



CITY OF COLLEGE PARK ADVISORY PLANNING COMMISSION
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ADVISORY PLANNING COMMISSION
Approved Minutes of Meeting
October 1, 2015 – 7:30 P.M.
City Hall – Council Chambers

<u>Members</u>	<u>Present</u>	<u>Absent</u>
Mary Cook, Chair	<u> x </u>	<u> </u>
Lawrence Bleau	<u> x </u>	<u> </u>
James McFadden	<u> x </u>	<u> </u>
Rose Greene Colby	<u> </u>	<u> x </u>
Christopher Gill, Vice Chair	<u> </u>	<u> x </u>
Kate Kennedy	<u> x </u>	<u> </u>

Also Present: Planning Staff – Miriam Bader and Theresheia Williams; Attorney: Suellen Ferguson

I. Call to Order: Mary Cook called the meeting to order at 7:45 p.m.

II. Approval of Minutes:

Lawrence Bleau moved to accept the minutes of September 3, 2015. Kate Kennedy seconded. The motion carried 4-0-0.

III. Amendments to Agenda: Lawrence Bleau moved to amend the agenda to insert Discussion of the Advisory Planning Commission Powers and Duties after item V. Kate Kennedy seconded. The motion carried 5-0-0.

IV. Public Remarks on Non-Agenda Items: There were no Public Remarks on Non-Agenda Items.

V. Public Hearings:

CPV-2015-06 Variance to Validate Existing Conditions and to Construct a 13-foot by 8-foot Addition

Applicant: Neil Ordiers
Location: 9603 53rd Avenue

Mary Cook explained the hearing procedures and placed witnesses under oath. Miriam Bader summarized the staff report. The applicant is requesting a variance of 20.3% or 1,856.22 square feet from the maximum allowable lot coverage of 5% or 457.5 square feet to construct an 8-foot by 13-foot addition. The property is located in the Daniels’ Park Addition subdivision. The property is irregular in shape and has an area of 9,150 square feet. The front property line measures 113 feet, the rear property line measures 70 feet, the eastern side property line measures 109 feet, and

the western side property line measures 100 feet. The property is improved with a one-story single family home, detached garage now used as a shed, and driveway. The existing home was constructed in 1960 and the subdivision dates to 1906. The property was rezoned from R-55 to O-S in 1990 as part of a comprehensive rezoning by County initiative. The properties across the street are zoned R-55 (Single-Family Residential). There are a total of 5 single-family residential properties in the O-S zone in this area. These properties have developed similarly in terms of lot size, setbacks, house size, etc. None of these properties comply with the minimum O-S development standards.

The applicant applied for and was granted a variance for this same addition on November 9, 2011 but did not apply for a building permit until November 14, 2014, over a year after the variance expired. The original variance was to allow the applicant to construct a 6-inch by 8-foot addition to an existing 8.0-foot by 12.6-foot addition for a total dimension of 8-feet by 13-feet. This original addition was not built according to code and has been torn down. The applicant proposes to replace the original addition with an 8-foot by 13-foot addition, which is the same dimensions as was originally approved. The lot coverage variance has changed from the original request because the applicant has reduced the size of his driveway. The applicant states in his application that he did not obtain a building permit within the two-year time frame due to financial reasons but that he did comply with the condition of the variance which specifically stated that “the Applicant remove the concrete that connects the gravel driveway to the garage.” Staff recommends approval of the variance to allow the applicant to construct an 8-foot by 13-foot addition, with the condition that the applicant removes the tarp covering the front yard by November 1, 2015. The applicant has proffered that he will remove the lawn tarp covering his front yard by November 1, 2015.

Miriam Bader submitted the staff report, Exhibits 1-9 and the PowerPoint presentation into the record. Commissioners accepted unanimously.

Kate Kennedy asked if the property should be treated as O-S or R-55?

Suellen Ferguson, attorney, stated that the property is in the O-S zone, but the existing improvements were constructed before the property was re-zoned to O-S and are grandfathered. She stated that the applicant is putting up the same addition that was there before, but they are adding a foot. This would not exist if it preceded the building on the house. The property does comply with the R-55 zone requirements, which is the prevalent zone in the neighborhood.

Neil Ordiers, applicant, testified that he did not obtain a building permit within the two-year period because of financial reasons. He stated that he did remove the concrete that connects the gravel driveway to the garage to comply with the variance. Mr. Ordiers stated that the lawn tarp that he has covering his front yard is to allow water to penetrate to create a vapor barrier to kill any grass or weeds. He stated that the sooner the variance is approved the sooner the contractor can proceed with the addition.

Mary Cook asked what year did he remove the concrete?

Neil Ordiers stated that it was shortly after the variance was approved back in 2011. He stated that after having the concrete removed, he could not afford to do the addition at that time.

Mary Cook asked if he built the original addition?

Neil Ordiers stated that the original addition was already there when he purchased the property in 2010.

Commissioners accepted and entered into the record the list of property owners, which were inadvertently left out of the staff report. They were entered as Exhibit 10a-10f.

Commissioners reviewed the evidence and testimony submitted and determined that:

1. The property has an extraordinary situation in that the existing home is located in the O-S zone and does not conform to any requirements of the zone. The existing improvements were constructed before the property was re-zoned from R-55 to O-S and are grandfathered. The property complies with all the R-55 requirements, and no variance would be required for the addition if the property were still zoned R-55.
2. The strict application of the County Zoning Ordinance will result in an undue hardship to the applicant because the O-S zone is more restrictive than the R-55 that originally applied to the property. The side yard setback of 20 feet in the O-S zone could only be met if the applicant's entire house were moved 13 feet to the northeast, which would be an undue hardship. The lot coverage requirement could only be met if the house, garage and driveway were all reduced to not exceed a total square footage of 457.5 square feet, which would also be an undue hardship.
3. Granting the requested variances will not impair the intent and purpose of the applicable County General Plan or County Master Plan. The O-S zoning was placed on the property after it was subdivided and improvements constructed. The new addition replaces a previous addition in approximately the same location where a previous variance request was granted. The subject property is consistent with other houses in the vicinity zoned O-S and meets the requirements of the R-55 zone, which is the prevalent zone in the neighborhood. The proposed addition is consistent with development in the surrounding neighborhood.
4. There is no reason based on the evidence in this record to override the prior grant of this variance on November 9, 2011.

James McFadden moved to approve variance CPV-2015-06 as amended because the request meets the criteria for granting the variance for the reasons stated above.

Lawrence Bleau seconded. Motion carried 4-0-0

**CEO-2015-02 Variance from the City Fence Ordinance to Erect a 6' High
Front Yard Fence (continued from 9/3/15)**
Applicant: Cruz Development Corporation
Location: Branchville Road

Mary Cook explained the hearing procedures and placed witnesses under oath. Miriam Bader summarized the staff report. The applicant is requesting a variance to erect a 6-foot high, welded wire fence in the front yard. The property is located east of Baltimore Avenue and south of University Boulevard in the Branchville Crossing subdivision and is part of the Berwyn District Civic Association. The property is a triangular-shaped, through lot with frontage on Branchville Road and MD 193-University Boulevard. The area of the property is 2 acres. The front property line along Branchville Road measures 527.88 feet; the rear property line, along MD 193-University Boulevard, measures 630.16 feet; the side property line measures 338.45 feet; and the other side property line measures 23.74 feet. The property is undeveloped and mostly wooded. The south-eastern part of the lot has been cleared and kept mowed. There is also a gravel parking lot located on this section of the property. The applicant proposes to incorporate a 6-foot high, 16-foot wide, double-leaf swing gate into the fence located opposite a curb-cut on Branchville Road. There are single-family residences along the western boundary of the site. Across the street of Branchville Road is the Branchville Volunteer Fire Department and the Branchville Playground, a neighborhood park. Abutting the fire station to the east is a church and commercial uses. A 15-foot of right-of-way along Branchville Road was dedicated but not improved by Cruz Development Group pursuant to the record plat recorded on August 23, 1988. The paved section of Branchville Road is 26-foot wide within a 45-foot right-of-way. Prince George's County issued a fence permit for the property. There is no County front yard fence restriction on lots over one acre. The City issues permits for fences, regardless of expected duration. The applicant is actively working on developing the property.

Staff recommends approval to place a fence in the front yard with the following conditions:

1. Correct the fence location plan to accurately record the height of the existing fences on western property line.
2. Reduce the fence height from to 4-feet to lessen the impact on the neighborhood.
3. Upgrade material of fence from welded wire to vertical, aluminum or metal posts or something similar that would be more compatible with the neighborhood, subject to approval of City of College Park Staff.

Miriam Bader submitted the staff report, Exhibits 1-10 and the PowerPoint presentation into the record. Commissioners accepted unanimously.

James McFadden asked what is the R-10 zone?

Miriam Bader stated that it is high density multi-family.

Matthew Tedesco, representing the applicant, testified that he agrees with the staff report and the recommendation and conditions. He stated that there is an ongoing property dispute with the Branchville Fire Department with respect to the gravel property area. It is a separate proceeding, which will be determined at a future date by another body. The issue before the APC is a variance to install a 4-foot fence in the front yard. They would also like to address the issue of the fire department and others trespassing on the applicant's property. He stated that this property is unlike any property in the neighborhood. Most of the properties are zoned R-55, but they are old historical single-family lots. This is a two acre triangular shaped property, which is very unique in the neighborhood. It is also a through lot, which is a parcel that has frontage on two roads. The owners have liability concerns with respect to any ongoing or continued use of the property by anybody. To secure the property and to prevent this, a fence needs to be installed. He stated that assuming the Detailed Site Plan for the future development application is approved, the fence would be removed and it would be a comprehensive development plan that would address some of the concerns with respect to the installation of the fence. Mr. Tedesco stated that he does not believe the fence would impair the intent or purpose of the master plan. Mr. Tedesco stated that the applicant has a landscape company that comes out regularly and services the property and cleans the trash, that's why you don't see any evidence of dumping. The 45-foot dedicated right-of-way is substantial and wide enough to provide for the turning radius.

Mr. Tedesco submitted photos he obtained from the internet showing the fire department trespassing on the property, which were entered into the record as Exhibit 10.

Thomas Tanner, 4905 Branchville Road, presented a PowerPoint presentation and testified that he is the vice-president of the Branchville Volunteer Fire Dept. and has been a member since December 1990. He stated that he is opposed to the requested variance. He stated that four of the eight homes on Branchville Road have fences. All of them were built more than 40 years ago. He has seen very few trespassers on the lot and there have been no signs of dumping. He stated that the apparatus truck for their department is 31' long. In order to pull the apparatus out, they need to go onto the applicant's lot. Mr. Tanner showed a video of the fire engine pulling out and turning. He stated that the additional space out front helps the new drivers maneuver the truck. When they do maintenance on the engines, they have to lift the cab, which require the truck be centered on Branchville Road.

Mary Cook asked if anyone could testify that there has been no dumping or trespassing on the property?

Thomas Tanner stated that he can bring up Google Earth imagery that would show that they had volley ball nets and sheds on the property, but there was no trash on the property. He stated that the code enforcement records could be checked to confirm this.

Kate Kennedy asked if he was admitting to trespassing?

Thomas Tanner, stated that he wouldn't call it trespassing, they have always parked there and used the lot, and there has never been an issue.

Kevin Young, president of Berwyn District Civic Association, testified that he submitted comments to staff back in August. He stated that the Berwyn District Civic Associations respectfully disagrees with the staff report in this matter. There is no extraordinary condition that justifies a variance of the fence ordinance. He stated that to consider a dispute with a neighbor to be an extraordinary situation would set a dangerous precedent. He stated that the applicant has only become concerned with trespassing and dumping because of the recent dispute between them and the Branchville Volunteer Fire Dept.

Kevin Young stated that the Berwyn District Civic Association has no dispute with Cruz Development. They have an agreement made back in 1987 between Cruz Development and the Berwyn District Civic Association, which states that the abutters would have access to the abutting property. He stated that the attorney representing Cruz Development stated at the November 5, 2014 City Council worksession that the applicant was still addressing the turning radius. It is something that should be considered as an impact on the Fire Department. This is one of the reasons that the Fire Department is opposed to a fence of any height, any material for any duration on this property.

The following additional Exhibits were approved and entered into the record:

- Exhibit #11 – Photos of single-family homes with fences in the neighborhood
- Exhibit #12 – PowerPoint presentation from the Branchville Fire Department
- Exhibit #13 – Comments and photos from Kevin Young, President of the Berwyn District Civic Association
- Exhibit #14 – Agreement from 1987 between Cruz Development and the Berwyn District Civic Association.

Matthew Tedesco stated that he objects to Exhibits 12 and 14 because he feels they are irrelevant to the request.

At 10:12 p.m. James McFadden moved to go into executive session to discuss matters with counsel. The hearing reconvened at 10:22 p.m.

Commissioners reviewed the evidence and testimony submitted and determined that:

1. There is an extraordinary condition in that the property is a triangular through lot with lot lines of irregular length. It has two very long frontages: 630.16-feet along University Boulevard (MD 193) and 527.88-feet along Branchville Road. The frontage along University Boulevard has a guardrail and no curb-cuts. There is unrestricted access to the property from Branchville Road. The Branchville Road side of the Property has been used by others without permission for parking and burning of a vehicle and other activities involving trespass.

2. The property is vacant and proposed for development. Denial of the variance would result in an unusual practical difficulty to the property owner since he would be denied the ability to secure his property and reduce liability with a fence.
3. The Fence Ordinance was enacted to preserve and protect the character and preserve front yard views of single-family residential neighborhoods in the City. Granting this variance will not adversely impact the intent, purpose and integrity of the City's Fence Ordinance as this is a vacant, wooded multi-family zoned property that will eventually be developed in a manner consistent with the zoning.
4. Not applicable, the property is not located in an historic district.
5. Allowing the fence to secure the property to stop unauthorized use will not adversely affect the public health, safety, welfare or comfort.
6. The proposed fence type incorporates openness and visibility but while not technically chain link is very similar to chain link and should be adapted to be less like chain link.
7. There are very few homes and no similar, multi-family development properties that front on this section of Branchville Road and so it is difficult to evaluate what is characteristic. Lessening the height of the fence from 6-feet to 4-feet and upgrading the material from welded wire to a metal or metal-like material would lessen any potential negative impact on, and be more consistent with, the surrounding neighborhood.

Lawrence Bleau moved to approve variance CEO-2015-02 because the request meets the criteria for granting the variance for the reasons stated above with staff conditions. Kate Kennedy seconded. Motion carried 3-1-0, with Mary Cook voting Nay.

VI. Discussion of Advisory Planning Commission Charge

The City Council has asked the Advisory Planning Commission to review their Powers and Duties as stated in the City of College Park Code under Article IV to see if there are any changes they would like to make. Mary Cook distributed copies of the memo she presented to the Council back in August, which was developed by the APC at a special meeting. Commissioners discussed the items listed and voted to make the following changes:

- The Advisory Planning Commission would like to be available as advisors to City-University Partnership (CPCUP) and other community advising commissions
- Semi-annual meetings with the City Council

VII. Review Draft Agenda for Listening Session on Fences and Discuss Outreach Efforts

Commissioners reviewed the draft agenda for the Listening Session on Fences scheduled for December 3, 2015. They voted unanimously to approve the agenda, with the following changes:

- Indicate the start and ending time as 7:30 p.m. to 9:00 p.m.
- Speakers will have 3 minutes to speak unless they are speaking on behalf of a civic association, then they will have 5 minutes.
- Explain the differences between the County and City Ordinances

VIII. Update on Development Activity: There were no Update on Development Activity.

IX. Other Business: There was no Other Business.

X. Adjourn: There being no further business, the meeting was adjourned at 11:30 p.m.

Minutes prepared by Theresheia Williams