



MINUTES
BOARD OF ADJUSTMENT
CITY OF PRESCOTT
Thursday, May 17, 2007 - 9:00 AM
City Council Chambers

MEMBERS PRESENT:

E. Calvin Fuchs, Chairman
Mike Klein, Vice Chairman
Duane Famas
Johnnie Forquer
Tom Kayn
Bill Warren

MEMBERS ABSENT:
Ken Mabarak

OTHERS PRESENT:

George Worley, Assistant Community
Development Director
Gary Kidd, City Attorney
Dick Mastin, Development Services Mgr.
Mike Bacon, Community Planner
Bob Bell, Council Liaison
Bob Luzius, Councilman
Kathy Dudek, Recording Secretary

PLEDGE OF ALLEGIANCE

- I. **CALL TO ORDER**
- II. **ATTENDANCE**
- III. **REGULAR AGENDA**

1. **Approve the minutes** of the 04-19-07 public hearing.

Mr. Kayn, **MOTION: to approve the minutes** of the April 19, 2007 public hearing. Ms. Forquer, 2nd. **Vote: 6-0.**

2. **V07-002, 325 E. Gurley Street (The Cleaning Machine).** APN: 109-01-055A and totaling ± 0.21 acre. LDC Section 3.6. Zoning is Business General (BG). Request variance to reduce side and rear setbacks. Owners are Loren Q. and Linda R. Rowling. Applicant/agent is Mark Peugh. Community Planner is Ryan Smith. *(Continued from 04-19-07).*

Mr. Worley presented an update on the project. Because of the two separate parcels, the applicant was advised to combine the parcels into one before the Board of Adjustment could take action on the item. The request was continued to today's meeting; however, because of an absentee landowner that is involved, the combining of the parcels has taken longer than anticipated. Staff is requesting continuance to next month's meeting.

Mr. Kayn, **MOTION: to continue V07-002, 325 E. Gurley Street (The Cleaning Machine)** to the June 21, 2007 Public Hearing at 9:00 AM. Mr. Warren, 2nd. **Vote: 6-0.**

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3. **CUP07-002, 2116 Golf Links Drive.** APN: 102-12-016 and totaling ± 0.33 acre. Zoning is Single-Family 9 (SF-9). *LDC* Section 2.5 and Table 2.3. Request conditional use permit for a detached guesthouse. Owner is Alan Green. Applicant/agent is Tom Menser. Community Planner is Mike Bacon (928) 777-1360.

Mr. Bacon reviewed the staff report and indicated:

- this is a request for a detached guest house in the Golf Links subdivision;
- a new garage is not included in this request;
- the property line extends significantly to the north and setbacks meet *LDC* requirements;
- a letter of objection has been received from the homeowners association in regards to the CC&Rs;
- the Board is directed to consider this request with respect to the *Land Development Code (LDC)* requirements;
- there is no requirement to preserve views in the *LDC*;
- the owner prefers a detached guesthouse, but if “pushed” will attach the house and guesthouse via a roof connection; and,
- if the roofs are connected, no conditional use permit will be required.

Board members queried and commented on:

- if the guesthouse were moved and attached to the main structure, what would be saved distance wise;
- in requesting a CUP review, the Board has been charged by the City Council to examine the request to determine if a significant impact occurs to the residents or owners of surrounding properties; and,
- if the Board can be charged with taking a look at the CC&Rs to make an appropriate judgment in regard to the decision rendered.

City Attorney Kidd indicated that this is an age-old dilemma of applying City Code. CC&Rs are private and set policy; however, the City does not consider objections from homeowners associations in considering the impact on surrounding properties. The homeowners association does have the right to bring issues on behalf of the property owners' concerns. The covenants entered into can preclude the property owner from doing something that the Board gives permission to under the City Code.

Mr. Alan Green, owner, 2122 Golf Links Drive, indicated:

- the property address has been changed to 2122 Golf Links Drive;
- he paid \$750 [*sic* \$745] to the City for a CUP so that the structure will have a restriction that the guesthouse can never be rented;
- he could go out another 30' and attach a rain gutter and arch and the architectural review committee (ARC) would have no basis for their opposition, and a building permit could be issued;
- there are three properties in the Golf Links subdivision that have buildings that are detached and to prohibit his proposed structure would be selective; and,
- three properties, 1921 Golf View Lane, 5592 Hole-in-One Drive, and 5600 Hole-in-One Drive, were cited as having detached structures.

Mr. Edwin Wojack, chairman of the ARC, 5666 Hole-in-One Drive, stated:

- there is no homeowners association, only the ARC;
- the CC&Rs were developed and written by the City of Prescott;

- the three properties cited by Mr. Green with each abutting Hwy. 89 and were granted to diminish the noise level from the highway; and,
- ARC has talked to Mr. Green and has asked him to adjoin his guesthouse to the main structure.

Chairman Fuchs asked if any significant negative impact will occur if the Board is to go forward and approve the CUP. Mr. Fuchs stated that he hasn't heard anything said in the remarks that would indicate a significant negative impact in regard to this guesthouse.

Mr. Wojack remarked:

- the ARC has no means to follow through and deter persons from doing things;
- the request, if permitted, destroys the validity of the CC&Rs;
- ARC tries to handle matters on a personal basis, going to the property owners and asking for cooperation without threats and notices; and,
- property owners in Golf Links subdivision have signed the CC&Rs when purchasing their properties and have knowledge of what is in the CC&Rs.

Mr. Bacon proffered he would presume that the CC&Rs were written by the City when it was developing Antelope Hills Golf Course; however, once the lots are sold, the development is released to private ownership. The CC&Rs are subject to change by vote of the members.

Mr. Kidd indicated that he has reviewed the CC&Rs and the City did write them; however, the City did transfer the CC&Rs to the homeowners association, or property owners, or ARC. After perusing the CC&Rs, the City does not have any requirement to step in under the CC&Rs.

Mr. Klein asked if the primary objection of the ARC is one of aesthetics. Mr. Wojack replied that the ARC has the capability of addressing the casita [*sic* guesthouse]. There is one [guesthouse] directly across the street, it is used as guest quarters, and is attached to the house.

Mr. William Watts, owner of lot to the south, 2108 Golf Links Drive, indicated:

- he doesn't object to the guesthouse as long as it is attached to the existing house;
- the development is single family and is opposed to more than one residence on a single lot;
- the latest drawing shows the structure being moved closer to the house and is better;
- wanted to know if the guesthouse will have a kitchen [Mr. Green: There is no kitchen in the guesthouse, but there is a shower and toilet; and,
- is not opposed as long as there is compliance with the setback requirement.

Mr. Tom Menser, architect, 1120 Deerfield Road, stated that his client wants a "detached", not adjoined, structure and is adamant about the structure being detached. If the buildings were attached, it would be done at the roofline and not via a breezeway. The building is being held back 40' from the property line and is within the setback requirements.

Ms. Lois Rose, 2092 Golf Links Drive, indicated:

- she lives three doors away from the proposed project;
- several inaccuracies have been mentioned which include:
 - a. the floodplain easement prohibits placing any structure within the approximate 40-foot area, and the request to go back another 30' is not permitted;

- b. the historic aspects are inaccurate, the property was developed in the early 90s when Antelope Hills was expanded from 18 to 36 holes;
 - c. the City was both the developer and seller;
 - d. the owners are stuck with ARC as no homeowners association exists;
 - e. the owners are dependant on City Codes to protect us;
 - f. if proper documents were in existence, the CC&Rs could be amended.
- the only enforcement would be against the homeowner or City;
 - there is a concern with the proliferation of guesthouses that block peoples' views;
 - when the City was in charge, people had to move or tear down view-obstructing structures;
 - this home is one of the larger homes in the development and consumes a large part of the lot; and,
 - with approval, a decrease in property values to the adjoining properties will occur.

Further comments by the Board included:

- the owner could attach another bedroom to the house and wouldn't need a CUP; and,
- the owner could attach the two structures at the roofline and a CUP wouldn't be needed.

Mr. Gary Tibbits, 2009 Golf Links Drive, who lives across the street from the proposed structure, seconded the concerns of the homeowners association and various neighbors.

Chairman Fuchs stated that the Board deals solely with criteria established by City Codes. The Board has no jurisdiction to enforce the CC&Rs. The Board of Adjustment is not the forum for CC&R concerns. Today, the Board wanted to ascertain if any comments demonstrate a negative impact. The impact would be virtually the same whether the building was attached or was detached. Nothing today has been presented to the Board that would substantiate denial of the proposed project.

Mr. Kayn, **MOTION: to approve CUP07-002** for a detached, non-rentable residence in an accessory building in accordance with Exhibit A dated April 9, 2007 and subject to the conditions for use of said guesthouse of Section 2.5.6 of the *Land Development Code* of the City of Prescott. Mr. Warren, 2nd. **Vote: 5-1** (dissenting vote: Famas).

4. **CUP07-003, 645 Robin Drive.** APN: 106-49-087 and totaling ± 0.88 acre. *LDC* Section 2.5.6 and Table 2.3. Zoning is Single-Family 35 (SF-35). Request conditional use permit for a detached guesthouse. Owner/applicant is Carter Builders, Inc. Community Planner is Ryan Smith (928) 777-1209.

Mr. Worley presented the staff report and indicated:

- the request for the detached guesthouse is in the residential section of The Crossings;
- common requests from this residential development for detached guesthouses have previously come before the Board and have been approved;
- the guesthouse request does not include a request for a kitchen;
- utilities and service lines will be connected to the principal structure, i.e., the house;
- the property is currently under development; and,
- the project is in compliance with all *LDC* requirements.

Mr. Ron Ogden, 4013 N. Hill Drive, Prescott Valley, was present to answer questions. No questions were asked.

Mr. Klein, **MOTION: to approve CUP07-003**, subject to the following conditions:

That the proposed guesthouse is built in substantial conformance to the site plan dated March 27, 2007, and the construction be in accordance with Section 2.5.6 of the *Land Development Code* of the City of Prescott. Mr. Kayn, 2nd.

Discussion after the motion was made included:

- the floodplain and the need for stabilization on the bank; and,
- the elevation and requisite flood plain certificate.

Vote: 6-0.

5. **V07-003, 2530 Copper Basin Road.** APN: 108-21-007F and totaling ± 0.70 acre. *LDC* Section 3.2. Zoning is Rural Estate 2 acre (RE-2ac). Request variance for side and rear yard setbacks for a garage addition. Owners are John & Terri Enequist. Applicant/agent is Douglas Stroh. Community Planner is Steve Gaber (928) 777-1206.

Mr. Worley presented the staff report and indicated:

- the variance request is to allow an attached garage located in an area that was recently annexed into the City;
- the property came into the City with Rural Estate 2-acre (RE2-ac) zoning with substantial setback requirements;
- the annexation left non-conforming lots in that zoning district;
- there will be a 10' rear setback and 5' side setback when the garage is constructed;
- significant topographic issues exist on the property;
- the proposal is the logical place to put the structure;
- the adjoining property owner has not objected to the proposed structure; and,
- staff has determined that hardships exist that are not assignable to the property owner.

Mr. Famas indicated he was uncomfortable with voting on this request as he prepared the annexation plat. City Attorney Kidd indicated that in looking at a conflict of interest when a pecuniary interest or a pecuniary loss is included in making a decision the Board member should recuse him/herself. Mr. Famas indicated he received and spent the check a long time ago. After clarification, Mr. Famas felt that there is not any pecuniary interest that would come into play and after the fact at this point in time.

Mr. Doug Stroh, architect, 819 W. Gurley, noted that he received a letter of support from the property owner to the north; and, there are now three letters in support from all of the adjacent property owners. (*The letters were presented at the meeting and entered into the file*).

Mr. John Enequist, 2530 Copper Basin Road, indicated his closest neighbor, Mike Ward, is also present to support his request.

Mr. Klein, **MOTION: to approve V07-003**, 2530 Copper Basin Road, for a reduced rear yard setback and reduced side yard setback subject to the condition that the improvements be constructed in substantial conformance with the plans and drawings dated 3/02/07. Mr. Warren, 2nd. **Vote: 6-0.**

IV. REVIEW ITEMS

None.

V. SUMMARY OF CURRENT OR RECENT EVENTS

None.

VI. ADJOURNMENT

The meeting was adjourned at 10:20 AM.

E. Calvin Fuchs, Chairman