



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety
1415 Melody Lane, Bisbee, Arizona 85603

(520) 432-9240
Fax 432-9278

Carlos De La Torre, P.E., Director

TO: Board of Adjustment, District 2

FROM: Beverly Wilson, Senior Planner

For: Carlos De La Torre, Community Development Director

SUBJECT: Minutes of the Regular Meeting of April 4, 2012

DATE: April 5, 2012

Members Present:

Albert Young, Chairman
Patrick Greene, Vice Chairman
Gerald Eberwein, Member

Staff Present:

Beverly Wilson, Senior Planner
Michael Turisk, Planning Manager
Jack Holden, Building Official

Others Present:

Alexandro and Norma Criado

These minutes for the BA2 meeting held on April 4, 2012 are complete only when accompanied by the memoranda for said meeting dated April 4, 2012.

Call to Order / Roll Call:

Chairman Albert Young called the meeting to order at 6:00 p.m. at the Board of Supervisors' Executive Meeting Room at the County Complex in Bisbee. He explained the procedures of the meeting to those present, and noted all three members of the Board were present, establishing that the Board had a Quorum and could proceed.

Mr. Eberwein made a motion to approve the minutes of the February 1, 2012 regular meeting. Vice Chairman Greene seconded the motion, and the vote was 2-0 to approve the minutes of the meeting. Chairman Young abstained.

NEW BUSINESS

Docket BA2-12-02 (Criado): Chairman Young asked for the Planning Director's report which Beverly Wilson then presented. Docket BA2-12-02, which is a request for a variance from the Cochise County Zoning Regulations Section 904.03, which requires a 10' setback from all property boundaries in a SR-12 Zoning District. The Applicant applied for this variance on parcel (#406-26-113), located at 1766 E Golf Course Road in Douglas, AZ. The Applicant is applying for this variance to legitimize an existing 18' x 26' studio apartment which is less than one foot from the east and north property lines. Ms. Wilson explained that the site plan submitted for the permit to build this structure showed 10' setbacks from both the east and north property lines and that it would lie outside of the 10' Public easement which lies along the northern property line.

Ms. Wilson finished her presentation and asked for questions. Mr. Eberwein asked if Staff had received a new site plan with this application for a variance. She answered "no". Mr. Greenee asked about the easement. Ms. Wilson showed the easement from the packet and read that it was a public easement for utilities and storm drainage. Mr. Young asked if the protest was coming from developed lots. The answer was no, the protest notices came from owners of undeveloped lots. A discussion ensued between the Applicant and the Board on location and ownership of adjoining parcels. Mr. Greene then asked Ms. Wilson if the County had analyzed the drainage easement and if it would be vital to the subdivision in the future. She answered that Tim Mazanek, County Floodplain Engineer, had taken a look at the site and felt that it probably wouldn't be needed, but he couldn't guarantee that. Mr. Greenee then asked if the Staff had made any inquiries of utilities and the possibility of the easement being needed. Ms. Wilson stated that she had not called anyone, but that from viewing the layout of the subdivision, it potential could be the means of providing utilities to the adjoining lots to the north. There were no further questions of Staff.

Chairman Young then declared the public hearing open and called for the Applicant's statement at which time Mr. Criado passed out two documents he wished to use to explain how the studio came to be constructed in this location. He wanted to clear up inconsistencies and asked for assistance with this problem. He was traveling back in 2005 when he built the home and didn't receive clear instructions from the Planning Department. He indicated that he built the structure in good faith. It wasn't until January of this year that he became aware of the violation when the inspector came out to inspect the porch roof. After he was asked to write the letter enclosed in the packet, he started to wonder about how Staff was working and if everything was legal. He had the property surveyed and then asked the concrete contractor about where to site the studio. The surveyor and contractor led him to believe that the stakes were setback, and that he did the best job he could. He took out an Owner/Builder permit to save money and build for his family. He contested the 'self-imposed hardship' – as he couldn't get answers from Staff. He moved his family out of town in 2008 and didn't realize there were any problems with compliance. He admitted to making some errors, but suggested Staff had also made errors. He is not trying to get away with anything, he admits to making errors. He questioned whether the inspector had done something illegal by asking him to write the letter admitting his knowledge of the setbacks.

He asked if the letters sent from the County that didn't get a response would count as in favor. He was under the impression that the building is going to be demolished.

Chairman Young then told the Applicant his 10-minutes were up. Since there were no other comments, the Board agreed to allow the Applicant to speak for a few more minutes. Mr. Criado asked if he could have 30-days to seek legal counsel. Mr. Eberwein asked if Ms. Wilson would explain the due-process to the Applicant. She informed him that if this was denied, he had the right to Appeal to Superior Court. She also informed him that he could also obtain easements from the adjoin property owners for the setbacks, regardless, his studio would still be within the 10-foot easement on his own property. Chairman Young asked if Mr. Criado was requesting a 30-day continuance. Mr. Criado said he was, but now that he understands that he has an appeal process through the Superior Court he would withdraw his request and would follow the appeal process if needed.

Chairman Young then opened the discussion among the Board. Mr. Greene asked Mr. Criado if it was a studio or a studio apartment. Mr. Criado stated that he has allowed Customs Inspectors to stay in it to look after it as they have only lived in the house for four or five months. Mr. Greene asked what the purpose of the building was. The Applicant answered that he built it for his Mother and Father to eventually stay in when they retired. Basically, it will be a 'man-cave' for his Dad. It has a bathroom, two rooms, and a cook-top. Mr. Greene stated that it sounds like a studio apartment which falls into the Accessory Living Quarter description. Mr. Greene then asked about the site plan submitted – and asked why Mr. Criado placed the building on the parcel lines. He also asked who drew the site plan. Mr. Criado expressed that he was under the impression that he could build on the line – impressions were from surveyor and concrete contractor, not the County Staff. Mr. Greene asked if the roof was finished. The Applicant stated that he still has to install a fan. Mr. Greene asked if the Applicant wrote the letter that was in the packet. Mr. Criado stated that he did in fact write the letter. Mr. Greene then asked if it was not true. Mr. Criado stated that he was aware of the setbacks and did write the letter. Mr. Greene then asked about the statement of the Applicant on the application regarding water run-off problems. He wondered if an Engineer had been consulted. Mr. Criado stated the he made the statement after asking Staff what kind of problems might occur with the studio built in the easement. Mr. Greene asked if the Applicant had lived in the home enough to know what happens during the monsoon. Mr. Criado stated that he felt his property was a high point in the neighborhood and that he didn't feel there would be any problems from flooding.

Mr. Greene then asked Ms. Wilson about a statement in the Summary and Conclusion portion of the Staff memo, regarding on-site and off-site impacts involving a "fire safety issue for adjoining parcels." Ms. Wilson referred the question to Mr. Jack Holden, Building Official for Cochise County. Mr. Holden answered by explaining the fire separation distances under the Building Code. Mr. Greene asked if the Applicant would have to bring the building into code. Mr. Holden answered that the building was built prior to the County assuming the inspections in that area. The inside of the building has not been inspected. Mr. Greene asked for clarification of the easements on the adjoining parcel. Ms. Wilson answered that there is a 20' easement on the north side of the building on the adjoining lot.

Mr. Eberwein clarified that the State Fire Code was in effect at the time this building was constructed, regardless of the inspection area of the County at that time. Mr. Young then asked the Applicant to clarify if what he believed at the time was that the stakes were marking the 10'

setbacks. The Applicant said that is what he believed. Mr. Greene asked if the building was plumbed for a kitchen. The Applicant said yes it is, but he can remove the electric cook top if need be.

Mr. Eberwein then stated that the Board can approve with conditions, but he has concern for the neighbors for fire safety. He understands that there was loose enforcement and no building code at that time. He also owns a home built in the Border region and had to do many upgrades to bring it to code when he purchased it. Mr. Eberwein then asked if the Applicant would be willing to bring the structure up to today's building and fire codes. Mr. Criado asked what that would involve. He stated that he believed that it would pass any inspection today.

Chairman Young then asked for the Planning Directors recommendation and summary. Staff recommended approval based on the factors in favor. He then called for a motion. Mr. Greene made a motion to deny the request. Mr. Eberwein seconded it. Mr. Greene stated that the Applicant ignored the law regarding the setbacks and relied upon advice from contractors. It is clear that the building was not a studio for arts and crafts, but intended to be a studio apartment. This makes it accessory living quarters, which is not allowed in the zoning district. Mr. Criado did write a letter admitting that he willfully built this building, knowing that it didn't meet the zoning standards. It is a self-imposed hardship clearly impacting surrounding properties. He could not support this request. Mr. Eberwein then stated that he agreed with Mr. Greene on the ALQ issue as it violates the zoning regulations. In the past 17 or 18 years of sitting on this Board, there has never been a request for a variance in an easement approved, that he could recall. Each Board is independent and makes their own decisions. Mr. Eberwein also stated that he has been struggling with the willful violation of the setbacks as he may have gotten 'fuzzy' information from Staff. However, the thing that really bothered him was that a new site plan was never submitted for this variance request. He is not in favor of supporting this request either. Mr. Young then asked about the inspections done in 2005. It was his understanding that the County was not performing inspections in that time frame. Mr. Eberwein stated that the Inspector should have realized that the building was not in the correct location. Mr. Holden stated that the building was already built when the Inspector checked. Mr. Greene restated that he didn't think the Applicant was a bad person; he just relied on bad advice. Mr. Young then called for the question to deny the request. The vote was 3-0 to approve the motion to deny the request.

Planning Director's Report:

Ms. Wilson deferred to Mr. Michael Turisk for the report. He informed the Board of the upcoming Commission meeting and an interesting docket for a special use to cultivate medical marijuana. He also told the Board of the ongoing effort to update the Zoning Regulations. Mr. Greene made a motion to adjourn. Mr. Eberwein seconded the motion, and the meeting was adjourned at 6:58 p.m.