

MINUTES
of the
BOARD OF ADJUSTMENTS
OF THE VILLAGE OF VOLENTE, TEXAS
WEDNESDAY, OCTOBER 15, 2014 at 6:00 P.M.
City Hall, 16100 Wharf Cove, Volente, Texas.

1. Open Regular Meeting.

Meeting called to order at 6:08 PM by Mike Gold, Chair.

2. Call Roll.

Barbara Wilson, City Administrator, called roll. Chair Mike Gold and Board Members Roe Fleenor, Gary Cowsert, Richard Rocloux, and alternate Joe Lamoreux present. James Jorden absent. Also in attendance is Marc Dickey, City Engineer.

3. Signing of the Meeting Minutes for April 9th, 2013.

To be signed at later date after meeting.

4. Approval of Meeting Minutes for March 25th, 2014.

Roe Fleenor, Board Member makes motion to approve. Richard Rocloux, Board Member seconds. Carries unanimously.

To be signed at later date after meeting.

5. Public Hearing of variance request from Tana Busch regarding side yard setback for the Re-subdivision of 8114 and 8116 Joy Road, Volente, Texas 78641. Reference Zoning Ordinance Section 30.109, (i) Height and Placement Requirements, and Chart 1 page 32).

a. Staff Presentation

Barbara Wilson, City Administrator, details the relevant items in the packet and discusses how plat was originally subdivided. When re-subdivided, a park was created. Mentions some community outcry from residents that the park may be incorporated by Tana Busch, which is incorrect. Barbara says LCRA sold portions of a plat of land to Residents of Joy Rd.

Richard Rocloux, Board Member states that LCRA still has mineral rights and water rights to the property.

Barbara Wilson, City Administrator, says that the original plat had 5 foot utility easements on the side and back, which had been release from AT&T and other utility companies, which would be important if any utility company decided to put utilities in the encroachment. This project has 3 total lots, from 3 subdivisions, and is a minor re-subdivision because less than 4 lots.

Mike Gold, Chair, asks if this would become all one lot as seen on the map. *(see new subdivision map)*

Barbara Wilson, City Administrator, answers yes.

Marc Dickey states that because this is a new subdivision, after combining, the plat would be called Lot 1.

Barbara Wilson, City Administrator, details the next steps for this request after reaching BOA. There has been a French Drain and vegetative buffers to diffuse and address water quality. There was 500 foot radius notification sent out of the variance request, and we've had two phone calls and one email from neighboring property. *(see reference email from neighbor asking for repair to fence).*

Gary Cowsert, Board Member, inquires if this property is for sale.

Barbara, yes it is. During the process of the old owner trying to homestead the property they have instead decided to sell.

Gary Cowsert, Board Member, states that the fence doesn't have anything to do with the decision before BOA

Barbara Wilson, City Administrator, says it could be added as a stipulation of the approval

Mike Gold, Chair, states the applicant has an existing 3 lots they want to subdivide into one, so essentially a reverse subdivision. He then inquires what the total of the lots would come to.

After discussing two different totals and a mistake made by surveyor, Marc Dickey and Barbara Wilson, City Administrator, Wilson come to agreement that the total would be .998 acres.

Gary Cowsert, Board Member, inquires as to why is this is a variance request if all the building was done before incorporation.

Barbara Wilson, City Administrator, answers that even though the three lots were before incorporation, they must go through the current set of rules, including septic approval and setbacks when applying for re-subdivision.

Gary Cowsert, Board Member, asks if BOA approves the accommodation could P&Z still decline the variance.

Barbara Wilson, City Administrator, answers yes and mentions that if BOA denies the request that this must then go to District Court and cannot proceed to P&Z.

Gary Cowsert, Board Member, asks of Babs Yarbrough, Authorized Agent to property, are they aware of the requests regarding the property.

Babs Yarbrough details how the other waterfront partials were not homesteaded, causing major tax expenses for the applicant. The septic records from LCRA approved a

new septic for the existing structure and for a new 3 bedroom house that was allowed to be built over property line and was grandfathered in. The applicant's goal with the variance request is to have one property and one tax ID.

Gary Cowsert, Board Member, asks of Babs Yarbrough if the pending contract is contingent of this being approved

Babs Yarbrough answers yes.

Barbara Wilson, City Administrator, states a lot of mortgage companies and title companies are leery of doing anything where the lot line goes through the house.

Gary Cowsert, Board Member, mentions he's attempting to pinpoint the hardship. Babs Yarbrough states this request would save on taxes and combine all properties to one. The application for the septic and inspection is still at LCRA. As soon as everything is recorded LCRA will come back out and do septic inspection and have new plat and update all records.

Roe Fleenor, Board Member, asks of Babs Yarbrough if the only issue before the BOA is the combination of the 3 lots into one, and that there are no issues with the septic.

Babs Yarbrough says yes. Babs mentions that according to the plat and survey this was never meant to be more than 2 lots

Roe Fleenor, Board Member, inquires as to what is covered by grandfathering.

Marc Dickey, City Engineer states that grandfathering is out the door when you re-plat so everything has to comply with zoning and subdivision, which is why this request is in front of the BOA.

Mike Gold, Chair, requests clarification that no additional buildings are being constructed.

Babs Yarbrough states that the impervious cover is at a maximum right now, so nothing additional could be built.

Richard Rocloux, Board Member, mentions that the potential hardship is difficulty for the applicant in regards to selling, as well as for any buyer, because mortgage companies typically do not mortgage 3 lots.

Mike Gold, Chair, states that approval of this request would be improving the property itself by making it less of a cluster.

Barbara Wilson, City Administrator, Wilson mentions that the re-subdivision of this property is moving closer to conceptual desire of lot size

Carey Witt with GEO Solutions Engineering states that this request is bringing non-conforming lots closer to the ideal size and into one uniform shape and lot number. All buildings and issues were created before the Village was incorporated, so approval is just for moving forward. The applicant has addressed storm water quality, slowed water down and improved percolation for drainage.

Mike Gold, Chair, asks if any preexisting issues are being addressed, i.e. runoff.
 Carey Witt, Geo Solutions, stats that no, the applicant has complied with all of the LCRA requirements and those issues fall under the Planning and Zoning Commission. The issue before the BOA has more to do with the side yard setbacks.

Barbara Wilson, City Administrator, mentions that 5 foot remains on the left side of the property.

Mike Gold, Chair, asks if the structure is against the property line. *(see attached maps and plat surveys)*

Barbara Wilson, City Administrator, answers that the concrete slab is against the property line, but not a structure, but the wooden garage is in the technical definition of the new subdivision setback. She also mentions the outside utility easements will remain but not the one through the center of the property.

Mike Gold, Chair, asks if this were to be granted would we have any issues if they wanted to build a new structure.

Barbara Wilson, City Administrator, states that the new owners are not grandfathered in, and would have to comply with all current rules and ordinances.

PUBLIC HEARING CLOSSES AT 6:38 PM.

- 6. Consider and take possible action on variance request from Tana Busch regarding side yard setback for the Re-subdivision of 8114 and 8116 Joy Road, Volente, Texas 78641. Reference Zoning Ordinance Section 30.109, (i) Height and Placement Requirements, and Chart 1 page 32).**

Roe Fleenor, Board Member states it is a good idea to combine 3 lots and is more compliant with what the Village of Volente wants.

Mike Gold, Chair, says he's in favor as well.

Marc Dickey mentions it's a side and front yard setback, not just side setback.

Mike Gold, asks for specific numbers for the request.

Marc Dickey presents the letter from TRE Engineering and map. *(see attached)*

Carey Witt, Engineer for Applicant, mentions the applicant is requesting a 5 foot side yard setbacks and 15 foot front yard setback.

Roe Fleenor, Board Member asks for clarification that if BOA approves this, that it doesn't apply to any future construction to the new owners.

Mike Gold, Chair, says the new owners would have to go through the new rules and ordinances.

Richard Rocloux, Board Member asks if BOA can grant a 7.5 foot setback and have it take care of everything, which would fix all sides and it would be closer to 10 foot with any future concerns.

Babs Yarbrough, Authorized Agent for the Applicant says that the applicant is in agreement with that.

Roe Fleenor asks that BOA keep the wording simple and say existing structures are approved, but any new structures would go back to current Village of Volente setbacks.

Mike Gold, Chair, Gary Cowsert, Board Member, and Joe Lamoreax, Board Member agree.

Mike Gold, Chair, says the hardship in this case is that in order to make property sellable you'd have to re-subdivide.

Richard Rocloux, Board Member, states hardship on existing property owners is that it's created extensive taxes. Major hardship would be that the way the property lays is creating undue tax burden to the current owners.

Barbara Wilson, City Administrator, Wilson points out the uniqueness is that this was all platted and built prior to incorporation.

Mike Gold, Chair, agrees, adding changing this into one lot becomes more consistent with Village of Volente's desired lot size.

Richard Rocloux, Board Member makes motion to grant side setbacks of 7.5 foot and front setback of 15 foot in order for re-plat of 3 lots on 8114 and 8116 Joy Road based on the prior discussion of hardships with the stipulations that any new construction must fall within the guidelines of our current ordinances.

Roe Fleenor, Board Member seconds

Unanimous vote yay.

(see Findings of Fact, attached)

7. Public Hearing of variance request from Lori and Scott Ratcliffe regarding side yard setback for 15757 Booth Circle, Volente, Texas 78641. Reference Zoning Ordinance Section 30.109, (i) Height and Placement Requirements, and Chart 1 page 32).

a. Staff Presentation.

Barbara Wilson, City Administrator, mentions that this request is not to site development stage as of yet. Needs approval on variance before conceptual state can be completed. Originally the Zilker's homestead, the Ratcliffe's have been working on this project since October of last year (2013). Septic system has been accepted by LCRA. The house moved into floodplain in 90s. Barbara details the layout of the property. No interference with view corridor. No rise or no adverse impact in the floodplain.

Mike Gold, Chair, asks what is the request before the BOA.

Barbara Wilson, City Administrator, says the applicant would like to tear down the existing house and utilize the existing slab to build a new house.

Mike Gold, Chair, inquires as to where the 715 ft. contour is in regards to 722 ft. (*floodplain*).

Barbara Wilson, City Administrator, answers anything built has to have an additional foot of concrete on base. The current house was built into setbacks prior to incorporation.

Mike Gold, Chair, asks how wide the lot is.

Marc Dickey, City Engineer responds that the lot is 170-175 feet but the front tapers back.

Barbara Wilson, City Administrator, Wilson details maps of the plats (*reference Vanguard maps*), and the setbacks are drawn in red. She then shows the next map which details what is existing right now, and map of how this affects view corridors.

Mike Gold, Chair, asks if there has been any correspondence from the neighbors.

Barbara Wilson, City Administrator, Wilson states there was a 500 foot notice mail out with no objections from neighbors as of yet. Uniqueness and hardship is in letter that has been submitted, includes P&Z and BOA information (*see letter from Lori Ratcliffe, attached*). Owners will be increasing value of property considerably with new house.

Marc Dickey, City Engineer, states that the grading is a 720 contour across driveway, not an encroachment and that this request is basically a flip, moving out of one side of encroachment and adding to the other by 15 feet.

Richard Rocloux, Board Member assesses that there is a remaining 10 feet, so the applicant is asking for a 10 foot setback.

Gary Cowsert, Board Member, points out that there is a water tank in the plans that limit the 10 feet.

Barbara Wilson, City Administrator, shows the map detailing a screened rainwater tank. Applicant is interested in doing rainwater collection.

Mike Gold, Chair, states that the applicant is requesting 10 feet on structure and 4 feet for the water tank.

Richard Rocloux, Board Member asks if there is a new law from TCEQ stating that water tanks cannot be regulated by city or HOAs as far as where it can be placed on property.

Barbara Wilson, City Administrator, mentions that the edge of new structure is 10 feet from property line but the water tank is not considered a structure.

Richard Rocloux, Board Member mentions that the City Attorney determined at a past time that the water tanks *are* structures.

MIKE GOLD, CHAIR, OPENS PUBLIC HEARING AT 7:17 PM

Lori Ratcliffe, Applicant, says that the letter she had written (*see attached*) was speaking to the structure and not the water tank. The setback has to be wider because the lot is so wide (Marc Dickey mentions that the setback is 15% of lot width). Originally she wanted to remodel, but instead decided to tear down and rebuild to make the structure safer and gain water view.

Richard Rocloux, Board Member states the rainwater tank is considered a structure under current ruling and asks if Lori would consider moving the rainwater tank to setbacks determined by the BOA.

Lori Ratcliffe, Applicant, says that this is not a problem, the water tank is a “moveable piece of our drawing.”

Joe Lamoreaux, Board Member asks of the Board what exceptions, if any, would be made if this were to be approved.

Richard Rocloux, Board Member states that BOA could grant if it were in regards to the existing structure, but with building new the BOA should comply as closely as possible with Village of Volente Ordinances.

John Hathaway, Applicant Architect, suggest that if BOA decides on a 10 foot setback then he and the Applicant will design around it. He states that there is currently a 15 foot encroachment existing. The building is about 10-12 feet off of the property line. The proposed new structure would increase the distance between property line on the right side that is mostly encroaching now, and increase encroachment into the other side, the left side.

Richard Rocloux, Board Member asks of the Architect if the existing slab that will be utilized is the part that is encroaching.

Gary Cowsert, Board Member, asks of the Architect and Applicant what is the hardship they are facing.

John Hathaway, Applicant’s Architect, says there is no extreme hardship, the plan is to move over to capture a better view. The majority of the house is trying to stay with the footprint that’s there now.

Lori Ratcliffe, Applicant, says that the hardship for building purpose is that the width of the front of the plat makes the setbacks larger for her property than others. Also, that she is having to raise the structure to stay within floodplain guidelines.

Gary Cowsert, Board Member, asks of the Applicant and Architect what the problem would be with shifting the design of the house to be built so that it does not encroach on the setbacks.

Applicant’s Architect responds that then the homeowner would lose a water view because of the vegetation of the neighboring property.

Mike Gold, Chair, states to the applicant if everything is pushed over over 6 or 8 feet, to avoid encroachment, then it should not break your view.

Lori Ratcliffe says that because of the way her house lays and the vegetation from the neighbor's property, that is not the case.

Architect states the house is only 3 or 4 foot below floodplain and is only going up a little bit. The issue is the vegetation blocking the view from neighbor, with trees all the way down the property line.

Lori Ratcliffe says that the vegetative screen by neighbor that is overgrown is what is blocking the view. Currently, the view can only be seen from a portion of her deck.

Richard Rocloux, Board Member says that in the past neighbors say they weren't aware of these requests put forth. He says he would prefer to hear from the neighbor on which the new building will be moving closer to before making a decision.

Mike Gold, Chair, says that not having a view is not a relevant hardship.

Lori Ratcliffe responds that if she has a waterfront property with no view it's a hardship because it makes the property unsellable.

Mike Gold, Chair, states that by the ordinances that we have we cannot accept that lack of view as a hardship. He then asks of the applicant if there is any way to reposition the house to avoid encroachment.

Lori Ratcliffe states that repositioning the home would not give her a view and suggests that the Board of Adjustments come look at the property to understand more clearly the problems.

Joe Lamoreax, Board Member asks of the applicant if they have gotten an opinion from the neighbor on which they would be encroaching.

Lori Ratcliffe says notices have been sent out but there have been no words exchanged between the two.

Richard Rocloux, Board Member states that because the house cannot be set up within the setbacks on the land then utilization of the property is a hardship, not the view.

Lori Ratcliffe responds that there are lots of large established trees on the lot and that they are trying to leave as much existing vegetation as possible. The lay of the lot and slope of the lot and cost of what I have for a waterfront property is my hardship.

Mike Gold, Chair, asks what the preexisting setbacks were for the property when the original structure was built.

Lori Ratcliffe says there was a 7.5 feet minimum for the neighborhood.

Marc Dickey says setbacks are 15% of front lot width, if the property is under 125 feet wide. The back of the lot is roughly 125 feet, but the way the ordinance is written, unfortunately, is that setbacks are calculated from the front of the lot.

The Applicant's Architect asks to hear Barbara Wilson's view on this.

Barbara Wilson, City Administrator, states the applicant cannot move the house forward or over because of the floodplain.

Gary Cowsert, Board Member, says that the applicant is only relying on the view as their hardship.

Marc Dickey says that keeping house in the proposed and current location allows house to keep existing well, septic system, etc.

Gary Cowsert, Board Member, asks for specifics, on paper, of the limitations regarding septic and wells.

Mike Gold, Chair, to applicant, says those are the kind of things BOA needs to understand in order to see a hardship.

Lori Ratcliffe says that when she increases the size of the house, the septic and other systems will have to be increased.

Mike Gold, Chair, tells the Applicant using that as a hardship makes the hardship self-imposed. He again poses the question to the Architect and Applicant if there is any other way to rearrange the house.

Gary Cowsert, Board Member, to Architect, how many square feet are in the encroachment?

John answers 200 feet. If the house is pushed forward it would change the view corridors for neighbors.

Joe Lamoreax, Board Member suggests that the BOA hear from the neighbor on which the new structure would be encroaching.

The Applicant says ads in the paper and mail outs are sufficient notice.

Joe Lamoreax, Board Member wants to hear directly from the Neighbor.

Roe Fleenor, Board Member says if the neighbor is going to complain he's had opportunity to do so, He's been legally notified.

Gary Cowsert, Board Member, states he has a problem with the hardship, or lack thereof.

Mike Gold, Chair, agrees, stating the BOA has to go by the guidelines by which they are legally bound.

Richard Rocloux, Board Member, to Applicant, what we're looking for is how can we accommodate you and still follow guidelines.

(Barbara Wilson, City Administrator, reads aloud section on hardships and rules from Ordinance)

Mike Gold, Chair, to Applicant and BOA, those are the guidelines that we have to abide by. Based on what we're hearing right now, I don't hear what we need to hear to justify this.

Roe Fleenor, Board Member states that a view is a property owner's right. Not letting them take advantage of their property deprives them of their right. He goes on to

suggest a copy of the Ordinance in which the BOA has to abide be given to the applicant so that they are aware of what is needed. (To Applicant) Give us factual information that we need.

John (Architect), shows BOA a plan of house to be built, with an emphasis of what's being done to capture a view, and how the neighbor's shrubs and flood plain prohibit moving things around to capture a view.

Lori Ratcliffe, Applicant, details dining room, which opens to deck, but has no view because of the shrubs. The applicant plans on moving the deck and dining room to get a view, regardless of the neighbor.

Richard Roeloux, Board Member asks if moving the house further out would infringe on the neighbors's views? If we consider where the house is currently, there is 18 foot approximately of setback.

Marc Dickey says yes, with a paper scale, but that is not taking into account the 13 feet of house out of opposite side.

Richard Roeloux, to John, Architect, so we're moving 15 feet out of this side and 8 feet into this side.

John, I would need to verify but yes. There's more area in the encroachment than we're asking for.

Judy Graci, 15775 Booth Circle:

Expresses concern that the information needed to illustrate a hardship is not presented or in the backup material. Mentions that the lack of view was existing when the property was bought, so the owner was fully aware of what their view would look like.

Allison Thrash, 15100 FM 2769 :

States that if a need for a variance is actually a need, then it's easy to discern and a lot of talk and investigation would not be necessary. Allison mentions that a homeowner in Volente should design their home after being informed of the rules and regulations, not design their home then ask for permission or variance from the rules and regulations.

Mike Gold, Chair, asks of the Architect what the impact on the neighbor's view will be with changing from a one story to a two.

John, Architect for the Applicant, states there is enough vegetation between the two properties that the construction should not interfere with the neighbor.

8. Close Public Hearing.

MIKE GOLD, CHAIR, CLOSING PUBLIC HEARING AT 8:41 p.m.

9. Consider and take possible action on variance request from Lori and Scott Ratcliffe regarding side yard setback for 15757 Booth Circle, Volente, Texas 78641. Reference Zoning Ordinance Section 30.109, (i) Height and Placement Requirements, and Chart 1 page 32).

Mike Gold, Chair, asks of the BOA if it is acceptable for the BOA to help an applicant articulate their hardship or if an applicant needs to have it all laid out before presenting.

Barbara Wilson, City Administrator, asks of the BOA if a designer or architect says there is a hardship then why is that not enough proof for them.

Mike Gold, Chair, responds that there were glimpses of justifiability, but nothing hard set.

Roe Fleenor, Board Member, states that while the BOA should not help an applicant articulate their hardship, he personally sees the applicant as having a hardship by denying her the right, as a property owner, to a view.

(Barbara Wilson, City Administrator, reads aloud number 2 and 4 of guideline rules)

Gary Cowsert, Board Member, states that the property was bought as-is. And the desire to improve is fine, but it should comply with the ordinances set forth by the Village of Volente. Richard Rocloux, Board Member, states that Volente has setbacks because of the desire to build a community within reasonable guidelines, not to become a “cookie-cutter” subdivision. He asks of the Board not to suppress people wanting to build nice things, or be bogged down by technicalities. Adding, this is a viable improvement to the property.

Gary Cowsert, Board Member, states that he will not vote to approve the variance as it stands before him today. Adding, that he does not see lack of view as a hardship since the property was bought with full knowledge of what the view would be.

Roe Fleenor, Board Member, says if we adhere to a strict interpretation there wouldn’t be any need for a BOA. We’re here to look into individual situation. In this case, I think the view is a property right. We are limiting that property right with strict adherence.

Mike Gold, Chair, states that if BOA accepts this variance request it would not be any different from someone coming in with a height variance request to “capture a great view”.

Roe Fleenor, Board Member, agrees this is a judgment call.

Gary Cowsert, Board Member, asks if this was open to liability form a court of law would the BOA be able to defend its decision with what is before them.

Barbara Wilson, City Administrator, asks if the BOA would grant the applicant 30-60 days to come back and present again.

Mike Gold, Chair, says yes, and that what he’s hearing is that the BOA needs to hear more about why that house needs to be put where it needs to put.

Barbara Wilson, City Administrator, asks of the BOA if word of mouth by the Engineer enough for them to go on.

Mike Gold, Chair, states that he does not want to hear the costs associated with the variance. What BOA can take in consideration is the impact on the property itself to move the house around. Adding, he does not think the view is the right of a property owner. Bottom line, this should be tabled for review.

Gary Cowsert, Board Member, agrees stating if the applicant puts the house in compliance, what would be the hardship of keeping it there?

Mike Gold, Chair, says that's something the Applicant has to consider at this point.

Richard Rocloux, Board Member, asks that BOA gives the Applicant concrete things to come back with.

Mike Gold, Chair, says based on what is standing right now, BOA can't say the house is tilted this way to protect the view because the house could be changed to fit in compliance. When a setback is granted for a building site, it's based on site plan.

Richard Rocloux, Board Member makes a motion to table the variance request for 30 days, giving the applicant time to review BOA's guidelines to make a decision and come back with a presentation that is stronger. Seconded by Gary Cowsert. Roe Fleenor, Gary Cowsert, Richard Rocloux, and Joe Lamoreux are yays. Mike Gold, Chair, votes nay.

10. Adjourn.

Motion to adjourn, unanimous, 9:14 pm

Approved this 12th day of November, 2014.

Signed:

Mike Gold, Chair

Attest:

Julia Vicars, Acting City Secretary