



**Forest Acres Zoning Board of Appeals
Minutes
March 13, 2023
City Council Chambers
6:00 PM**

I. Call to Order

Robin O'Neal, Chair, called the meeting to order at 6:00 PM.

- 1. Determination of a Quorum** – There was a quorum with Robin O'Neal, John Kososki, Stephen Oliver, Shirley Fawley, and Kate Usry present. Pete Balthazor was absent. Ryan Newton provided a statement of recusal. Shaun Greenwood, City Administrator, Will Dillard, City Attorney, and Andy Smith, Assistant City Administrator/Finance Director, were also present.

II. Approval of Minutes

1. February 13, 2023

Mr. Oliver made a motion to approve. Ms. Fawley seconded. Motion passed unanimously.

III. New Business

1. Variance request

5213 Trenholm Road. (5213 Trenholm LLC); TMS 14013-02-06 & TMS 14013-02-20. Requesting a variance to reduce the permittable size of five (5) parking spaces from 300 square feet to 200 square feet per space.

Ms. O'Neal introduced the topic and noted that members of the ZBA should have received a packet with the variance application from 5213 Trenholm LLC, relevant excerpts from the City's zoning ordinance, and notice of objection from Shop-Vista TIC, LLC. Ms. O'Neal noted that she would invite the applicant to present the variance request, the City Administrator to provide the City's perspective on the need for a variance, and the objecting party to provide their perspective. There would then be opportunity for comment for and against the proposed variance.

Frank Cason, with Cason Development Group and agent for 5213 Trenholm LLC, began by noting that they had just received the formal objection 30 minutes prior to the meeting. He noted that they need time to digest the objection and either discuss it with the party making the objection or prepare a formal response. So, he requested a deferral.

Mr. Greenwood noted that earlier that day Mr. Cason requested information about the meeting, and Mr. Greenwood notified him that we had received one objection.

Mr. Cason requested a copy, and Mr. Greenwood provided it. Mr. Greenwood noted that the board can elect to defer this to the following month's regular meeting or proceed with the meeting tonight. Mr. Usry asked and Mr. Greenwood clarified that objections are not automatically sent to the applicant because they are addressed to the ZBA, not the applicant. In this case, the objection came in the preceding Friday (i.e., two business days before the meeting).

Ms. Usry asked if construction was planned in the next 30 days. Mr. Cason replied that it is not.

Ms. O'Neal asked the objecting party, through their attorney Robert Fuller, if they had any objections to a deferral (City Attorney Will Dillard clarified that this would be a continuance, not a deferral). Mr. Fuller noted that one of the objections they're raising has bearing on whether the variance application should be heard at all – and that's the issue of standing. Mr. Fuller's contention is that, as there is no written consent from the neighboring property owner (i.e., the objector) to use the shared easement for a purpose impacted by the potential variance, the variance applicant has no standing to propose the variance for a hearing before the ZBA (today or at next month's meeting). Ms. O'Neal noted that the easement is a private matter that doesn't have bearing on whether or not the ZBA hears the variance. Ms. O'Neal asked for Mr. Dillard's comment on this question; he advised that the questions Mr. Fuller raises can be heard as part of the overall variance request hearing, whether that's now or next month.

Stan Harpe, owner of Shop-Vista TIC, LLC (i.e., objecting party), noted his contention that this is a legal issue related to the access easement agreement between the two properties. He noted that the agreement specifically said that there is to be no parking. Mr. Dillard clarified that the City's decision, at the staff level, is that the relevance of the easement to the variance request is for the consideration of the Zoning Board (just like any other decision of the ZBA, which inherently includes decisions that have related legal issues). He further noted that the Zoning Official, Mr. Greenwood, was not going to refuse to submit the application to the ZBA for hearing. At the ZBA level, both sides will have an opportunity to present arguments, and there are appeal processes beyond the ZBA, if necessary. Mr. Harpe noted his contention there should be a consent, waiver or letter of agency from the adjacent property owner. Mr. Harpe further indicated that he was all right with a continuance.

Ms. O'Neal noted that, at this point, it's probably best to allow the applicant to digest the objection and that all of the parties seemed in agreement that a continuance would be helpful.

Mr. Kososki made a motion to continue this discussion to the next regular meeting. He noted further that he'd like time to digest the objection. Ms. Usry seconded the motion on the grounds that Mr. Cason indicated that he'd like time to discuss this with the party that objected. Motion passed unanimously.

IV. Adjournment

Ms. Usry made a motion to adjourn; Mr. Kososki seconded. Motion passed unanimously, and the meeting was adjourned at 6:18 PM.

Respectfully Submitted,
Andy Smith, Asst. City Administrator/Finance Director
(Administrative support of Zoning Board of Appeals)