

**Minutes**  
**PLANNING & ZONING COMMITTEE**  
**WORKSHOP WITH CITY COMMISSION REGARDING VARIANCE CRITERIA**  
**Wednesday, February 21, 2007 8:30 a.m. – City Hall Conference Room**

Call to Order – Chair Bill Danaher called the new member orientation and variance criteria workshop to order at 8:30 a.m. Present were: Bill Danaher, Ron Anderson, Kathryn McCullough Rea, Bob Glassman, Ron Foster and Marie Flood. City Commission: Mayor Burnett, Vice-Mayor Carbin, Commissioner Vorick, Commissioner Sutton, Commissioner DeGraw. Also present: Attorney Thomas Wright, Building Official Edward Borysiewicz and City Clerk Vickie Bollinger. Public: 0

Discussion

Attorney Wright stated the purpose of the meeting was for new member orientation and to discuss the variance criteria. He reminded all that no pending issues or variances may be discussed. He stated that the Planning & Zoning Committee serves various functions such as review and approval of plats, major construction projects, and variances. All agreed the variance criteria needed to be clarified and the process improved.

Attorney Wright advised that if the variance applicant was represented by an attorney, then he and Building Official Borysiewicz should also be present to advise the committee. Building Official Borysiewicz stated he often meets with applicants and reviews their requests and assists them to complete the application.

In response to a question regarding sunshine laws, Attorney Wright stated that committee members may visit the property and talk to others, except other committee members, about the variance prior to the meeting. He recommended property visits be done individually by committee members to avoid the appearance of sunshine law violations. After the committee has made their recommendation to the commission, committee members may speak to anyone about any issue regarding the variance application.

Attorney Wright stated that the Department of Community Affairs (DCA) is more concerned with our land development regulations (LDR) than our city code of ordinances. As a result, it takes longer to amend the land development regulations and requires DCA approval. Variances are for exceptions to the land development regulations. Variances are not granted to city code, except for docks. The city commission gave a special exception and variances may be granted for docks.

Attorney Wright reviewed LDR section 101-171(5)(c) Other Considerations. It states that variances may not be granted for uses, e.g. a variance may not be given to build a duplex in a single-family zoning district.

Committee members will be given a copy of the LDR and the application will include a question as to whether the applicant will have an attorney present. If the applicant answers “no” on the application, but then brings an attorney, the hearing should be continued to the next meeting so that Attorney Wright can be present to advise the committee.

Building Official Borysiewicz reviewed all the zoning districts in the city, their uses and allowed accessory structures. Attorney Wright stated site plans for all zoning districts, except single-family and duplex, are brought to the committee for review and recommendation to the city commission. There was a discussion of density, spot zoning, docks and piers, boat lifts, and permitted uses. Attorney Wright stated there are no variances for density; and that at a hearing, the committee should confine their discussion to the issues before them.

Attorney Wright led a discussion of the variance criteria. He stated the committee first considers the six specific criteria. If all six criteria are not met, the committee may then consider the three general

criteria. If all three general criteria are met, then the committee may recommend approval to the city commission. He then reviewed the six specific criteria.

1. That special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district.

Attorney Wright stated the committee should consider what is unusual about the land or building; why does the applicant need a variance and the neighbors don't; for example, is the lot an unusual shape.

2. That the special conditions and circumstances do not result from the actions of the applicant.

Attorney Wright stated that if the applicant created the situation, then a variance should not be given. He stated that variances have been granted to keep the same wall or roof line after side setbacks have been changed.

3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings or structures in the same zoning district.

Attorney Wright stated that this should not be interpreted too broadly and the committee should be sure no collateral privileges would be given if the variance is granted.

4. That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.

Attorney Wright stated this is an overlap of criteria #3--a repetition of the concept. The question is: is it unfair to the applicant to enforce the city regulations?

5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure.

Attorney Wright stated this criteria is never met in our city, but it should be read narrowly, e.g. maybe the applicant doesn't need to encroach into the setback as much as what is requested. The variance should be granted for the minimum amount and he encouraged the committee to discuss this with the applicant. Attorney Wright stated the committee may apply conditions and set restrictions as part of their recommendation to the commission.

6. That the granting of the variance will be in harmony with the general intent and purpose of this chapter and that such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

Attorney Wright stated this is a catch-all criteria.

The history of the variance criteria and process was discussed. The committee and commission agreed that another workshop was necessary to continue progress toward revising the criteria.

The workshop adjourned at 9:35 a.m.

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Vickie L. Bollinger, City Clerk