



Meeting Minutes - Draft  
License and Variance Board

Wednesday, August 13, 2014

10:00 AM

Council Chambers

**Rollcall**

**Present** 3 - Board Member Roy Acree, Chair Person Tammi Saddler Jones, and Scott Stokes

**Also Present** 4 - Russell Martin, Joey Staubes, Jeffrey Tucker, and Lisa Moore

**1. Call To Order**

The meeting was called to order by Assistant City Administrator Tammi Saddler Jones at 10:00.

**2. Business:**

**LIC2014-08** Public Hearing-Privilege License Request LIC 2014-08-Beer, Wine, Liquor Pouring-3197 South Cobb Drive-Ruby Tuesday, Inc dba Ruby Tuesday with Spencer Edward Paul Peters as agent

**Sponsors:** Welch

Assistant City Administrator Tammi Saddler-Jones called Spencer Edward Paul Peters to the podium. Mr. Peters has received, read, and understands the alcohol beverage ordinance and has completed the responsible alcohol sales class. Mr. Peters will make sure all employees are certified and is hosting a class for employees to deter underage sales; he further understands the Smyrna Police Department does periodic undercover operations. Mr. Peters has been the general manager at this Ruby Tuesday location for about 1 year. The Smyrna Police Department performed a background investigation and it reveal no information that would preclude issuance of this license.

Ms. Jones called for a Public Hearing and no one came forward to speak.

A motion was made by Scott Stokes to approve LIC2014-08, a Privilege License request for Beer, Wine, Liquor Pouring at 3197 South Cobb Drive, Ruby Tuesday, Inc dba Ruby Tuesday with Spencer Edward Paul Peters as agent; seconded by Roy Acree. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

**2014-264** **Public Hearing** - Variance Request V14-028 - Reduction of side setback from 20' to 16' - 0.7 Acres - Land Lot 492 - 2267 Dixie Avenue - Fairbanks Property Services, Inc.

**Sponsors:** Anulewicz

Ms. Jones called Joel Powell to the podium. Mr. Powell, Fairbanks Property

Services, stated the land lot was annexed into the City in May and as part of the request was to build a larger structure on site and in order to do so, the requested setback reduction would have to take place for the placement of the structure. There are 3 reductions requested by the applicant, City Planner Rusty Martin stated the first request is a side set back reduction from 20 feet to 16 feet. The applicant is proposing to construct a 1,948 square feet office building and a 9,375 square feet auto body shop. The subject property is currently vacant and under development. The property and business owner also owns property adjacent to the north of this land lot, Community Development is supportive and recommends approval with one stipulation, the building is constructed according to the site plans provided.

Mr. Acree asked if the first request for the side set back reduction would be on the east side of the property, City Planner Martin confirmed it would be on the north side of the property.

Ms. Jones called for a Public Hearing and no one came forward to speak.

A motion was made by Roy Acree to approve 2014-264, Variance Request V14-028 for the reduction of side setback from 20' to 16' on 0.7 Acres at Land Lot 492 on 2267 Dixie Avenue by Fairbanks Property Services, Inc.; seconded by Scott Stokes. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

#### 2014-265

**Public Hearing** - Variance Request V14-029 - Reduction of rear setback from 30' to 4.5' - 0.7 Acres - Land Lot 492 - 2267 Dixie Avenue - Fairbanks Property Services

**Sponsors:** Anulewicz

City Planner Martin stated this is a reduction for a rear setback from 30' to 4.5' and Community Development is in support of the variance under the same stipulations as the previous variance, that it is constructed under compliance of the plan submitted.

Ms. Jones asked if Mr. Powell was in agreeance to the stipulations, Mr. Powell stated he was. Mr. Stokes asked if there was any consideration made to consolidate the lots or move the lot lines. Mr. Powell stated under a time related issue, they believed the quickest route to begin the project was to do so without consolidation. Mr. Stokes asked City Planner Martin if the lots were consolidated would that complicate the issue in respect to multiple buildings on one lot. City Planner Martin stated with the adjoining property to the rear it would not be affected because there is no building on that site, but if it was adjoined to the property on the north there would be multiple principle buildings on one site.

Ms. Jones called for a Public Hearing and no one came forward to speak.

A motion was made by Scott Stokes to approve 2014-265, Variance Request V14-029 for a reduction of rear setback from 30' to 4.5' on 0.7 Acres in Land Lot 492 at 2267 Dixie Avenue by Fairbanks Property Services with the following condition, that the approval of the requested variance be conditioned upon the development of the property in substantial compliance with the site plan and elevation submitted with the variance application; seconded by Roy Acree. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

#### 2014-266

**Public Hearing** - Variance Request V14-030 - Reduction of street

side setback from 33.35' to 25.6' - 0.7 Acres - Land Lot 492 - 2267 Dixie Avenue - Fairbanks Property Services

**Sponsors:** Anulewicz

Ms. Jones called Mr. Powell of Fairbanks Property Services, Inc to the podium. Mr. Powell stated this is the same parcel, but it is the southern portion which runs along Park Drive, it is the minimum reduction in regards to all three variance requests and is closest to property not owned by the property owner.

City Planner Martin stated Community Development is in support of this street side set back reduction from 33.35' to 25.6' variance request with the same stipulations as the previous requests.

Ms. Jones called for a Public Hearing and no one came forward to speak.

A motion was made by Roy Acree to approve 2014-266, Variance Request V14-030 for the reduction of street side setback from 33.35' to 25.6' on 0.7 Acres in Land Lot 492 at 2267 Dixie Avenue by Fairbanks Property Services; seconded by Scott Stokes. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

#### **V14-025**

**Public Hearing** - Variance Request - V14-025 - Allow six foot privacy fence in front yard - 0.27 acres - Land Lot 489 - 1180 Hill Street - Jonathan and Emily Sanders

Ms. Jones called Jonathan Sanders to the podium. Mr. Sanders explained he has a corner lot (Hill St and Brown St) and because of this his actual backyard is considered a front yard so they are looking to build a six foot privacy fence which would come up to 7 ft, where the road is located, which would be considered his second front yard.

Mr. Stokes asked about the property line, which goes to the edge of the curb. Mr. Sanders stated the extra 7 ft area was a recommendation of their contractor.

City Planner Joey Staubes gave the background. The applicant is requesting to increase the height allowable for a fence in the front yard from 4 ft to 6 ft at 1180 Hill St. The majority of the decorative fence will be on the Brown Circle side of the house about 63 ft in length. City Planner Staubes stated the variance board has seen similar requests and does not feel there will be any negative precedence set. Furthermore, there has not been any opposition to the requests and Community Development does recommend approval with the following conditioning: approval of the requested variance shall be conditioned upon the development of the property and substantial compliance of the site plan and fence detail submitted with the variance application. Mr. Sanders stated that he accepts the stipulation.

Ms. Jones called for a Public Hearing, no one came forward.

A motion was made by Scott Stokes to approve V14-025, Variance Request V14-025 to allow six foot privacy fence in front yard on 0.27 acres in Land Lot 489 at 1180 Hill Street by Jonathan and Emily Sanders with the above condition; seconded by Roy Acree. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

#### **V14-026**

**Public Hearing** - Variance Request - V14-026 - Allow side setback

reduction from 10 feet to 5 feet for the construction of an attached garage - 0.51 acres - Land Lot 527 - 1314 Hayes Drive - Patrick Winchester

City Planner Staubes stated Community Development requested additional information from the applicant and the applicant chose to table the request until the August 27th, 2014 meeting.

Ms. Jones called for a Public Hearing, no one came forward.

A motion was made by Roy Acree to table V14-026, a variance request to allow side setback reduction from 10 feet to 5 feet for the construction of an attached garage on 0.51 acres in Land Lot 527 at 1314 Hayes Drive by Patrick Winchester to August 27, 2014; seconded by Scott Stokes. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

#### V14-027

**Public Hearing** - Variance Request - V14-027 - Allow six foot privacy fence in front yard - 0.25 acres - Land Lot 448 - 2665 Parks Edge Drive - David Weekley Homes

Ms. Jones called the applicant, John Brewel, forward. The applicant stated they are building a home on the lot and would like to build a six foot privacy fence, they would like to add the fence after the landscaping to provide privacy in backyard. Mr. Stokes asked the elevation difference in the sidewalk and the backyard. Bob Poole, builder for David Weekley Homes and the property, came forward and stated the difference is minimal and relatively flat.

Ms. Jones called City Planner I Joey Staubes to the podium for background. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. Community Development has reviewed the request against the variance review standards and found it to be in compliance. Community Development recommended approval upon the following condition: the approval of the requested variance shall be conditioned upon the development of the property in substantial compliance with the site plan and fence detail submitted with the variance application. There has been signs posted and neighbors have been notified, with no opposition. The applicant accepted the conditions as stated.

Mr. Stokes asked the applicant if he anticipated another variance for the land lot across the street. The applicant stated there is a retention pond adjacent and a model home as well.

Ms. Jones called for a Public Hearing, no one came forward.

A motion was made by Scott Stokes to approve V14-027 a variance request to allow six foot privacy fence in front yard on 0.25 acres in Land Lot 448 at 2665 Parks Edge Drive by David Weekley Homes with the above condition; seconded by Roy Acree. The motion was carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

#### 2014-236

Appeal of the denial of application for an alcohol server's permit for

Lindsey Bergen.

**Sponsors:** Blustein

Ms. Jones called Assistant City Attorney Jeffrey Tucker to the podium. Attorney Tucker swore in Ms. Bergen, appellant, and Ms. Gerber, who works for the Smyrna Police Department and issues alcohol permits. Ms. Gerber conducted a criminal history check of the appellant which showed there is a pending felony charge with no disposition with Cobb County, the arrest was made April 15, 2014. The appellant stated all information provided by Ms. Gerber was correct and she currently has a pending charged and has not been disposed. Ms. Bergen stated she recent has started a job at Kroger and needs a permit to be a cashier, she also stated she did not need a pouring license and asked it could be limited to beer and wine so she could continue to work. Ms. Bergen has not received any information regarding a court date and further expressed she now understands her actions has consequences and she should choose correct actions so she will not get in trouble in the future.

Board Member Acree discussed the current City Ordinances and how the board does not want to call more hardship on the applicant but the City does have procedures the board must follow. Attorney Tucker stated the language of City Ordinance 6-51 states if there is a pending felony that has not been adjudicated the appeal should be postponed and not denied, pending adjudication. The postponement of the appeal does not mean the license is issued.

Ms. Jones also informed Ms. Bergen that she has the right to appeal to Mayor and Council.

A motion was made by Roy Acree to postpone pending final adjudication the appeal of the denial of application for an alcohol server's permit for Lindsey Bergen; seconded by Scott Stokes. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

**2014-254**

**Appeal of the denial of application for an alcohol servers permit for Universe Winston.**

Attorney Tucker swore in appellant, Universe Winston. Ms. Gerber stated she received an application and ran a standard background check on Ms. Winston, which disclosed there was a pending felony charge in Cobb County, which showed an arrest date of February 16, 2014. There was no record of disposition of the case. Ms. Winston stated everything Ms. Gerber stated was correct and she has a pending felony charge. Ms. Winston stated she did have a court date on August 7, 2014 and has another one scheduled in September and has been offered to enter into a diversion program.

As a result of this process, Ms. Winston stated she has learned her lesson and she knows she has consequences for her actions. Ms. Winston is a a hostess at Ruby Tuesday, she does not serve, but she stated the Manager requested she receives the license.

Ms. Jones told the applicant she has the right to appeal the decision to the Mayor and Council.

A motion was made by Scott Stokes to postpone pending final adjudication the appeal of the denial of application for an alcohol servers permit for Universe Winston; seconded by Roy Acree. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

**3. Approval of Minutes:**

**2014-259**

Approval of the July 23, 2014 License and Variance Board Meeting Minutes

A motion was made by Roy Acree to approve the July 23, 2014 License and Variance Board Meeting Minutes; seconded by Scott Stokes. The motion carried by the following vote:

**Aye:** 3 - Board Member Acree, Chair Person Saddler Jones and Stokes

**4. Adjournment**

The meeting was adjourned at 10:42 AM.