



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

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Carlos De La Torre, P.E., Director

TO: Board of Adjustment, District 1

FROM: Keith Dennis, Senior Planner
For: Michael Turisk, Planning Manager

SUBJECT: Minutes of Regular Meeting of March 28, 2012

DATE: April 3, 2012

Members Present:

Ed Cottingham, Chairman
Tom Borer, Chairman
Michael Cerepanya, Member

Staff Present:

Keith Dennis, Senior Planner
Britt Hanson, Chief Civil Deputy County Attorney
Michael Turisk, Planning Manager

Others Present:

Nathan Yarbrough, BA1-12-02 Applicant
Monica Vandivort, BA1-12-02 Applicant
Robert Maloney
Michael Thornburg

These minutes for the BA1 meeting held on March 28, 2012 are complete only when accompanied by the memoranda for said meeting dated March 28, 2012.

Call to Order/Roll Call

Chairman Borer called the meeting to order at 6:00 p.m. at the Cochise County Service Center Conference Room in Sierra Vista.

He called the public hearing to order regarding the first Docket, BA1-12-02:

NEW BUSINESS

Docket BA1-12-02 (Yarbrough): The Applicant seeks to establish a medical office, and requests the following Variances to site development standards in a General Business District:

Section 1203.05 (screening); 1203.02 (setbacks); 1804.07.C (paved surface standard – gravel surfacing requested); and 1908.03.B (maximum sign size).

The subject parcel (Parcel # 104-06-020D) is located at 4524 E Hereford Road in Hereford, AZ.

He asked the Applicant if he had anything to add that was not already in the staff memorandum.

The Applicant, Nathan Yarbrough, indicated that the request for a paving surface Variance was being withdrawn, as they intended to pave the required areas.

Mr. Borer then declared the public hearing closed and called for the staff report on this Docket.

Mr. Dennis offered a brief explanation of the Docket and the facts of the case. He showed by means of photographic evidence the nature of the Variances subject to the request, with the exception of the paved surface standard Variance which had been withdrawn. He explained that the setback Variance was being requested in order to be able to provide additional parking along the front yard of the building. Mr. Dennis indicated that the adjacent residentially zoned properties were undeveloped. He also explained that the unique street frontage situation meant that an increased sign size might be appropriate.

He also indicated that staff had received a late comment letter from a neighbor within the notification area, supporting the request.

He offered factors in favor of approval, and recommended approval without condition.

Mr. Cottingham then entered the hearing room, whereupon the Chairman asked for a motion to accept the January 25, 2012 minutes. Mr. Cottingham moved to approve the minutes, Mr. Cerepanya seconded the motion, and the motion passed 2 - 0, with Mr. Cerepanya abstaining.

Turning his attention back to the Docket at hand, Mr. Borer asked Mr. Cottingham if he intended to recuse himself from the Docket. Mr. Cottingham indicated he did know the Applicants, but he would defer to the Chairman as to whether he ought to recuse himself. Mr. Borer said he approved of Mr. Cottingham participating in the hearing.

Mr. Cottingham then asked the Chair to have staff repeat the Variances under consideration, and Mr. Dennis complied.

Mr. Borer then called for a motion. Mr. Cerepanya moved to approve the Variances as recommended by staff. Mr. Cottingham seconded the motion and the motion passed on a 3 - 0 vote.

There followed a brief discussion with the Applicant as to next steps in the commercial permitting process.

Chairman Borer then called for the next item on the agenda:

Docket BA1-11-08 (Bays): Consideration and discussion to clarify Michael Thornburg's position on Docket No. BA1-11-08 (Bays), being a request by Applicant Paul Randall Bays for a 6-foot height Variance in a TR-36 Zoning District. The Board granted the Variance at their regular meeting of January 25, 2012. Mr. Thornburg has requested that the Board of Adjustment convene to hear his testimony, and to re-consider the Docket in question. If the Board grants his request, Docket BA1-11-08 will be re-considered by the Board at their regular meeting of April 25, 2012.

Mr. Borer began by offering a history of this Docket, going back to what was to be the original hearing on this matter from December 21, 2011, through the actual hearing on January 25, 2012, and what had transpired since.

Mr. Britt Hanson then interjected and clarified that the purpose of this hearing was to hear Mr. Thornburg's testimony and decide whether or not to re-consider Docket BA1-11-08. He indicated that the Board's by-laws do provide for re-consideration of a Docket, but that it was deemed prudent to hear Mr. Thornburg's testimony first, and then decide whether to re-hear the Docket.

Mr. Borer thanked Mr. Hanson for clarifying the purpose of the hearing.

Mr. Thornburg then read from a prepared statement, wherein he provided the following testimony:

- That he provided a written objection prior to the December 21, 2011 hearing, and spoke with staff regarding his objection prior to that hearing;
- His belief is that his position was misrepresented at the January 25, 2012 by the Applicant. Namely, he contends that the Applicant told the Board that Mr. Thornburg had withdrawn his objection, when he had not. Mr. Thornburg said that if he intended to withdraw his objection, he would have done so in writing. Furthermore, he said that neither himself nor his wife had spoken with Mr. Bays in over a years' time, indicating that the Applicant's testimony at the January 25 hearing, wherein Mr. Bays stated that he had spoken with Mr. Thornburg, was false.
- He re-stated what he had said in his previous written testimony, that due to the fact that his property was at a lower elevation than that of Mr. Bays, his views of the mountains to the West and South would be significantly impacted by the construction of the building, especially at the requested height.
- He concluded by stating his belief that the Variance would not constitute a true hardship under state law, and asked the Board to re-consider the Docket at their next regular meeting.

Mr. Cottingham reminded the Board of how he had voted in January, and that his position had not changed.

Mr. Cerepanya said that, this being his first meeting, he was unfamiliar with the history of the Docket, and that it might be appropriate to re-consider the Docket. This way, he said, the facts of the case could come to light in the usual manner, and he would be able to hear both sides of the issue. He said that it would be difficult to vote one way or the other absent this process.

Mr. Borer asked Mr. Hanson if the letter sent to Mr. Bays specified whether the Variance would be re-considered at this hearing, or if it was to decide whether to re-hear the Docket. Mr. Dennis answered, saying that the most recent correspondence to the Applicant was essentially the same as what the Board had before them, and was consistent as well with what was advertised in the newspaper.

Mr. Borer said that he would agree with the other members of the Board and re-hear the Docket at the April 25, 2012 meeting.

Mr. Cottingham asked if the permit had been issued for the building, and Mr. Dennis said it had not. He in fact had the permit in the Docket folder and the permit was considered on hold pending the outcome of these proceedings.

Mr. Borer stated it was his wish that the Docket proceed as if from the beginning, and that staff treat it as a new Docket.

Planning Director's Report:

Mr. Dennis welcomed Mr. Cerepanya to the Board. Mr. Dennis deferred to Planning Manager Michael Turisk for the Director's report. Mr. Turisk had nothing to report.

The meeting was adjourned at 6:35 p.m.