



Meeting Minutes - Preliminary License and Variance Board

Wednesday, December 10, 2014

10:00 AM

Council Chambers

1. Call to Order

Present 2 - Board Member Scott Stokes, and Board Member David Lee

Also Present 6 - Heather Corn, Chelsea Jackson, Russell Martin, Jeffrey Tucker, Joey Staubes, and Marla Gerber

2. Business

Fire Chief Roy Acree called the meeting of the License and Variance Board to order at 10:03 AM.

A. Public Hearing - Allow second full kitchen within single family townhome - 0.06 acres - Land Lot 808 - 5134 Afton Way - Brigida Suarez

The applicant, Ms. Brigida Suarez was called forward to speak about her variance request. Chief Acree asked the applicant if it was correct that reason she was present to obtain a variance for a kitchen she already had built in her town home. Ms. Suarez responded that yes, that was correct and that she did not know to build the kitchen it needed to be permitted.

Chief Lee asked her to explain how she ended up with the kitchen. She responded that she purchased the property and did not know she needed a variance to build the kitchen. She built it for her parents who live with her and are elderly and were unable to go up and down the stairs on the inside of the townhome. She wanted them to be comfortable in the basement and be able to cook meals when necessary. She stated it was a single family home and she had no plans to live with anybody else.

Chief Lee asked the applicant how many other units were attached to her town home and she did not understand the question. He reworded the question three times. She was able to understand the question and responded that she had a town home to her left and to her right.

Chief Acree asked if those three townhomes made up one building and she said no, but did not explain further.

Chief Acree called staff to come forward and give the background for the variance. Joey Staubes, Planner I with Community Development noted that there were eight units per townhome section, in response to Chief Lee's question. Mr. Staubes stated the applicant did not reside in an end unit and there were units on either side of hers. Her variance request was for a kitchen in basement, which had already been built. Code Enforcement was made aware of the non-permitted kitchen and in turn they made Community Development aware in order for the applicant to obtain a variance. The owner was informed she would need a variance or would have to remove the kitchen. A stove, microwave and sink constitute a kitchen and because she does have an electric stove, a microwave, a sink, as well as a refrigerator, a dishwasher and cabinets, it was considered a full kitchen. The previous owner had a Jacuzzi tub with adequate plumbing and electric and those utilities were used to add the current items listed.

The subject property is zoned R12 and was built as a single family townhome.

Meaning one dwelling has one full kitchen. The applicant was requesting the variance for elderly parents who have issues that preclude them from using stairs. There has been no modification to the townhome to make it a duplex. The townhome has driveway access at ground level with no stair access for entry.

Chief Acree affirmed that no interior walls had been constructed to separate the basement from the upstairs in a permanent fashion and the answer was no, the upstairs was still accessible with interior stairs and a door.

Mr. Stokes asked what was specifically in the basement and the response was there was a kitchen, bath, bed and mechanical room, with gas water heater which was contained and closed off. The basement was finished by previous owners but with the Jacuzzi and no kitchen.

There have been previous instances of second or basement kitchens having approval in single family detached homes but not a record of a townhome however staff recommended approval with six conditions:

1. The finished basement is to be only utilized by family members.
2. The applicant shall not lease, rent, or sublet any space in their home.
3. The basement stove shall remain an electric appliance.
4. These conditions shall run in perpetuity with the property and as such are also applicable to any future owner.
5. Upon sale, change of ownership, or refinance, the deed for the subject property shall be amended to restrict rental of the basement as a separate dwelling unit.
6. Applicant must provide third party verification from a licensed building inspector certifying that all aspects of the basement kitchen meet city requirements.

Chief Acree asked the applicant if there was a door at the top or bottom of the stairs leading to the basement from the upstairs or vice versa. She responded that there was a door at the top of the stairs.

Mr. Stokes asked the Ms. Suarez how the basement was laid out and she said there was a kitchen, bathroom, and bedroom/living room area. He asked if there was a back door and/or how does someone get into the basement and she said there was a front door. Mr. Stokes asked what the reason was for the door at the top of the stairs and she said privacy as well as controlling the heating and A/C. The question was asked, was there a separate thermostat in the basement and the response was no.

Mr. Stokes also asked her who owned the property and she responded she was the sole owner. Her parents stay in her home. For six months out of the year they live in Georgia and for the coldest part of the year they travel back to Nicaragua and live there for the other six months. He asked if she was aware of the stipulations and agreed to them and she said yes, she received an email from Mr. Staubes explaining the stipulations to her and she agreed with them all. Mr. Stokes asked how long she had owned the property and she explained she purchased the property back in April 2014, remodeled the property to accommodate her parents living in the basement, and they started staying there towards the end of September of this year. She also stated she had a friend who was in trouble and needed a place to stay and she let the friend live in the basement for a period of about two weeks back at the beginning of September before her parents took residence of the basement. She went on to say that she works close to her town home at Bank of America at Cumberland, so in September she moved to the townhome to be closer to work. She said her mother had a stroke so was being treated at Emory Hospital and in order for her and her dad to care for her they moved into the basement at the end of September. Mr. Stokes then asked how many people lived in the house and she said her and her two parents. And how many cars were at the property and she stated just one, hers. Her parents did not drive.

Mr. Stokes then announced he wanted to go over each condition with the applicant one by one and she agreed.

He reread each condition aloud and asked her if she understood it and agreed with it and the answer was yes to each one read. Specifically he stated she would be unable to rent the townhome to anyone, rent the basement to anyone and she could not sell it to someone who would then rent out the basement. He wanted to modify

condition #5 to say that prior to sale of the property, the basement kitchen would have to be removed in order to avoid the rental of the space, because this variance is specific to this applicant due to the circumstances of her parents living arrangements. He also stated that for item #6, she needed to understand that she would have to hire a building inspector to satisfy the City's building officials that everything was done to code in regards to electric, plumbing, etc. when the kitchen was constructed. Chief Acree announced the public hearing and three citizens were signed up to speak regarding this variance request.

Derrick Norton, who resides at 1000 Afton Way and identified himself as the President of the HOA, said he agreed with stipulations. He stated the facts are being misrepresented to the board. He had never seen or spoken to this applicant before and he had been speaking to a Mr. Elan Suarez, who has represented himself as the owner of the property. He stated he was unaware there was currently anyone living in the home, as he has not seen anyone, nor any car/s in the driveway for at least three months.

When there were people moving into the house, Mr. Norton spoke to Mr. Suarez and reminded him that the home was purchased as a HUD home as was not able to be rented. He stated that as soon as he had that conversation with Mr. Suarez, the tenants left shortly there after. At one point there was six to seven cars parked in the driveway and up and down the street. He does not think this would be a precedent that should be set for this community as he said the HOA was requesting that the Board deny the variance request.

Mr. Stokes asked Mr. Norton what type of HOA the community had and if there were covenants and the response was it was a fee simple HOA and the basic covenant was the townhomes were to be single family. Mr. Norton said a painter at the property gave him the number for Mr. Suarez. When the variance sign went up he called Mr. Suarez and was told the sign was for a kitchen they wanted to add to the basement and he wanted to go through the proper channels.

Chief Acree asked for further public comment. Tony Martinez lives at 5150 Afton Way, approximately four houses down from the applicant. Mr. Martinez said he knew the previous owners of the town home when there was a hot tub in the basement and one bathroom. The new owner removed the hot tub, put living space for more people to live downstairs, and as soon as construction was complete, there was a family who moved in although he was unaware if they were all related. There were seven different cars parked all over the neighborhood. He stated there was no permit to do the work and he was in protest of this variance because for the last two months there have been no cars in driveway. The seven cars he mentioned were there for about two weeks with tags from Texas, Alabama and Cobb County. He stated he lived in the next section of townhomes when asked by Mr. Stokes.

Mr. Stokes asked how long ago the seven people were living in the home. Mr. Martinez responded the early part of September to the best of his knowledge. In his opinion it appeared the house was vacant and he reiterated there have been no cars in the driveway for weeks now.

Mr. Henry Waleczko resides at 5054 Afton Way and he is about thirty houses down the street. Has stated he has coffee with Mr. Martinez every Friday, he runs in the neighborhood and had seen the same seven cars parked at the home and in the street. He was unsure of how long the seven cars were there, but said that when the homeowner was made aware of the HUD status the cars were gone the next day. He wanted to back up the other speakers comments.

Chief Lee requested to speak to the applicant again. He asked if she currently lives at the property and she stated yes. He asked to see her Georgia driver's license for review and she presented it to Chief Lee and the board.

Mr. Stokes asked the applicant who Mr. Suarez was that Mr. Norton referred to and she said that he was her husband. She said he did not live there and he was not the owner. Mr. Stokes asked about the testimony presented where it was stated that it looked like no one lived at the home, there were no cars in the driveway and could she explain further. Ms. Suarez said she gets up at 4:30am, drives to Canton where

her husband resides with her two children. They go to school in Canton which was why they lived with their father. She helps him get the children ready and she takes the children to school, and then she goes to work. She goes and picks up the children after school and helps her husband with them at night until about 11:00PM and then goes home to the townhome to sleep.

Public Works Director Scott Stokes made a motion to go into executive session to confer with the Assistant City Attorney, Jeffrey Tucker; seconded by Police Chief David Lee. The motion carried by the following vote:

Aye: 3 - Board Member Stokes, Board Member Lee and Acree

A motion was made by Public Works Director Scott Stokes to return to regular session, seconded by Police Chief David Lee. The motion carried by the following vote:

Aye: 3 - Board Member Stokes, Board Member Lee and Acree

A motion was made by Public Works Director Scott Stokes to deny V14-043 variance request to allow a second full kitchen within a single family townhome on 0.06 acres in Land Lot 808 located at 5134 Afton Way, applicant Brigida Suarez, seconded by Police Chief David Lee. The motion carried by the following vote:

Aye: 3 - Board Member Stokes, Board Member Lee and Acree

B.

Appeal of the denial of application for a taxi permit for Wilmer F. Caballero Lazo

Assistant City Attorney, Jeffrey Tucker was present to swear in the applicant and City Police Department employee, Marla Gerber for testimony.

Ms. Gerber gave testimony that she is a current employee of the City of Smyrna, in permits at the Police Department. She gave background of her job duties and was asked by Mr. Tucker if the applicant, Wilmer Cabarello, completed a taxi permit application and the response was yes.

Mr. Tucker asked if Mr. Caballero had completed the section on arrests and convictions and gave written permission for a background check. Ms. Gerber responded in the affirmative. Mr. Tucker then asked her to explain what the response was from the background check. Ms. Gerber stated it showed he had two arrests, one in November 2013 for possession of cocaine with intent to distribute and one possession of marijuana, both a felony. Mr. Tucker asked if there was a disposition of those charges and Ms. Gerber said no.

Mr. Tucker asked if there were any other arrests or convictions on the background check and she responded yes there was an additional arrest in March 2014 for obstruction of a law enforcement officer and trafficking, both felony charges.

The question was asked by Mr. Tucker if the applicant had disclosed both arrests on the application and Ms. Gerber responded no, he had not disclosed the more recent arrest in March of 2014.

Chief Acree asked the applicant to come forward and Mr. Tucker explained that he would ask him questions and give him the opportunity to speak to the board. Mr. Tucker started by asking Mr. Caballero if anything Ms. Gerber had stated was untrue and he said everything Ms. Gerber had stated was correct. He agreed there were additional charges in March of this year.

Mr. Tucker showed Mr. Caballero the application and asked if he had completed it and he said yes it was the correct copy of the application. The applicant was asked by counsel if it was a true statement that he did not disclose the March felony charges and he said yes he had not and that he had signed the application stating that all the information was true and correct.

Mr. Caballero went on to say that the prosecution has not provided any evidence against him for the November 2013 charges and he had not even been to court for

those charges yet.

He told the board they could not keep him from working and Chief Acree said the board was not keeping him from working. Mr. Caballero presented the Taxi Permit pamphlet provided by Smyrna PD and read where it said that no application would be denied based on arrest, only conviction.

Chief Acree asked him if he had anything else to say to the board at this time and he again reiterated that the City was keeping him from working.

Deputy Clerks Note: Chief Acree gave the applicant the information to contact the City Clerk's office for final appeal to the Mayor and Council after the votes were cast.

A motion was made by Public Works Director Scott Stokes that V14-039, the appeal of the denial of application for taxi permit, be denied based on false information given by the applicant, Wilmer Caballero, on the taxi permit application and as well as pending charges, seconded by Police Chief David Lee. The motion carried by the following vote:

Aye: 3 - Board Member Stokes, Board Member Lee and Acree

3. Approval of Minutes

A. Approval of License and Variance Board meeting minutes for November 12, 2014

A motion was made by Police Chief David Lee to approve 2014-367, License and Variance Board meeting minutes for November 12, 2014, seconded by Public Works Director Scott Stokes. Motion carried by the following vote:

Aye: 3 - Board Member Stokes, Board Member Lee and Acree

4. Adjournment

Fire Chief Roy Acree adjourned the meeting of the License & Variance Board at 10:48 AM.