

North Little Rock Board of Adjustment

Minutes

July 31, 2014

The meeting of the North Little Rock Board of Adjustment was called to order by Chairman Carl Jackson at 1:30 P.M. in the City Council Chambers at 300 Main St.

Members Present

Carl Jackson, Chairman
Tom Brown, Vice-Chairman
Steve Sparr
Mike Abele
Andy Hight

Members Absent

None

Staff Present

Robert Voyles, Planning Director
Wade Dunlap, City Planner
B.J. Jones, Secretary

Others Present

Paula Jones, City of North Little Rock Legal Dept
Arlis Harvey, 2500 Lakeview Rd, NLR, AR
Cara Lafferty, 6109 No. Hills Blvd., NLR, AR
Steve Moss, 4409 Randolph, NLR, AR
Ruth Hankins, 4205 Arlington, NLR, AR
L.J. Norman, 4304 Arlington, NLR, AR
Charlotte Murry, 4100 Arlington, NLR, AR
T. P. Pace, LCA, 3700 Lakewood Valley Dr., NLR, AR
Laura Butler, 319 W. Locust, Lonoke, AR
Koy Butler, 319 W. Locust, Lonoke, AR
David & Linda Cassinelli, 4101 Arlington, NLR, AR
Phil Hankins, 4205 Arlington Dr., NLR, AR
Frank & Becky Thorne, 4508 Arlington, NLR, AR
Jackie Pearson, 3400 McCord, NLR, AR
Ken Sullivan, 2017 Topf Rd., NLR, AR

Approval of Minutes

Mr. Hight formed a motion to approve minutes from the previous meeting of the Board.

Mr. Sparr seconded the motion and there was no dissent.

Old Business

None

New Business

- 1. BOA CASE #1518** – Mr. Arlis Harvey, 2500 Lakeview Road, legally described as Lot 1, Block 55, Lakewood Addition – The request is to allow a front yard 6' decorative iron fence with brick columns in a C-1 zone.

Chairman Jackson swore in the applicant.

Mr. Harvey explained that he is requesting permission to install a wrought iron fence around his entire property to stop his problems with vandalism.

Chairman Jackson asked the applicant to state his hardship.

The applicant replied that vandalism and loitering have created a safety issue.

Chairman Jackson asked for staff recommendations.

Mr. Voyles replied that the adjoining properties are a residential neighborhood and front yard fences are not allowed. He added that the vandalism problems could probably be solved with a rear yard fence and he did not understand the necessity of a front yard fence.

Mr. Harvey replied that windows had been broken in the front.

Mr. Brown asked if the gates are electric.

Mr. Harvey replied that they are automatic and solar powered.

Mr. Brown asked if the fence request had been previewed by the fire marshal's office.

Mr. Harvey replied that he had talked with the fire department and was aware of their requirements.

Mr. Brown asked what type of business was on the premises.

Mr. Harvey replied that it was a wholesale food business.

Mr. Brown asked why not just place the fence at the front of the building.

Mr. Harvey explained the traffic issues in front of the business due to parking for the school pick up. He noted that sometimes he could not get in his own drive.

Mr. Abele questioned the placement of a front yard fence.

Mr. Harvey explained that he would align it with the neighboring privacy fence.

Mr. James Ard of 3308 MacArthur Dr. spoke for the applicant and noted what a nuisance took place with people turning around in the applicant's driveway all hours of the night.

Mr. Brown asked Mr. Voyles what the zoning of the applicant's property is currently.

Mr. Voyles replied that the zoning is C-1 currently. He noted that it had been residential in the past, but had been rezoned by the City.

Mr. Sparr formed a motion to approve the applicant's request.

Mr. Abele seconded the motion and it was passed with a vote of four yes votes and one vote against the fence.

Mr. Hight cast the lone dissenting vote.

- 2. BOA CASE #1519** – Mr. Koy Butler, 4404 Arlington Drive, legally described as Lot 12, Block 19, Lakewood Addition – The request is for Reasonable Accommodation, to allow up to 5 disabled persons at a residence.

Chairman Jackson recused himself from this case due to his home being located in close proximity to the applicant's address.

Vice Chairman Tom Brown took over for the Chairman and swore in the applicant and all those wishing to speak in the case.

Mr. Butler took the floor and explained that he wanted to make his house at 4404 Arlington available for disabled individuals and comes before this Board to request reasonable accommodation.

Mr. Brown opened the floor to any Board members with questions for Mr. Butler.

Mr. Hight asked Mr. Butler what his occupation is.

Mr. Butler replied that he is the owner of House of Three.

Mr. Hight asked what House of Three is.

Mr. Butler replied that it is a home for disabled individuals.

Mr. Hight asked if it is a business for profit.

Mr. Butler replied in the affirmative.

Mr. Hight asked how it would compare to the house he wants in North Little Rock and if he would be charging rent to the occupants or bill for medical care.

Mr. Butler replied that he did not provide medical care, but would be charging rent.

Mr. Hight asked the average cost to the occupant for rent.

Mr. Butler guesstimated rent to be five thousand dollars per month per occupant.

Mr. Hight suggested he would be collecting rent ten times the amount for the area.

Mr. Butler explained that the pricing is because the occupants are disabled and cannot take care of themselves, therefore would need additional services.

Mr. Hight asked if that included providing medical care.

Mr. Butler replied in the negative, explaining that he did not provide medical care per se, just care.

Mr. Hight asked what kind of services would be provided.

Mr. Butler explained that he would provide whatever services are needed to meet the needs of the disabled such as transfers, eating or washing clothes.

Mr. Hight asked if there would be workers on the premises.

Mr. Butler replied that there would be one employee on the premises to help the occupants.

Mr. Hight asked if that employee would be provided medical insurance.

Mr. Butler replied in the negative.

Mr. Hight asked if the employee is paid an hourly rate.

Mr. Butler asked where this line of questioning is going. He stated that he would be glad to answer questions as far as they pertain to his request.

Mr. Brown interjected that Mr. Hight had asked a question that they would all like to hear the answer to.

Mr. Butler acknowledged that he paid his employee an hourly wage.

Mr. Abele asked if this house is to be a House of Five as the Little Rock house is a House of Three.

Mr. Butler noted that North Little Rock ordinance allows five unrelated people to reside together and he thinks disabled people should have at least the same rights as those non-disabled.

Mr. Abele asked the applicant to address security and explain how he is registered and defined by the state, i.e.: nursing home or assisted living?

Mr. Butler replied that it is a home or an Adult Family Home if you must put labels on it. He suggests it is no different than any other home with individuals choosing to reside together.

Mr. Abele asked if there is any oversight by the State for such residences.

Mr. Butler replied in the negative, adding that the only state requirement relates to how many people can be housed under one roof.

Mr. Abele asked what that limit is.

Mr. Butler replied that it could be three or could be up to five depending on the individuals.

Mr. Sparr asked for clarification that there would be three to five disabled persons in the home with a sixth person taking care of them.

Mr. Butler confirmed.

Mr. Sparr asked if there is to be 24/7 care.

Mr. Butler agrees there would be round the clock care but the care giver would not be living there.

Mr. Sparr asked for confirmation that someone would be there round the clock but would not be living there or sleeping, napping, eating or toileting there?

Mr. Butler replied that we all use the restroom at our place of employment. (Inaudible back and forth exchange between Mr. Sparr and Mr. Butler).

Mr. Brown asked how many bedrooms are in the house.

Mr. Butler replied there are six bedrooms.

Mr. Brown asked how many bathrooms.

Mr. Butler replied that there are four bathrooms.

Mr. Brown stated that the County Assessor shows the residence to have four bedrooms and four bathrooms. Have you remodeled to make six bedrooms or baths?

Mr. Butler replied that he was counting a basement room as a bedroom that they may not have counted as such.

Mr. Brown wanted to address the parking issue and asked if any of the residents would be able to drive.

Mr. Butler replied that typically none of the residents drive.

Mr. Brown asked what kind of disabilities the home would deal with.

Mr. Butler responded that the disabilities would include those allowed by ordinance.

Mr. Brown asked the applicant to name specific disabilities.

Mr. Butler read a definition from the ordinance: persons with handicap include persons with mental or physical impairment which substantially limit one or more of major life activities (inaudible) not to include current illegal use of controlled substances (Section 102 of the controlled substance act).

Mr. Brown concluded that some of the residents could be mentally challenged.

Mr. Butler agreed that those individuals would be covered in the ordinance.

Mr. Brown asked if that is a yes or a no.

Mr. Butler responded that anyone could have mental issues.

Mr. Brown accused Mr. Butler of skirting the question.

Mr. Butler denied the accusation.

Mr. Brown asked again if the residents of the home might be mentally challenged.

Mr. Butler responded that those are not the people he is seeking, but he cannot predict who is going to live in the house over the course of time any more than one renting a home can know if they will ever have a mentally challenged resident.

Mr. Brown asked who would determine the types of disabilities allowed in the home.

Mr. Butler replied that the Fair Housing Act has requirements to avoid discrimination.

Mr. Sparr questioned the parking situation when residents had family visiting on holidays and asked if the space was available for each resident to have two spaces of parking for family members.

Mr. Butler assured the Board that there is a long driveway to provide adequate parking for family visitation; up to ten cars.

Mr. Abele asked the applicant if he is required to meet the ADA laws.

Mr. Butler replied in the negative.

Mr. Abele asked the applicant if he must comply with fire marshal requirements.

Mr. Butler replied in the negative.

Mr. Brown asked the fire marshal to address fire requirements.

John Pflasterer of the North Little Rock Fire Department stated that fire code requires a sprinkler system for a care facility with five or fewer residents in a single family dwelling according to the International Residential Code.

Mr. Brown asked the applicant if he would install a sprinkler system after hearing the requirements from the Fire Marshal's office.

Mr. Butler replied in the negative, stating he would not install a sprinkler at this time.

Mr. Abele asked if there are fixed visiting hours.

Mr. Butler replied in the negative, explaining there are no restricted visiting hours, as it is their home.

Mr. Abele asked Staff if the applicant would still come to this Board for any future variances such as room additions or fences, if this request is granted.

Mr. Voyles replied in the affirmative, that the applicant would come to this Board if any variance is needed in the future.

Mr. Butler added that the federal statute for reasonable accommodation does away with some rules to make housing available to disabled persons. He used an example of a variance for a wheelchair ramp to extend all the way to the road or a path wider than would typically be allowed.

Mr. Voyles noted that the City already allows a wheelchair ramp to extend all the way to the property line. He added that a room addition out of the ordinary would still require a variance.

Mr. Butler added that he would still come before the Board to ask for the variance though his reason might be based on reasonable accommodation.

Mr. Abele asked the applicant if he would be required to have a North Little Rock business license considering he is in business for profit.

Mr. Butler responded that his business license is in Lonoke and when he has applied for a business license in North Little Rock he has been denied.

Mr. Brown asked if a North Little Rock license is required.

Mr. Butler replied that the ordinance does not state such.

Mr. Voyles noted that any business in North Little Rock is required to have a North Little Rock business license.

Mr. Brown informed the applicant that if his request is granted, he will be required to have a North Little Rock business license.

Mr. Butler agreed to comply.

There was an inaudible comment from Mr. Hight.

Mr. Abele asked if there are specific limits for visitor parking.

Mr. Voyles replied in the negative, noting there are requirements in the zoning ordinance for a maximum of two parking spaces for a single family dwelling and that the applicant is asking for reasonable accommodation for adequate parking for his residents.

Mr. Brown asked if there would be three employees sharing a twenty-four hour work period.

Mr. Butler replied in the negative.

Mr. Brown asked if two employees would work twelve hours each.

Mr. Butler replied that the employees typically would work three days on then four days off. He summarized that one employee would be there for three days.

Mr. Brown reminded the applicant that he had stated earlier that no employee would live there.

Mr. Butler denied that an employee would live there.

Mr. Brown asked if they would work eight hours then go home.

Mr. Butler argued that if Mr. Brown had an injury and a family member stayed with him to help out, they would not be living there.

Mr. Brown asked again if the employee would go home after working twelve hours.

Mr. Butler responded that the employee would stay continuously for three days.

Mr. Brown asked if the employee would sleep there.

Mr. Butler replied in the affirmative, but denied that the employee would be living there.

Mr. Brown asked if the employee would be sleeping after they worked their shift.

Mr. Butler explained that part of the shift included sleeping, but being available if there is a need by a resident.

Mr. Brown summarized the employee would be sleeping at the residence.

Mr. Butler confirmed.

Mr. Hight asked if OSHA regulations would be met by the applicant for his employees.

Mr. Butler replied in the affirmative.

Mr. Abele asked for confirmation there would be round the clock care year round.

Mr. Butler replied in the affirmative.

Mr. Brown asked for any additional questions or statements from the Board or the applicant.

Mr. Butler summarized that this Board must determine if this case met reasonable accommodation per the City ordinance and must determine if the request poses an administrative or financial burden on the City or fundamentally alters the land use

plan. He noted that he is not changing the exterior or interior of the home, only improving it. He adds that he is not changing the footprint of the home and it will look like all other homes in the neighborhood with ample parking for his planned use. He promises to be a good neighbor, as he says he has been in Little Rock with the House for Three already established.

Mr. Brown reminded Mr. Butler that he had stated earlier that he would not install the sprinkler system required by the Fire Department.

Mr. Butler replied that he would have to look into that but noted he had not seen any regulations regarding the matter.

Mr. Brown reminded the applicant that the Fire Marshal had just stated the requirement.

Mr. Butler replied that he would need a copy of the requirement and confer with his counsel regarding the matter.

Mr. Brown asked the applicant to be seated and called for anyone in the chambers that would like to speak for this case. He asked Mr. Ard to be seated until the gentleman standing first had spoken. He asked the gentleman to state his name and address for the record.

The speaker replied that his name is Steve Moss and he lives at 4409 Randolph, just behind the applicant's house. He asked if this is a variance being considered.

Mr. Voyles replied that it is not a variance but a consideration for reasonable accommodation.

Mr. Moss stated that he had not objected to the applicant's request before this and is okay with the request as long as it is not a zoning change and the accommodation follows the owner rather than the property.

Ms. Jones stated that the accommodation does not run with the property.

Mr. Voyles assured Mr. Moss that no re-zoning is involved and there is no variance either. He added that any accommodation would not run with the property but is rather for this specific business.

Mr. Brown asked if anyone is here to speak against this case. He asked any and all speaking against the request to raise their hands. He asked those opposed to limit remarks to two or three minutes and to not repeat previous objections by other speakers, but to express new concerns. He asked anyone speaking to state their name and address.

First speaker was Mr. (inaudible) Pace of 3700 Lakewood Valley Dr. He is representing the Lakewood Community Association, as their president. His membership is against the applicant's request by a vote of eight or nine against to one vote for the request. They recognize it is different than a variance and neighbors strongly oppose the request. He commended Mr. Butler for the work he is doing but states that he believes the request exceeds a fundamental change in the character of the neighborhood. Nine cars in the driveway cause problems. He believes parking is a problem. He expressed grave concern for one care giver with five disabled people and no sprinkler system. He expressed concern for safety.

Next speaker was Larry Norman of 4304 Arlington Dr. He stated that he had done plumbing work in Little Rock for a neighbor of the House of Three, Mr. Butler owns. After questioning neighbors, he learned that they had a problem with parking and ambulance traffic. He expressed concern that the same sequence of events would happen in this neighborhood and be very disruptive.

The next speaker was Justin Mauck of 4411 Arlington Dr. He questioned how reasonable accommodation applies to a business for profit trying to insert business into residential community. He views reasonable accommodation more a need for wheelchair ramps, etc. by an individual with specific needs. He is concerned this request is not what it seems as the website for the home does not mention disabilities but rather a home for the elderly. (Inaudible)

Next speaker is Ken Sullivan of the Lakewood Property Owners Association. He commended the intentions of Mr. Butler, but said he would oppose the request on behalf of his membership based on the phone calls he had received from them regarding the request. He stated intentions of trying to maintain and protect a residential atmosphere. He voiced concern that opening a door to a business coming into a residential area might make it easier for the next business to try the same.

Mr. Brown asked for anyone else against the request that would like to speak.

Mr. Voyles asked if legal counsel for the City had any other words of guidance on the matter.

Ms. Jones responded in the negative, stating that all involved had met and been advised on the law and admonished the Board to just follow the law.

(Inaudible)

There was a question from the galley to allow persons to speak for the request.

Mr. Brown stated that he had already allowed speakers for the request.

Mr. Ard disagreed, stating that only one person had been heard for the request, with others waiting to speak.

Another female in the audience agreed with Mr. Ard that all in favor of the request had not been allowed to speak.

Mr. James Ard of 5308 MacArthur Dr. and 112 and 119 Farmere Circle wanted to speak in favor of the applicant's request. He stated that he had taken care of his mother for sixteen years and a home like this would have made his life easier. He explained that City Council had changed some rules and regulations so a home like this would be possible. He stated he did not want to see a law suit against the City for something they are not allowing that they should be allowing. (Inaudible) Mr. Ard does not believe that there will many people parking in the driveway. (Inaudible) He stated that after long conversations with Mr. Butler, he believes there will only be three residents with a care giver around the clock. (Inaudible) He used fire fighters as an example of a similar working schedule as the care giver with several days in a row on duty, followed by several days off. He suggested the fire fighters eat, sleep and live there. He added the applicant's request is a good idea because people need help and need peace of mind in the final days. He stated that he did not believe the applicant would be doing anything wrong. (Inaudible)

Mr. Brown thanked Mr. Ard for his comments, but Mr. Ard was still speaking.

Mr. Brown asked him if he was finished.

Mr. Ard replied in the negative, but added that he would deal with Mr. Brown later.

The next speaker was Carol Lafferty of 6109 North Hills Blvd., here to speak for the House of Three. She addressed the comment that the website did not specify disabled residents but rather a home for the elderly. She suggested the elderly cannot take care of their daily needs and that is a disability. She stated she had been to the applicant's Little Rock house several times and the residents cannot take care of their daily needs. She suggested it is a disability to not be able to toilet yourself or do your laundry. She stated that in the one year the House of Three has been in Little Rock, there have been two ambulance calls / visits. She stated that House of Three means three residents, not five and that three residents will not have twelve cars parked there. She considers traffic and parking a moot point. She stated that it really bothers her because people should come first not our rules and regulations. She understands we have rules and regulations to protect people but disabled people need protection, too. They need more protection from us than the average person.

The next speaker was David Cassinelli of 4101 Arlington Dr. He stated he was raised in Park Hill and did not think a commercial business should be able to disrupt a residential neighborhood, but should locate in a commercial area. He thinks someone from Lonoke, buying a house here to open a business in a residential area is opening Pandora's Box and will not end and he asks the Board to please vote no.

Mr. Brown asked if anyone else wanted to speak and there were no replies.

Mr. Brown asked if there was a motion.

Mr. Abele formed a motion to approve the applicant's request.

Mr. Brown acknowledged the motion and asked for a second.

There was no second on the motion. The motion died without a second.

Administrative:

None

PUBLIC COMMENT/ADJOURNMENT:

Mr. Abele moved for the Board to adjourn at 2:25pm. Mr. Hight seconded the motion and there was no dissent.

PASSED: _____ RESPECTFULLY SUBMITTED:

CARL JACKSON, CHAIRMAN

ROBERT VOYLES, DIRECTOR