Senior Planner, was sworn in and made a presentation to the board. Sumeer homes
27 with the Vista del Arroyo development requested a variance from the Denton Development Code,
28 section 35.5.2.3, General regulations, to increase the maximum lot coverage from 60% to 88%. In
29 the City of Denton lot coverage is any impervious surface, such as parking areas, pedestrian
30 walkways, or any surface that rain cannot get through. The zoning of NRMU-12 has a maximum
31 lot coverage of 60%, the applicant is proposing 88%, an increase of 28%. The property was platted
32 in April 2015, as 100 single family attached homes. The lots range from 2,000 square feet to 4,200
33 square feet. The final lot layout of this property was based on a misapplication of the Denton
34 Development Code, and was instructed to follow DDC section 35.13.7.b. subchapter 13. Pervious
35 parking areas can be considered landscaped area and not lot coverage. Driveways that were
36 constructed with bricks, grasscrete, or pavers would not count against lot coverage. In 2018 staff
37 had a discussion regarding an update to parking regulations, the updates would increase the parking
38 requirements for residential developments. During the discussions the misapplication of this
39 property came to light, the code specifically excludes single family and duplex lots from the
40 pervious parking prevision. Therefore the driveways built with brick should count against lot
41 coverage. Using this new information it was discovered that the constructed lots cannot meet lot
42 coverage requirements of 60%. Julie went on to address the criteria for approval of the variance.
43 She noted that staff believe there is a special circumstance that applies to the parcel which is
44 peculiar and not generally applied to other parcels in the district or neighborhood. She stated that
45 the strict application of the ordinance would deny the applicant of a reasonable use of the parcel.
46 Staff also did not believe that it would be detrimental to other properties or their improvements.

1 There was a concern that if the request was to be denied, additional building permits could not be
2 issued for the remaining lots, and would leave the development unfinished. This would in turn
3 negatively affect the homeowners who have already purchased homes in the development. Staff
4 also believed granting of the variance was necessary for the reasonable use for the property, and
5 was a minimal approach. With the compliance of lot coverage requirements it would prevent the
6 balance of the subdivision causing an unnecessary hardship. Julie then presented photos of the site
7 to the board. She also noted that in the future staff is planning on updating the DDC, and with that
8 providing different standards for townhome and duplex developments.

9
10 Vice-Chair Lane questioned the environmental effect of a pond and stream that appeared to be
11 walled off on the property, Julie Wyatt answered that the area is the detention area, and that
12 engineering staff ensured that there was adequate drainage. Vice-Chair Lane asked if the pond and
13 drainage was connected, Julie was unsure if they were, but noted that a lot of water drained to that
14 area.

15
16 Vice-Chair Lane asked about a possible gas well on the property, Julie did not believe the structure
17 on the map to be a gas well. Vice-Chair Lane asked about a few houses that appeared to have had
18 driveways made out of pavers, but the remaining were concrete. Julie was unaware as to how that
19 came to be, originally all driveways were meant to be made with a pervious surface.

20
21 Julie stated that the structure that was previously discussed was not a gas well according to maps.

22
23 Citizen Shelly Monich, a homeowner of the development, was sworn in. Shelly stated that there
24 was a spillway on the back edge of the pond on the property, and when the pond filled it emptied
25 into the stream, and the park had built a culver. She went on to say that the structure thought to be
26 a gas well was a mechanical or utility box that was fenced.

27
28 Board Member Higgins asked if the board was correcting a mistake and making the development
29 consistent with the building code, Julie responded that there was a misapplication of code that was
30 provided to the applicant when the property was platted, and the variance will allow the
31 development to continue.

32
33 Jerry Drake mentioned that staff believed the existing infrastructure was a condition existing on
34 this property that was unique, and not generally applicable to other properties. The standard of
35 hardship was met by the infrastructure that was already laid out.

36
37 Vice-Chair Lane questioned if there was a reason this area was zoned differently than the land
38 across the street. Julie answered that it was due to the 2002 re-zoning, and the area across the street
39 on Elm was intended to have a more regional type development.

40
41 Alt. Beck asked if the hardship would be that developers would have to re-develop parcels to meet
42 code. Julie answered that the developer submitted plans for civil engineering during the platting
43 process, therefore each lot had water and sewer taps and the infrastructure was consistent with the
44 plat. If the variance was not approved there would need to be a re-tooling of the public
45 infrastructure. She also noted that approximately 86 of the 100 lots had not been built yet.

1
2 Drake stated that the hardship does not come from regulations, but from the hardscape in place.
3
4

5 Alt. Beck asked if the intent would be to continue with the porous driveways going forward, Julie
6 responded that there would not be a restriction on what type of material that they use.
7

8 Homeowner Shelly Monich stated that the current pervious driveways do not hold up very well.
9 She also added that if the variance is not approved it puts a hardship on the homeowners as the
10 property value would suffer.
11

12 Jerry Drake noted that the board could approve the variance under a condition that the driveways
13 must be made of a pervious material.
14

15 Alt. Leak asked if the variance was approved would the zoning be changed, Julie Wyatt responded
16 that it would not.
17

18 Vice-Chair Lane asked if by passing this variance, would a neighboring development have a
19 stronger reason to request a variance as well. Julie Wyatt responded that there was a hardship
20 requirement, the analysis would have to be done to see if the development met the criteria. Jerry
21 Drake noted that for an adjacent lot to use this variance, if accepted, as a reason for their suggested
22 variance was legally inadequate. He went on to say that this case is very unusual.
23

24 Board Member House stated that because this case had a clerical error, another developer would
25 not get to the point of asking for a variance because the planning department would not allow it to
26 get past the preliminary planning stage. If the developer was granted this variance they can
27 continue building, the homeowners would be in a finished development, and the prospect of this
28 happening in the future was low. Julie Wyatt added that hopefully this issue would not happen
29 again as the code would be applied correctly.
30

31 Alt. Beck asked if the variance being considered was including an existent plan for porosity, or
32 was this a variance that changes the guidelines for 88% coverage of any type of material. Jerry
33 Drake answered that it would be a variance on the maximum lot coverage only, there is a possibility
34 to have a condition regarding the porous material.
35

36 Julie Wyatt concluded her presentation.
37

38 Alt Leak asked if the structures already built were built to the 60% lot coverage standard. Vice-
39 Chair Lane responded that they were not.

40 Jerry Drake asked if it would be possible to meet the standard for the development overall,
41 notwithstanding the lots that have already been built; possibly making the remainder of the
42 development less dense. Julie Wyatt responded that in order for that to happen it would require a
43 re-plat.

1
2 Alt. Beck stated that the only two options he saw was to either re-plat or approve the variance.
3 Julie Wyatt noted that there is no provision in the code to allow a pervious surface to not count
4 against the lot coverage. Regardless of what the driveway was constructed with, under regulations
5 the driveway, sidewalks, and houses count toward lot coverage.
6

7 Alt. Beck asked what would happen to the 14 constructed homes if the variance was not granted.
8 Julie Wyatt answered that those houses would not be included in the variance.
9

10 Homeowner Shelly Monich asked if there was a code for townhomes, or for only apartments and
11 single-family housing. Julie Wyatt answered that there is no separate standards for townhomes.
12

13 Vice-Chair Lane was concerned that the difference between lot coverage standards and what was
14 being requested was more than 25%.
15

16 The applicant Girish Sumeer was sworn in. He noted that with the driveways and walkways taking
17 up approximately 30% of the lot, there would not be adequate space left to build the homes.

18 Homeowner Shelly Monich noted that if the variance was not granted that she would be living in
19 an unfinished development, and it would be catastrophic to her property value. She also noted that
20 the driveways made with pavers did not hold up and are needing to be replaced.
21

22 Vice-Chair Lane asked if platting was done by the original or current developer, Julie Wyatt
23 responded that it was done by the original developer. She added that walkways are owned by the
24 property owner, and sidewalks are city owned.
25

26 Ron Menguita asked how the request for 88% came to be, Julie Wyatt answered that it came from
27 the applicant. She does not believe that every lot would need the 88% lot coverage. Vice-Chair
28 Lane asked if there could be flexibility of that number, Julie Wyatt noted that it may be possible
29 due to variation in lot sizing.
30

31 Girish Sameer noted that some lots would need all of the 88%, but because of the lots being of
32 different sizing, some lots, such as for duplexes, only need 70% lot coverage. Lane asked if the
33 development would make the walkways pervious and driveways impervious. Mr. Sameer
34 answered that he could do that.
35

36 Ron Menguita noted that if they did not count the driveway, would the zoning requirement of 60%
37 be met? Sameer believed that it would be met. Jerry Drake stated that there would be an issue with
38 changing the variance requested due to the way the agenda is captioned. There cannot be a change
39 in variance requested, but there can be a variance granted with less than what had been proposed,
40 such as changing the lot coverage from 88% to 70%.
41

42 Vice-Chair Lane asked if instead of all lots having the 88% lot coverage variance, if it could be
43 specific such as a number of homes will have 88%, and another number of home will have 70%.

1 She also questioned if there could be conditions on driveways and walkways. Jerry Drake stated
2 that driveways and walkways could be a condition.

3
4 Julie Wyatt stated that there are townhomes and duplexes. There are different sizes of townhomes
5 as well. In townhomes only 8 can be attached, therefore the end units would have a larger lot size.
6 She believed that it could be possible for there to be different variances for each lot depending on
7 what would be built on them. The applicant would need to get that information and the item may
8 need to be discussed in the following meeting. Mr. Sameer stated that depending on the lot, the lot
9 coverage varies from needing 68% to 88%

10
11 Vice-Chair Lane asked Mr. Sameer if he would be able to provide the number of lots that need
12 68%, 70-75%, and those that need 88%. She also asked if he would be able to provide an assurance
13 that walkways would be made with pervious material. Mr. Sameer agreed that walkways would
14 be made pervious.

15
16 Mr. Sameer had a sheet that had representative samples, it did not have every lot in the subdivision,
17 but does show every lot that is available. This sheet was marked as Exhibit 1.

18
19 Jerry Drake suggested continuing the matter in the next ZBA meeting to allow for submittal of the
20 new information unless the applicant and members believed that the exhibit could be done within
21 a timely matter.

22 Board Member House motioned that using what Mr. Sameer had submitted as a guideline, the city
23 allow the variance strictly for the minimum amount of expansion of lot coverage. To meet the city
24 guidelines for the four car driveway of an impervious type, and a pervious walkway to meet the
25 bare minimum of what is needed to meet city guidelines. Alt. Beck seconded.

26
27 Jerry Drake noted that there needs to be a document that writes out which lots are subject to which
28 designations, and that it is incorporated into the order of the commission. He suggested that if that
29 could not be prepared at this meeting, the commission may want to have a vote on something that
30 has more detail. The board may want to do a motion to continue with the direction given to staff
31 and with the applicant to prepare the document.

32
33 Ron Menguita noted that if this item would be moved to next meeting, the following meeting
34 would be held February 25, 2019.

35
36 Homeowner Shelly Monich suggested if Girish Sumeer could make a list showing the number of
37 homes that needed a certain percentage of lot coverage, and do so for all home types. Mr. Sumeer
38 noted that there were 6 different home types, and he could make a list of how many homes there
39 were of each type; along with how much lot coverage each type needs. There was an adjournment
40 at 6:25pm to allow Mr. Sameer to write out the information.

41

1 The meeting was called back to order at 6:34pm.

2
3 Julie Wyatt stated that based upon the boards concerns regarding what percentage of lot coverage
4 applies to each lot, the applicant had provided exhibits. The first 3 are site plans for each lot type,
5 based upon lot width and use. The next exhibit was the plat which referenced each lot type as A,
6 B, C, D, and Duplex, it also referenced how many of each lot there was. There was 19 type A
7 homes at 30ft wide that required 70% lot coverage. There were 23 type B homes that were between
8 25ft that required 81% lot coverage. There were 28 type C homes at 28ft wide that required 88%
9 lot coverage. There were 16 Duplex lots at about 43ft wide, he requested 70% lot coverage.

10
11 Vice-Chair Lane asked if the duplexes really needed 70% lot coverage, Mr. Sameer responded that
12 it was necessary.

13
14 Vice-Chair Lane stated that only 28 lots needed to have the 88% variance, out of the remaining 86
15 homes that needed to be built.

16
17 Jerry Drake mentioned that there would have to be a new motion. Board Member House motioned
18 to increase the lot coverages listed on exhibit 5, as directed by city staff with the walkways being
19 of a pervious nature and the driveways being of an impervious nature. Alt. Beck seconded the
20 motion. Motion approved (7-0) Vice-Chair Lane, "aye", Board Member House, "aye", Alt. Beck
21 "aye", Board Member Higgins, "aye", Board Member Connie Baker, "aye", Alt. Leak, "aye", Alt.
22 Meisner, "aye"

23
24 Ron Menguita mentioned that the next meeting would be February 25, 2019, and the board would
25 be going over training. He then asked the board if they needed paper copies of the ZBA packet, or
26 if they could access the packet electronically. Most of the members preferred to continue getting
27 paper copies. He went on to say that currently there were no cases planned for the next meeting
28 but that can change.

29
30 Board Member House motioned to adjourn, Alt. Meisner seconded. Meeting adjourned 6:44pm.