



COMMUNITY DEVELOPMENT DEPARTMENT

Planning, Zoning and Building Safety

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MINUTES

TO: Board of Adjustment, District 3

FROM: Keith Dennis, Senior Planner

SUBJECT: Minutes of the Regular Meeting of August 14, 2012

DATE: September 25, 2012

MEMBERS PRESENT

Paul Brick, Chairman
Shawn Wales, Vice Chairman
Helen Barnard, Member

STAFF PRESENT

Keith Dennis, Senior Planner

OTHERS PRESENT

Margorie, James and Tiffany Fisher, Applicants
Edna and Richard Hummel
Mike and Helene Jackson

The minutes for the BA3 meeting held on August 14, 2012 are complete only when accompanied by the memorandum for that meeting.

Chairman Paul Brick called the meeting to order at 6:30 p.m. and called the roll, and noted that all members were present, and that as such, a quorum was established and business could proceed.

He then called for a motion to approve the minutes of the previous month. Mr. Wales moved to approve the minutes as presented. Ms. Barnard seconded the motion and it carried 3 – 0.

Mr. Brick then called for new business.

NEW BUSINESS

Docket BA3-12-08 (Fisher): The Applicant is appealing an interpretation of the Cochise County Zoning Regulations by the Zoning Administrator, which limits the number of dogs deemed

accessory to a residential use on a parcel of 2 acres or more to ten (10) dogs. The Applicant's property is about 4.3 acres in size, and there are 18 dogs on the property. According to the 2005 interpretation, any number greater than 10 dogs on this parcel would be considered "animal husbandry," which requires a Special Use Permit in the RU District (Section 607.06). The Applicant is appealing the Director's requirement that they seek the Special Use Permit to continue their animal sanctuary/animal husbandry activities on the property. The subject property (Parcel No. 106-16-022) is located at 506 E. Allen Lane in Whetstone, AZ. Applicant: Margorie Fisher.

Senior Planner Keith Dennis presented the Docket on behalf of the Planning Department. He explained the nature of the case, that it is a Zoning Appeal, and set out the powers and duties of the Boards of Adjustment in deciding upon disputed interpretations of the Zoning Regulations.

He explained the Interpretation dealing with the number of dogs deemed reasonably accessory to a principal residence, and offered a general discussion of the differences and thresholds between accessory versus principal uses. In cases where there are a large number of dogs on a property, staff interpreted the Zoning Regulations to determine the number of dogs a property owner can have on a property as accessory to the residence, and the number after which the number of dogs changes the nature of land use on the property, constituting a principal use.

Having provided the rationale and regulatory validity of the case, Mr. Dennis then briefly explained the facts of the case at hand, concluding with factors in favor of and against the Appeal.

The factor in favor given was that the most recent reports from Animal Control were that conditions for the animals on the property were improving. The factors against approval were as follows:

1. The Zoning Inspector has determined that 10 dogs may be considered accessory on a property this size. The Appellant has 18 dogs on the property.
2. This Zoning Appeal is intended to rectify a Violation for Animal Husbandry, and was initially reported to staff by Animal Control Officers as an "animal hoarding" complaint.
3. Staff reports over 18 different incidents involving complaints, loose, feral and dangerous dogs, multiple animal cruelty violations, death and depredation to neighbors' animals and livestock, injuries from dog bites to the Appellant, and other incidents over a period of almost 10 years.
4. Three property owners within 300-ft. oppose this request.

Mr. Dennis then concluded by offering a recommendation that the Board deny the appeal, based on the factors against granting the same.

Chairman Brick called for questions the Board may have of staff. Ms. Barnard inquired as to the fencing surrounding the property; Mr. Dennis suggested asking the Appellant, whereupon the Chairman opened the public hearing and invited the Appellant to speak.

Appellant Margorie Fisher then offered her testimony regarding the case. She explained that she had recently split the property, and suggested that the number of dogs could be evenly distributed on the two properties and thereby cause the Appeal to be unnecessary. She explained that there had been recently a problem with parvovirus on her property and that this meant that local animal shelters

would not take the dogs. This disease problem has since been resolved. She said there was no commercial activity related to the dogs; they were not for sale, but were family pets. When the dogs would have puppies, they would adopt them out or give them away.

Mr. Brick asked what type of dogs she had, and she said they used to raise miniature catchers, but have since stopped.

Mr. Fisher then spoke regarding a court order in 2005 restricting the number of dogs on the property, stating that the courts produced no evidence of the numbers of dogs on the property.

Ms. Barnard then asked about the fencing around the property. Mr. and Mrs. Fisher said she uses various types of fencing around the property.

She said that morning joggers accompanied by their own dogs cause a great deal of barking throughout the neighborhood.

Ms. Barnard then asked if there were still problems with wild or vicious dogs on the property. Mrs. Fisher said that this problem had passed, stating she watches “the Caesar show, with the dogs, and even a dog you might not be able to handle, you know, pick them up in your lap, you can still handle them, you can put a loop around his neck.” She further stated all the wild dogs are gone. She claimed not to be aware of dogs causing problems on neighboring properties. Mr. Fisher said they heard lots of stories around the neighborhood, and that any time there is a stray or problem dog, the neighborhood assumes the dogs belong to the Fishers.

Ms. Barnard asked if the dogs were fixed, to which Mrs. Fisher replied that she has all the males fixed, but females are expensive to neuter. She said the females they had had fixed had all been eaten by a jaguar in the neighborhood. She mentioned mountain lions and coyotes were also in the neighborhood and ate their dogs. She said they used to have horses and sheep, but presently they do also have six llamas on the property.

Mr. Wales asked about accommodations. The Appellant said all animals have dog houses. She said there are four males they tie up to keep them from forming a pack. The puppies are kept in a shelter because owls will eat them otherwise. She said there are no problems and that Animal Control had to read the posting on the property to know that the hearing was taking place.

Ms. Barnard asked why Animal Control was out recently, and she said this was because P&Z staff had asked them to visit.

Mr. Wales asked how many dogs there were. She said she has 10 dogs and her daughter has eight. This, she explained was why she divided the property. Mr. Wales asked if the two new parcels were separated by a fence, and she said no.

Mr. and Mrs. Jackson asked if they could move to the other side of the room, the better to hear the Board proceedings. The request was granted.

Helen Jackson then spoke, stating that there is no actual regulation in place regarding numbers of dogs, that there is instead an interpretation that staff has attempted to place into the Zoning Regulations to no avail, and that it is a policy not a regulation. She said that what the Fishers were doing was caring for animals, not breeding them for sale, and that as such, the land use ought not to be considered “animal husbandry.” She quoted a previous Board of Adjustment Chairman (District 1) to the effect that zoning rules do not address families caring for their pets. She mentioned two other cases similar to this one. She offered her estimate of costs to the Appellant based on her

understanding of the process that the Fishers had so far undertaken, and those she assumed would take place in the future.

Mike Jackson then spoke regarding the 2005 memorandum spelling out staff's interpretation regarding accessory dogs. He offered his understanding of the history of the interpretation and some of the Appeal cases brought before Boards of Adjustment over the years. Because the Board of Supervisors had not adopted a regulation governing this issue despite attempts by staff to enact such, he disputed the idea that staff or Board of Adjustment authority to interpret the Zoning Regulations as had been done for the current case. He suggested that a precedent had been set by previous Boards of Adjustment actions on this issue, and suggested that this precedent be followed for the current case.

A neighboring property owner who could not be identified from the recording said that because he was hard of hearing, he probably only heard about half of the noise from the dogs in the neighborhood. He said they themselves have a dog that barks occasionally, but said that having over a dozen dogs barking at all hours is a problem in the neighborhood. He said there is no quiet in the neighborhood.

Mr. Brick asked where they lived in relation to the Fishers, and they pointed out on the map the location of the same.

The alley behind the subject property was briefly discussed.

The neighbor said their chief issue was the fact that she and her husband could not enjoy a quiet moment on their porch at sundown, she always hears them yelling at their dogs. She said she is concerned that the animals are being abused or neglected. She said they heard a dog screaming several nights previous, and the screaming suddenly stopped and she was concerned that this dog had been killed. She wondered how so many dogs can be in such a small area and all receive the care they need.

She said there have been so many calls to Animal Control that the neighbors have stopped calling because nothing is ever solved by calling them and, for their part, the Animal Control staff are so familiar with the property that response times suffer.

Ms. Barnard expressed her appreciation to these neighbors for coming to the hearing to offer their testimony. She stated her strong support of individual property rights, but that government's role is to intervene when the rights of individual property owners come into conflict. She spoke about her own experiences with her own dogs and how these fit into the area in which she lives.

The neighbor said they had neighbors with dogs on either sides of them and these neighbors control their dogs. He said he does not want to see dogs euthanized, but wonders how many dogs is too many. His wife said the issue is whether or not someone can control their dogs, and she believes the Fishers have too many to control.

Mr. Wales said he had driven by and visited the property. He said he observed the fencing on the property. He said that the homes in the neighborhood are somewhat close to one another. He said he observed no dogs at the time of his visit.

Mrs. Fisher said the dogs are quiet during the day as they are likely asleep. In the morning when the dogs are fed they make noise, and again in the evenings. The neighbor invited the Appellant to come to her home and hear for herself how it sounds.

Mr. Wales asked about the llamas and how they factor into the case; Mr. Dennis stated that this was the first he had heard about the llamas, and that the significance of the llamas on the property would be for the Board to determine.

Mr. Wales said that, while Ms. Barnard brought up the property right issue, his chief concern was safety, particularly for the dogs themselves. He said the puppies being kept in a small kennel while the other dogs ran free was an issue. He asked how many dogs is enough, and stated that if the Board grants the Appeal and allows the 19 dogs on the property, other neighbors would feel empowered to do likewise.

Mr. Brick offered the Appellant the chance for a rebuttal. Mrs. Fisher spoke more about the situation on her property, the conditions when they moved there. She spoke about wild animals, illegal immigrants crossing her property, and Border Patrol helicopters hovering above her property. She spent some additional time discussing the jaguar in the neighborhood and the special considerations surrounding the presence of this animal in the area.

Mr. Fisher admitted the dogs do bark as late as 10 p.m. and spoke about other loose dogs accompanying joggers and walkers in the morning. He re-iterated his opinion that many of the loose dogs in the neighborhood belong to other people.

Mr. Brick closed the public hearing. Mr. Wales asked staff to address some of the issues that had come up during the testimony.

Mr. Dennis began by reminding the Board and those assembled that County staff, in the person of the Zoning Inspector, and the Board of Adjustment has the authority to interpret the Zoning Regulations and, in the case of the latter, hear and decide upon Appeals to those Regulations.

Next, he addressed the history of the interpretation in question and the fact that the Board of Supervisors had not adopted a specific regulation. He quoted from the memorandum from 2005 and suggested that the Board had not codified the interpretation because to do so would have been seen as unduly burdensome on property owners whose pets were not a problem in their respective neighborhoods. Having the number formally adopted as zoning code would make enforcement mandatory, whereas leaving the matter as one for interpretation provides staff with the ability to act under limited circumstances on a case by case, complaint-driven basis.

Turning to the difference between principal versus accessory uses, he offered by way of analogy a discussion about home hobby auto repair.

He informed Mr. Wales that Board of Adjustment cases are decided on a case by case basis and are not bound by any sort of precedent regardless of previous rulings on similar cases.

Finally he explained that the Planning Department does not receive notice when a property owner splits their property. He said that the split on the Fishers property appears to meet code, but said that there is no fence between them. Moreover, he said that the two new parcels nonetheless are considered one "site" for zoning purposes, being comprised of adjacent parcels under the same land use regardless of ownership.

Ms. Barnard asked the Appellant to re-state why they case had come before the Board of Adjustment. Ms. Fisher said she had asked County staff what the allowable number of dogs is and that is how this became a Board of Adjustment case. Mr. Wales read from the packet and said he

thought it had to do with Animal Control filing a complaint. Staff confirmed this, stating that Animal Control had complained to P&Z staff that “animal hoarding” was taking place on the property.

Mr. Wales asked for clarification on the need for a Special Use Permit for animal husbandry; Ms. Barnard asked for clarification regarding what constitutes animal husbandry. Mr. Dennis read the definition of the latter from the Zoning Regulations and discussed the implications of that definition. Mr. Wales asked for more information about the Special Use process and staff provided more information.

Mr. Brick said that during his visit to the area he also heard no barking nor did he see any dogs. He said homes on the South side of Allen Lane are fairly close, and he characterized the area as residential in nature. He said his opinion on the Interpretation was that the number was not decided upon arbitrarily but was the result of consultations with experts as well as previous Board of Adjustment cases. He said that even number smaller than that allowed under the Interpretation could be a problem if even one dog barks constantly. He said a distinction needs to be made between more rural and more residential areas, but the issue at hand is the number of dogs that can be reasonably be deemed accessory, not whether they escape and injure other animals or bark incessantly.

Ms. Barnard said there is a great range of types and sizes of dogs, and that the amount of land that might be needed for some dogs could also vary. She said that for her part, the issue is whether or not the dogs are a problem for other property owners.

Mr. Wales said that he had heard that there was no limit to the number of horses that would be allowed on a property. Similarly, there are no such restrictions on other types of animals or livestock. The fact that there is an Interpretation from the Zoning Inspector on this issue illustrates the fact that, unlike other animals, dogs can pose a nuisance in some cases. He agreed with Mr. Brick that the neighborhood is residential in nature. A neighbor reminded the Board that the property is within the Sulger Subdivision and as such is not a rural area but is more a rural residential area.

Mr. Wales said that splitting the property might have seemed a way to go around County enforcement actions, but that he concurred with staff that splitting the property does not remedy the problem. He reminded those assembled that the Board does have the authority to rule on this case. He said that the 2005 Interpretation memorandum sets forth a number for staff to adhere to as a matter of policy, but that the Board is not bound by that number.

Ms. Barnard said the Board had a choice to defend the Fisher’s rights, or those of their neighbors.

Mr. Wales said neighbors concerns are an important consideration for the Board of Adjustment.

Mr. Brick asked for further comments from staff. Staff declined.

Mr. Brick called for a motion; Mr. Wales moved to deny the Appeal. Ms. Barnard seconded. Mr. Wales said there could be other options. Mr. Dennis said an appeal to Superior Court is possible. He said that Animal Control had informed staff that they would remove the excess number of dogs from the property. Mr. Wales said that further exploration on the issue of dividing the property into multiple parcels or sites was possible. Mr. Dennis declined to comment on this issue without further research.

The motion carried 3 – 0 and the Appeal was denied.

There followed several minutes more of informal discussion on the Docket, the next steps for the Appellant, the merits of the Board's decision, and other matters appertaining to the case which had just been decided. Much of this consisted of a debate between Mr. Jackson and members of the Board about the basis for jurisdiction over appeals based on Zoning Interpretations.

DIRECTOR'S REPORT:

Mr. Dennis told the Board that several Dockets located in the Sunsites area would be considered by the Planning Commission at the September 12, 2012 meeting.

The meeting was adjourned at 8:37 p.m.