

**THIS IS NOT A VERBATIM TRANSCRIPTION
CITY OF CLEBURNE
ZONING BOARD OF ADJUSTMENT (ZBA)
MINUTES OF THE APRIL 18, 2023 MEETING**

The Zoning Board of Adjustment (ZBA) of the City of Cleburne met in open session on Tuesday, April 18, 2023, at 5:00 p.m. in the Council Chambers of City Hall located at 10 N. Robinson Street, Cleburne, TX. Zoning Board of Adjustment meetings are open to the public.

BOARD MEMBERS PRESENT:

Ross Green - Chairman

Raydean White - Vice-Chairwoman

Tim Barnette

David Holcomb

Sabrina Ishmael

Adam Matthews

David Jones, Community Development Dir.

Danielle Castillo, Planning Manager

Laura Melton, Assistant Director of Public Works

Lindsey Hale, City Attorney

CITY STAFF ABSENT:

Terry Broumley, Building Official

David Jellen, Planner II

CITY STAFF PRESENT:

CALL TO ORDER:

ROLL CALL FOR THE ESTABLISHMENT OF A QUORUM.

Chairman Green called the meeting to order at 5:05 P.M. and it was established that a quorum was present.

CITIZEN COMMENTS:

There were no citizen comments at this meeting.

APPROVAL OF MINUTES:

The minutes of the March 21, 2023 meeting were considered.

Chairman Green called for a motion to approve the minutes of the Zoning Board of Adjustment meeting of March 21, 2023. Vice-Chairwoman White made a motion to approve the minutes and Board Member Barnette seconded the motion. **The motion to approve the minutes carried by a vote of 6-0.**

EXECUTIVE SESSION:

Pursuant to Section 551.071, Texas Government Code, the Board reserves the right to convene in Executive Session(s) from time to time as deemed necessary during this meeting to receive advice from its attorney on any posted agenda item.

Chairman Green convened into Executive Session to receive training on statues and case law related to functions of the Zoning Board of Adjustment at 5:07 P.M.

Chairman Green closed the Executive Session at 5:38 P.M. and the meeting reconvened into open session.

SECTION I: ITEM FOR CONSIDERATION:

CONSIDER REQUEST FOR VARIANCES FROM THE REQUIREMENTS OF SECTION 155.2.05.A OF THE CODE OF ORDINANCES: DIMENSIONAL STANDARDS TABLE, ON ±0.21 ACRES LOCATED AT 1316 STANWOOD AVENUE, AS REQUESTED BY JACOB DIAMOND, **CASE VC23-001**

Danielle Castillo, Planning Manager, presented the case to the Board.

Vice-Chairwoman White questioned staff regarding the plans provided with the approved building permit for the subject property.

Mrs. Castillo responded that the building permit had been issued for a portion of the building expansion at the rear of the property.

Board Member Barnette questioned staff regarding the difference between the increased expanded building area and the approved building area.

Mrs. Castillo responded that the City did not know the difference in building area between what was approved and what had been expanded following approval.

Board Member Ishmael questioned staff regarding the side yard setback and whether the initial expansion had encroached into the required setback.

David Jones, Community Development Director, responded that the initial expansion had almost certainly encroached into the required side yard setback.

Board Member Ishmael questioned staff whether the requested variances were regarding the encroachment on the side yard setback on either side of the property.

Mr. Jones responded that the variance requests were regarding the encroachment of the side yard setback on both sides of the property.

Board Member Holcomb questioned staff whether the side yard setback encroachment included the side yard adjacent to Corson Street.

Mr. Jones responded that the side yard setback encroachment did include the side yard adjacent to Corson Street and that no inspections had been performed on that side of the building expansion.

Vice-Chairwoman White questioned staff whether an inspection had been performed on the second story of the building expansion.

Mr. Jones responded that no inspection had been performed on the second story expansion to the building. He stated that a basic safety inspection had been performed to verify whether the structure would be fit for residence, but that no other customary inspections had been performed.

Board Member Barnette questioned staff whether the building expansion had been completed without any permits having been issued.

Mr. Jones responded that the building expansion had not been completed prior to the issuance of any permits, but that it had been completed prior to the standard inspections.

Vice-Chairwoman White questioned staff whether the building permit had included the second story of the building expansion.

Mrs. Castillo responded that she would need to review the permit but that it was likely that the second story of the building expansion had been included on the building permit.

Chairman Green read into the record an anonymous letter that had been submitted in opposition to the request.

Chairman Green opened the public hearing and swore in the applicant, Jacob Diamond.

Board Member Holcomb questioned the applicant regarding the setback from Corson Street.

Mr. Diamond responded that he did not know the setback of the building from Corson Street.

Mr. Diamond read a letter to the Board providing background to the request. He stated that the home was built in 1921 and that it consisted of a 10-foot by 20-foot living room with no central air conditioning. He stated that he had the misunderstanding that the property was not located within the City limits and that he had been responsible for installing the curbs on Stanwood Avenue and Corson Street. He explained that the building had been gradually remodeled, beginning with the interior of the residence, proceeding to exterior renovations and additions. He stated that he had been issued a "stop work" order by the City in 2021 and that he had been told that he needed to obtain a permit and that a variance would be necessary. He explained that he applied for a permit, paid for it, and that the permit was issued. He stated that the City had posted a notice to the house deeming it unfit for human occupancy and that he was told that he needed to apply for a variance. He stated that he was told that he would have to demolish the building expansions if the variance was not granted.

Vice-Chairwoman White questioned the applicant to clarify his statement that he had been soliciting neighboring property owners.

Mr. Diamond explained that he had been arrested while gathering signatures from his neighbors to support his building expansion.

Vice-Chairwoman White questioned the applicant why the building had been determined to be unfit for residence.

Mr. Diamond responded that the building did not have any plumbing.

Vice-Chairwoman White questioned the applicant regarding the square footage of the building.

Mr. Diamond responded that he did not know the square footage of the building.

Board Member Holcomb questioned the applicant why he had not included all of the building expansion with the initial building permit.

Mr. Diamond responded that the concrete slab had already been poured and that he was told that he only needed a permit for the portion of the building that did not need a variance. Board Member Ishmael questioned the applicant regarding the timeframe that the “stop work” order had been issued for the property.

Mr. Diamond responded that the “stop work” order had been issued during the summer of 2021. He explained that there had been two (2) “stop work” orders issued to the property, one (1) for the rear addition and one (1) for the front addition. He stated that he had been told that the front porch addition would not require a permit and then subsequently received the second “stop work” order after beginning the addition.

Board Member Ishmael questioned the applicant whether he was occupying the addition.

Mr. Diamond responded that he and his family were currently occupying the addition.

Chairman Green questioned the applicant about whether there had been renters occupying the addition.

Mr. Diamond stated that there had been renters, including his family, occupying the addition.

Board Member Barnette questioned the applicant regarding the four (4) properties that he owned.

Mr. Jones clarified that the subject property consisted of two (2) lots and that the adjacent property, which had previously been owned by Mr. Diamond, also consisted of two (2) lots.

Board Member Ishmael questioned staff regarding the number of variances that were being requested.

Mrs. Castillo responded that the applicant was requesting two (2) variances, the first to the interior side yard setback and the second to the exterior side yard setback adjacent to Corson Street.

Mr. Diamond stated that he had been under the impression that he did not need a variance to the interior side yard setback and that it had been approved as part of the building permit process.

Board Member Holcomb questioned the applicant whether there had been any complaints from the neighbor about the interior side yard setback.

Mr. Diamond stated that the fencing between the two (2) properties provided screening from the building addition.

Vice-Chairwoman White questioned staff regarding the side yard setback adjacent to Corson Street.

Mrs. Castillo explained that the required side yard setback adjacent to Corson Street is 12 feet and that the applicant was requesting a reduction of the required setback down to two and a half (2.5) feet.

Board Member Barnette questioned the applicant whether he had hired a general contractor to perform the work.

Mr. Diamond responded that he had hired a general contractor to perform the work.

Board Member Barnette questioned the applicant why the general contractor had not applied for a building permit for the work.

Mr. Diamond responded that he was not aware that a building permit was required.

Board Member Barnette questioned the applicant why he applied for a building permit after the work had been completed.

Mr. Diamond responded that he applied for a building permit once the City had issued a red tag on the property.

Board Member Ishmael questioned the applicant regarding the side yard setbacks for the other properties in the vicinity.

Mr. Diamond responded that the adjacent property along Corson Street had a detached garage that was closer than the required side yard setback.

Vice-Chairwoman White questioned the applicant whether the second story of the building addition had been approved.

Mr. Diamond clarified that the building addition would only be one (1) story.

Vice-Chairwoman White questioned the applicant whether there were multiple entrances into the property.

Mr. Diamond responded that there were two (2) gates into property.

Vice-Chairwoman White questioned the applicant whether the intent was to rent out the additional building space.

Mr. Diamond responded that the building would not be utilized as a rental property.

Board Member Ishmael questioned the applicant whether he had rented out individual bedrooms.

Mr. Diamond responded that he had rented out individual bedrooms.

Board Member Holcomb stated that it was important to determine whether the requested variances would be contrary to public interest. He questioned the applicant whether the additional bedrooms would be used as rental space.

Mr. Diamond responded that the additional rooms would not be used for rentals. He stated that he would be able to finish the building addition quickly following approval of the variance requests.

Vice-Chairwoman White stated her concern that the expansions had not been properly inspected.

Mr. Jones responded that the Building and Standards Commission would assess the building expansions following the decision of the Zoning Board of Adjustment.

Vice-Chairwoman White stated that the rear expansion was very close to the fence.

Mr. Diamond responded that the space between the fence and the building expansion was wide enough for two (2) people to walk through.

Board Member Ishmael questioned staff regarding the exact dimension of the interior side yard setback.

Mrs. Castillo responded that the setback information had been provided by the applicant and that the City had requested a survey from the applicant. She stated that the adjacent property had been approved to be built with an eight-foot (8') side yard setback.

Board Member Barnette stated his concern that the building could be sold without having approval from the City for the building expansions.

Mr. Diamond responded that the City could have inspected the building expansions but chose not to do so.

Board Member Ishmael questioned the applicant whether the building had access to City water and sewer services.

Mr. Diamond responded that the building did have access to City water and sewer services.

Board Member Ishmael questioned the applicant regarding the interior setback from the building expansion to the fence.

Mr. Diamond stated that he was not sure what the dimension was for the interior setback from the building expansion to the fence.

Chairman Green read in that Mary Ann Wheatley, 4 Edgebrook Court, did not wish to speak but wanted to register her support for the requested variances.

Chairman Green swore in Derek Larabel, 1316 Stanwood Avenue, who stated that he was speaking on behalf of Gary and Melissa Bennett and read a letter that they had submitted. They stated their support for the requests and that the improvements planned for the house would be an asset to the neighborhood.

Chairman Green swore in Joy Larabel, 1316 Stanwood Avenue, who stated her support for the requests.

Chairman Green read in that JJ Early, 3022 N. Main Street, did not wish to speak but wanted to register her support for the requested variances.

Chairman Green read in that George Ann Meek, 3205 Binyon Avenue, Fort Worth, TX, did not wish to speak but wanted to register her support for the requested variances.

Chairman Green closed the public hearing.

Chairman Green stated that it did not appear that the adjacent neighbor had any issues with the interior side yard setback.

Board Member Ishmael questioned staff whether there had been any inspections performed for the building expansion.

Mr. Jones responded that the requested variances would allow for the footprint of the building as currently built. He stated that the Building and Standards Commission would determine whether to authorize the construction of the building expansion.

Board Member Barnette questioned staff regarding the role of the Building and Standards Commission.

Mr. Jones responded that the Building and Standards Commission would determine how to address the building expansion.

Board Member Barnette questioned staff what would happen if the Building and Standards Commission decided not to approve the building expansion.

Mr. Jones stated that the Building and Standards Commission had the authority to order that the expansion be demolished if necessary.

Chairman Green stated that Board Member Matthews was present for the meeting and that he had not contributed to the discussion and that he would not be voting on the item.

Board Member Holcomb made a motion to deny the variances as presented and Board Member Barnette seconded the motion.

EXECUTIVE SESSION:

Pursuant to Section 551.071, Texas Government Code, the Board reserves the right to convene in Executive Session(s) from time to time as deemed necessary during this meeting to receive advice from its attorney on any posted agenda item.

Chairman Green convened into Executive Session to receive advice from the City Attorney on the posted agenda item at 6:58 P.M.

Chairman Green closed the Executive Session at 7:07 P.M. and the meeting reconvened into open session.

The motion to deny failed by a vote of 2-3, with Chairman Green and Board Member Ishmael voting against the motion and Vice-Chairman White abstaining from the motion.

Chairman Green stated that he did not have any issue with the requested variances.

Vice-Chairwoman White stated that the hardship appeared to be self-created.

Board Member Ishmael stated that the hardship is self-created, but noted that the variance would affect the property owner's occupancy of the structure.

Chairman Green reopened the public hearing and swore in the applicant, Jacob Diamond.

Mr. Diamond stated that he had a list of his neighbors who were in support of his building expansion.

Vice-Chairwoman White stated her concern that the applicant would not be able to finish the construction of the building expansion.

Mr. Diamond stated that he would be able to finish the construction of the building expansion if approved.

Board Member Ishmael stated that the anonymous letter that had been submitted spoke to the look of the building expansion and not to the footprint of the building.

Board Member Barnette stated that he did not have an issue with the requested variances but stated that the applicant should have applied for a building permit.

Mr. Diamond stated that he had told the City that inspections could be completed on the property at any time.

Board Member Ishmael questioned the applicant whether he understood that all construction moving forward would require a building permit.

Mr. Diamond responded that he understood that he would need a building permit for any type of construction moving forward.

Board Member Ishmael questioned staff whether the Building and Standards Commission would be waiting on the decision of the Zoning Board of Adjustment.

Mr. Jones responded that the variances would need to be acted on prior to any action taken by the Building and Standards Commission.

Board Member Ishmael stated that she did not have any issues with the requested variances.

Vice-Chairwoman White questioned staff whether a variance would need to be needed for the height.

Mr. Jones responded that the City did not have any measurements showing the height of the building expansion, but stated that the property owner would be allowed to construct up to 40 feet in height or up to 2.5 stories.

There being no other questions or items for discussion, Chairman Green closed the public hearing.

Vice-Chairwoman White stated that the hardship was self-created and that granting the variances would be contrary to public interest.

Board Member Ishmael stated that the requested variances were similar to a previous variance that the Board had approved.

Board Member Barnette responded that the previous case that had been approved had been different in that the applicant had applied for the variance prior to any construction.

Board Member Holcomb stated that the hardship had been self-created and that it would not be in the best interest of the public to grant the variances.

Chairman Green called for a motion.

Board Member Ishmael made a motion to approve the variances as presented and Chairman Green seconded the motion. The motion to approve failed by a vote of 2-3, with Vice-Chairwoman White, Board Member Holcomb, and Board Member Barnette voting against the motion.

Vice-Chairwoman White stated her opposition to the request given that the hardship was self-created.

Board Member Ishmael questioned staff whether the Board could place conditions as part of the approval.

Lindsey Hale, City Attorney, stated that a failure to approve the variances would constitute denial of the variances.

Vice-Chairwoman White stated that she would be amenable to placing a condition on the approval of the variances.

Board Member Ishmael stated that she wanted more clarification regarding the location of the property line in relation to the building expansion. She questioned staff whether a survey could be required of the applicant.

Chairman Green stated that staff had requested a survey from the applicant but that it had not been provided.

Mrs. Castillo stated that staff had requested a survey from the applicant and that it had not been provided. She stated that the Board could request a survey from the applicant.

Vice-Chairwoman White questioned staff whether the applicant could be given a specific amount of time to provide a survey.

Ms. Hale responded that the Board could table their decision in order to give the applicant time to provide a survey. She stated that the Board would have to table their decision to a date and time certain.

Board Member Ishmael stated that the survey would need to show the exact dimensions of the property and the exact location of the building expansion.

Board Member Ishmael questioned staff what would happen if the variances were denied.

Mr. Jones responded that the building expansion would have to conform with the City's setback requirements if the variances were denied. He further explained that the building expansion would be moved forward to the Building and Standards Commission if the variances were approved or denied.

Chairman Green reopened the public hearing.

There being no further questions or items for discussion, Chairman Green made a motion to continue the public hearing and table the case to the May 16, 2023 Zoning Board of Adjustment Meeting with the following condition:

1. The applicant submit a survey of the property to the City by April 30, 2023.

Board Member Ishmael seconded the motion. **The motion to continue the public hearing and table the case to the May 16, 2023 Zoning Board of Adjustment Meeting carried by a vote of 5-0.**

THERE BEING NO FURTHER BUSINESS, THE MEETING WAS ADJOURNED AT 7:33 PM.