



Meeting Minutes - Final License and Variance Board

Wednesday, March 22, 2017

10:00 AM

Council Chambers

1. Rollcall

Present: 3 - Roy Acree, Tammi Saddler Jones and Scott Stokes

Also Present: 3 - Christiana Craddock, Jim Cox and Joey Staubes

2. Call to Order

Chairperson Tammi Saddler Jones called the March 22, 2017 meeting of the License and Variance Board to order at 10:01am.

3. Business

- A. [LIC2017-04](#) Public Hearing - Privilege License Request LIC 2017-04 - Beer and Wine Package - 475 Windy Hill Road - Ayra Chevron LLC with Syeda Khatun as agent.

Attachments: [AYRA CHEVRON.pdf](#)

Chairperson Tammi Saddler Jones announced the public hearing and asked the applicant to come to the podium. The applicant was not present.

A motion was made by Boardmember Roy Acree to table item LIC2017-04, a Public Hearing for a Privilege License Request for Beer and Wine Package at 475 Windy Hill Road by the applicant Ayra Chevron LLC with Syeda Khatun as agent to the April 12, 2017 License and Variance Board meeting; seconded by Boardmember Scott Stokes.

The motion carried by the following vote:

Aye: 3 - Roy Acree, Tammi Saddler Jones and Scott Stokes

- B. [LIC2017-05](#) Public Hearing - Privilege License Request LIC2017-05 - Beer, Wine Package - 3240 South Cobb Drive - The Kroger Co. dba Kroger Store #699 with Ward A Chapman as agent.

Attachments: [KROGER STORE 699.pdf](#)

Chairperson Tammi Saddler Jones announced the public hearing and asked the applicant to come forward and state his name for the record. Mr. Ward Chapman presented himself.

Chairperson Tammi Saddler Jones asked Mr. Chapman if he received the City's alcohol beverage ordinance, if he read it, understood it, and agreed to abide by it. Mr.

Chapman replied yes to all questions. She stated he had also completed the responsible alcohol sales class. She asked what steps he had in place to make sure his store does not sell alcohol to underage persons, and Mr. Chapman said that they have a training center where all supervisors and cashiers attend a class specifically on this. He also said their POS system prevents selling alcohol or tobacco to minors because it requires the input of a birthdate.

Boardmember Roy Acree asked the applicant what his role was at the store, and he said he was the manager. Boardmember Acree asked him if he had been the registered agent for any other stores, and he said he had and had been a store manager for 25 years, and also operated one in Smyrna.

Chairperson Tammi Saddler Jones asked the applicant if he understood that the Smyrna Police Department conducts undercover sting operations and if anyone is caught selling alcohol to a minor they are taken to jail immediately, and he said yes. She said the SPD did a background investigation on Mr. Chapman and there was no information that would preclude the issuance of this license.

She announced the public hearing and asked if there was anyone present who wished to speak on the item, and there was no one.

A motion was made by Boardmember Scott Stokes to approve item LIC2017-05, a Privilege License Request (LIC2017-05) for Beer, Wine Package sales at 3240 South Cobb Drive, by the applicant The Kroger Co. dba Kroger Store #699 with Ward A Chapman as agent; seconded by Boardmember Roy Acree.

The motion carried by the following vote:

Aye: 3 - Roy Acree, Tammi Saddler Jones and Scott Stokes

C. [V17-017](#)

Public Hearing - Variance Request - V17-017 - Allow construction of pool deck within sanitary sewer easement - 0.35 acres - Land Lot 335 - 417 Downfield Way - James Atria

Attachments: [Staff Memo - V17-017](#)
[Site Plan - V17-017](#)
[Application - V17-017](#)

Chairperson Tammi Saddler Jones announced the public hearing and asked the applicant to come to the podium. Mr. Atria began by saying he had dozens of emails back and forth between himself and the contractor and City staff, and this process began almost a year ago with a simple pool permit. He said there had been various delays, some caused by him and the City, and he wrote a letter to his Councilman, Charles Welch, and he wanted it read into the record.

A summary of the letter read into record is as follows:

- On or about 3/9/16 he started the pool permitting process, and asked for a checklist of what Smyrna requires. He contacted Eric Randall and was told there were none, but he gave him guidance.
- On 3/10/16 he downloaded the City ordinance and asked for more help. He met with Bob Thorn who informed him an erosion plan was needed, and Mr. Atria passed that onto the pool contractor. He was also told by Eric Randall that he needed an NPEDS permit (four months later he found out this was not needed).
- In May 2016 he asked for more detail and was reminded that he needed an NPEDS permit.

- In June 2016 the contractor's agent who obtains the permits informed him that he did all he can do and needed a builder/developer to sign off on the pool permit because of the NPEDS requirements. Mr. Atria then started calling the County and State, as well as the subdivision developer. He submitted the site plan with the pool application and got the building permit on 7/26/16 for the residential pool with nonpermanent interlocking concrete pavers shown on the plan.

- Due to Mr. Atria's schedule, construction did not begin until February 2017. He asked for a preconstruction meeting and was told that was not needed, so they started construction of the pool. They passed the basket inspection on 2/2/17.

- On the afternoon of 2/2/17, Mr. Paul Osborn came to the home and questioned Mr. Atria about the pool. He expressed that his department was not aware of the pool starting construction, and Mr. Atria told Mr. Osborn that they called the City and were told to start. Mr. Osborn stated he was not surprised because there had been personnel changes. He had a copy of the permit and site plan and said there were pavers in the easement that had to be removed/changed and asked Mr. Atria to redraw the site plan and take some of the pavers out of the easement. This was emailed to him.

- Shortly thereafter, Mr. Atria received a "stop work order" via email, which he noted was not the appropriate method of communicating such an order. In the next several weeks he was informed by Scott Stokes that he could not build the pool. Mr. Atria said he would pursue a variance. He noted that the City had reviewed and approved a site plan that had pavers in the easement on Permit No. 162172 on 7/26/17.

- On 2/15/17 Public Works said Mr. Atria could gunnite the pool with no changes to the original or revised plans. He noted that the City's ordinance 90-33 has a solution for structures built in easements, and he emphasized that pavers are not a structure according to the building code, which defines a structure as something that is 6 inches or greater above the ground. He said the remedy is outlined in the ordinance as such that a property owner is responsible for any expense of reinstallation or reconstruction in the easement, should it be damaged or removed for sewer work. Mr. Atria offered to record a formal agreement to agree to this condition in the City Ordinance.

- He stated if ever a hardship was not the cause of a property owner, this more than meets the requirements.

- Mr. Atria made note that the city routinely allows fences throughout the community over easements, and it also allows concrete structures, such as sidewalks, curbs, and driveways on city easements.

Mr. Atria asked Mr. Joey Staubes if the City is still using the IRC-2012 building code guidelines, and he said yes. He clarified that in the code, pavers are not considered structures, and Mr. Joey Staubes said he did not believe they were. Mr. Atria added that pavers were not an obstruction to drainage and will not restrict drainage as long as they are installed properly and at grade.

City Planner Joey Staubes said he may need some clarification from the applicant. He asked Mr. Atria if what was in the ground now was the original design or the revised design, and Mr. Atria said it was the revised design that they were building off of. Mr. Staubes said that everything Mr. Atria shared with the board was accurate, and there had been a lot of discussion between he, Eric Randall, and the pool contractor. He said they both told him that no construction is allowed in the sewer easement, prior to seeing any plans. He said that when they reviewed and approved the original site plan, they overlooked the portion of the pavers that encroached into the sewer easement, and in that original plan the pool was about 7 feet further back from the easement. Mr. Staubes emphasized that the only plan staff saw and reviewed was the original plan, and they were never given the revised plan. He said the problem came to their attention when Paul Osborn got involved, and the revised design had approximately the same amount of encroachment into the sewer

easement, but the alignments of the pool were much different and the pool wall was either right on the edge of or in the sewer easement, which created a whole different set of challenges and difficulties of getting into the sewer line for maintenance. He noted that if this area was ever dug up and the pavers removed, the equipment could rupture the wall of the pool or not support the wall of the pool due to remove of fill dirt, which could cause the pool to collapse. He said this was the issue staff was bringing up. Boardmember Roy Acree asked when staff received the revised site plan, and it was on 2/2/17 when the variance application was submitted.

City Planner Joey Staubes said staff's recommendatino for denial was strictly due to the challenges with the revised site plan, and they want everyone to understand the nature and probability of sewer maintenance occuring in the easement that could potentially rupture the pool. He said staff could have worked with just the encroachmetn of pavers into the easement, which was in the original design, but that design had more distance between the pool wall and easement and did not present the issues they have with this revised design. He said if the Board did want to consider approval, then staff had recommended stipulations to allow for that.

Boardmemer Roy Acree said he listened to everything Mr. Atria and staff had to share and wished to make a comment. He said the pavers themselves were not the issue here. He said it appeared to him that the original approved site plan, which was issued a building permit, was not what Mr. Atria actually put in the ground, and that there had been a revision. He said it also appeared that the construction of the revised pool was built without the revised site plan being submitted, which is important to note. He said if that is the case, then the issue is not with the pavers - the issue is w ith the proximity of the pool wall to the sewer easement. He said Mr. Atria mentioned the City giving variances over easements, which was true, but he wanted to clarify that the particular easement in question is a sewer easement, which requires more a more stringent and stern look. He said ultimately the issue is that the applicant built a pool with a revised plan that was different from what was originally approved and the pool was moved into or right at the actual sewer easement, as opposed to the original plan where the pool was at least 7 feet away. He said these were two completely different situations.

Mr. Atria responded that staff received the revised plan after the pool was gunnitted. He also explained that there was miscommunication between he and his contractor and they each assumed the other had submitted the revised plans to the City. He did point out that the revised plans were within the IRC 201 code requirements as well as the City of Smyrna code requirements. He said the pool itself was not in violation, and that the Code says you clearly cannot build in the easement, but you can build next to it.

Boardmember Scott Stokes asked the applicant if he had the distance measured by a surveyor from the outside edge of the pool structure as built to the easement line. Mr. Atria replied no, and it had never been requested. Boardmember Stokes asked if him if the current "revised" plan was the last plan he was going to produce, and Mr. Atria said it was, but he did not mind working with staff if they want him to move it. Boardmember Stokes asked him if he was willing to do the documentation to record the recommended stipulation accepting liabiliy and responsibility for the pool, and Mr. Atria said yes, he has no problem moving the pavers or replacing them. Boardmember Stokes said he also would want something that says the owner of the property now or in the future realizes damage could occur to the pool deck if a backhoe is working in the sewer easement. Mr. Atria said he did not have a problem with that as long as the language can be finalized.

Boardmember Roy Acree asked the applicant if he understood that if the City were to

have to gain access to the sewer line, it is possible and likely that damage could occur to the pool structure, not just the pavers. He asked the applicant if he is willing to have recorded that the homeowner is going to be responsible for any of that damage in the event the sewer line needs to be repaired. Mr. Atria replied that yes, as long as they put the proper framework in the record that states they do the proper shoring and method of accessing the sewer. Boardmember Stokes said of course they would, but a backhoe causes both vertical and horizontal pressure, which could effect the pool deck.

Mr. Atria said he was a licensed GC and has operated heavy equipment and is well aware of the issue they are referring to. He mentioned that there are proper methods of doing minimal damage to adjoining structures, and as long as those are followed, he does not have a problem with their recommendations and request.

Boardmember Scott Stokes noted that the code requires a self-latching or self-locking gate or door around the pool, and in an emergency if the City needed to gain access, they would break the gate to get in. Mr. Atria said he would provide a lockbox of some sort so they can gain access.

Chairperson Tammi Saddler Jones announced the public hearing and asked if there was anyone present who wished to speak on the item, and there was no one.

A motion was made by Boardmember Scott Stokes to approve with conditions as listed Item V17-017, a Variance Request (V17-017) to allow the construction of pool deck within sanitary sewer easement on 0.35 acres on Land Lot 335 located at 417 Downfield Way by the applicant James Atria; seconded by Boardmember Roy Acree.

1. Approval is conditioned upon substantial compliance with the latest site plan submitted with the variance application and that the site plan shows the limits of the deck and of the pool itself.
2. The pool exterior wall must be measured by a professional land surveyor as to its distance to the existing sewer easement and verification be submitted to the City of Smyrna.
3. That the pool wall itself is not within the sewer easement.
4. Smyrna is not responsible for any repairs or replacement to the pool deck or rear yard damage through maintenance of the sewer line.
5. The property owner must provide a recordable document that will run with the property and be recorded to indicate that the pavers and pool itself are the responsibility of the property owner if maintenance needs to be done to that specific sewer line in that area.
6. The applicant provides a letter acknowledging all the conditions that have been provided to other subsequent owners of the property, which should be conveyed by recorded document on the property.

Chairperson Tammi Saddler Jones asked Mr. Atria if he accepted the conditions as stated, and he said yes he did, as long as they are subject to normal construction procedures when digging in the close proximity of any structure.

Boardmember Stokes asked that the applicant provide the survey documentation as soon as possible.

On an unrelated topic, Mr. Atria spoke with Boardmember Scott Stokes about an issue with their HOA and unpaid Georgia Power bills for the light poles in their community. Boardmember Stokes said he was aware of the issue and was in the process of addressing it with Georgia Power.

The motion carried by the following vote:

Aye: 3 - Roy Acree, Tammi Saddler Jones and Scott Stokes

D. [V17-018](#)

Public Hearing - Variance Case - V17-018 - Allow front setback reduction from 25 feet to 18 feet for construction of a new single family home - 0.94 acres - Land Lot 456 - 3303 and 3305 Woodcrest Court - Jeffrey Shea

Attachments: [Staff Memo - V17-018](#)

[Site Plan - V17-018](#)

[Application - V17-018](#)

Chairperson Tammi Saddler Jones announced the public hearing and asked the applicant to come to the podium. Mr. Jeffrey Shea said their variance request was due to them shifting the house to the second lot and merging the two lots together, and they were asking for a setback reduction because of the incline of the lots.

Boardmember Scott Stokes noted that there was a sewer easement in the back of the lot.

City Planner Joey Staubes said the subject property was two individual lots and several years ago the Board approved variances for impervious setback reductions for the 2 single family homes that were never built. He said the property has sat vacant, but Mr. Shea was now acquiring the lot and wants to reduce the front setback which will allow the home to be shifted so there is no encroachment into the impervious setbacks or stream buffers (in which the sewer easement is located). Staff supports the request with the standard condition that the site plan be built in substantial compliance with the site plan submitted and that the applicant records a combination plat that combines both properties into one. Chairperson Tammi Saddler Jones asked the applicant if he accepts the conditions, and he said yes. She announced the public hearing and asked if there was anyone present who wished to speak on the item, and there was no one.

Boardmember Roy Acree noted that the front setback reduction is a good trade off to keep the structure out of the rear setbacks and buffers mentioned by staff.

A motion was made by Boardmember Roy Acree to approve with conditions as listed Item V17-018, a Variance Case (V17-018) to allow a front setback reduction from 25 feet to 18 feet for the construction of a new single family home on 0.94 acres on Land Lot 456 located at 3303 and 3305 Woodcrest Court by the applicant Jeffrey Shea; seconded by Boardmember Scott Stokes.

1. Approval of the requested variance shall be conditioned upon the development of the property in substantial compliance with the site plan and elevation submitted with the variance application.

2. The applicant will record a plat that combines the two lots into one lot.

The motion carried by the following vote:

Aye: 3 - Roy Acree, Tammi Saddler Jones and Scott Stokes

4. Approval of Minutes:

A. [2017-114](#)

Approval of the minutes from the March 8, 2017 meeting of the License and Variance Board.

ISSUE: Approval of the minutes from the March 8, 2017 meeting of the License and Variance Board.

BACKGROUND: Approval of the minutes from the March 8, 2017 meeting of the License and Variance Board.

RECOMMENDATION/REQUESTED ACTION: Approval

Attachments: [03-08-2017 March 8, 2017 LVB Meeting Minutes no attachments.pdf](#)

A motion was made by Boardmember Scott Stokes to approve Item 2017-114 for the Approval of the minutes from the March 8, 2017 meeting of the License and Variance Board; seconded by Boardmember Roy Acree.

The motion carried by the following vote:

Aye: 3 - Roy Acree, Tammi Saddler Jones and Scott Stokes

5. Adjournment

Chairperson Tammi Saddler Jones declared the March 22, 2017 meeting of the License and Variance Board adjourned at 10:49am.