

CITY OF CASTLE HILLS  
BOARD OF ADJUSTMENT HEARING  
MINUTES OF APRIL 16, 2008

The Board of Adjustment of the City of Castle Hills held a public hearing on the 16<sup>th</sup> day of April, 2008, at 7:00 P.M. at the City of Castle Hills City Hall, 209 Lemonwood Drive, Castle Hills, Texas.

Those in attendance included Linda Johns, Bruce Smiley, Baylor Eidelbach, Martha Pattillo Siv, Sichan Siv, LaVerne Japhet, Ron Jay, Evangeline O’Sullivan, Frank T. Jasso, Cecelia T. Jasso, Jerjis J. Denno, Terry Carter, and Helen Glass.

I. OPENING - QUORUM

Present and composing a quorum of the Board of Adjustment was Chairman William Schluter, Brother William Dooling, Eunice Vandebos, Kathryn Safford, and Bob Jones.

Staff members present were City Manager Mike Rietz, Assistant City Manager Rita Hoyl, City Secretary Linda Gill, and City Attorney Mike Brenan.

II. OLD BUSINESS – None

III. NEW BUSINESS

A. CONSIDER AND ACT UPON APPROVAL OF THE MINUTES OF THE MEETING OF FEBRUARY 20, 2008.

**Motion:** Brother William Dooling moved to approve the minutes of February 20, 2008. Ms. Safford seconded the motion. The motion passed unanimously.

B. CONSIDER AND ACT UPON AN APPLICATION FROM JAMES B. POAGE AND LINDA S. JOHNS, OWNERS OF 117 FOX HALL LANE REQUESTING A VARIANCE FROM CITY OF CASTLE HILLS CODE OF ORDINANCES, CHAPTER 31.405 OTHER REGULATIONS (2) FENCES, WHICH STATES “FENCES IN THE REQUIRED FRONT YARD MAY NOT BE HIGHER THAN THREE FEET.” APPLICANT IS REQUESTING A VARIANCE TO ERECT A FENCE, NOT TO EXCEED A MAXIMUM HEIGHT OF 6’6” ALONG THE FRONT PROPERTY LINE AND A 6’ SECURITY GATE AT THE FRONT ENTRANCE TO THE PROPERTY.

James Poage introduced his attorney, Patrick Christiansen of Brown & Ortiz, P.C., who would be making the presentation. Mr. Christiansen began by explaining that the property is unique in that it is a flag shaped lot and that the

front yard faces the back yard of 119 Fox Hall Lane, the adjoining property. He illustrated that the property is bounded by eight other separate properties and shares borders with their front, side, or rear yards; and fences range from 6' to 7' in height on those properties that have fences. Mr. Christiansen explained that, although there are 8' posts on the rear border of 119 Fox Hall; there is no fence.

Mr. Poage stated that he was requesting a 6' security gate at the entrance of the property and a 6'6" fence in the front of the property. He said that only about 30' of the 813' of the front yard line abuts the street. He pointed out that, if the proposed fence was constructed inside of the adjacent property at 119 Fox Hall Lane; it would be in compliance with the height ordinance. He said the shape of his property creates a unique security risk not found with a normally shaped lot.

Mr. Poage's wife Linda Johns, who is co-owner of the property, said that her primary concern is safety and security because she works alone in her home office and the views of the street and from the street are obscured. Mr. Poage added that the nearest street light is a block away.

Brother Dooling suggested that the variance Mr. Poage was requesting might not be the variance that is needed. He asked Mr. Poage if he could see any wiggle room. He said that the variance requested may not be granted, but wondered if some other variance could work. Brother Dooling suggested that the variance requested could be looked at, not as a whole, but in segments. He commented that the security issue applied mostly to the driveway. He added that there is no way to demonstrate that security would be enhanced because the application does not specify what materials will be used for the fence.

Ms. Vandebos said that the fence has to remain compatible with surrounding properties; and before discussing a compromise, the board needed to know the type of fence to be constructed. Mr. Poage responded that the fence would be in compliance with the city's fence ordinance. He stated that the fence at the rear of his property was stucco on one side and cedar on the other, which the rear neighbors found acceptable.

Ms. Vandebos reiterated that the board needed to know the type of fence before it could make a decision. Brother Dooling added that the question still wasn't answered regarding the security argument. Ms. Vandebos asked Mr. Poage if he had considered additional types of security such as the following:

- (1) Security lights on the house and the driveway.
- (2) Motion detectors.
- (3) An alarm system.
- (4) Neighbors...let them know when you're out of town
- (5) Tell Castle Hills Police...for extra surveillance when you're out of town.

Mr. Poage said that he would have them all.

Brother Dooling asked Mr. Poage what he was proposing regarding a compromise. Mr. Poage agreed that the fence would not answer all security problems, but a 6' fence might deter problems more than a 3' fence. He mentioned that, of the eight adjoining properties, three are vacant lots.

Brother Dooling said that he had no idea what the fence would look like; and therefore, he could not complete an analysis. At Chairman Schluter's request, Mr. Poage confirmed that the fence would be stucco and rock. Ms. Vandebos remarked that there are other flag shaped lots with no 6' fences on either side of the driveway. Brother Dooling commented to Mr. Poage that his request amounted to a fortified driveway.

Mr. Poage discussed the differences in tastes of people. He indicated that he was trying to establish some kind of control over the entrance to his property. He said the gate is 35 feet from the street. Brother Dooling commented that things would move along better if considered in segments, instead of the whole. He recommended that they look at the rest of the fence and come back to the gate.

Chairman Schluter opened the floor to citizens who wished to speak.

Joan Buerschinger of 212 Glentower Drive questioned whether the driveway would be wide enough for the Fire Department to get in. City Manager Rietz explained that would be evaluated when the building permit is issued.

Valerie Powers of 108 Fox Hall Cove said that her neighbor's front yard faces her back yard. She said that good fences make good neighbors, and nobody will see anything but the gate.

Sichan Siv of 119 Fox Hall Lane, which adjoins the property in question, said he and his wife had moved to Castle Hills in September of 2006. He expressed concern that the air flow would be compromised and trees would be damaged by the fence. He indicated that he did not have enough information. His wife Martha handed out copies of a letter they had written listing questions concerning the fence. Mr. Siv asked to see more concrete information. Mrs. Siv agreed, saying the issues are unclear. She questioned what was being proposed. Mr. Siv said he was opposed.

Jeanne O'Sullivan of 115 East Castle Lane commented that, if people knew the specifics of what the fence was going to be; there would not be so much resistance.

Ron Jay, owner of 12 West Oaks Court, said he planned to build on the lot behind Mr. Poage's and wanted to know about the hardy board. Mr. Brennan said that Mr. Poage agreed to take down the hardy board after the city negotiated with him.

Brother Dooling remarked that the request is for a fence over 3 feet high. He said he could not accept the arguments made and was opposed to the variance at the present time.

Ms. Vandebos proposed that Mr. Poage be willing to move the fence back 203 feet to where the drive bends and construct a 6' fence across the back of the Siv's property, having a 3' fence on either side of the driveway back to there. She suggested putting wrought iron along the drive, that stucco was not at all compatible with the neighborhood.

Ms. Safford remarked that the issue was the difference in height, not the materials. She added that the request was to redefine the front yard and have a 6' fence.

Brother Dooling indicated that Mr. Poage had not carried the burden for all seven questions on the application. He stated that he opposed the variance. He said that, if the board could bifurcate on the 203' driveway, they could vote on the part around the house. Mr. Brennan confirmed that Mr. Poage could amend the variance request to approve only the 6' fence in the back of the Sivs' property and reserve his right to come back for the 203 feet of driveway.

City Manager Rietz asked if Poage was to withdraw his application, would the 6-month moratorium on new requests apply. Brother Dooling read from the Board of Adjustment Handbook that no application on the same property could be heard within 6 months. Mr. Poage said he would be willing to split the same request in two, but he wanted each part voted on at this meeting. Mr. Brennan advised against voting on the same request in two parts without assurance that the outcome would be agreeable to Mr. Poage. Brother Dooling said he was ready to vote.

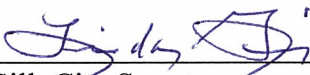
Mr. Brennan asked Poage what he was willing to do. Brother Dooling explained that, in order to get an affirmative vote, he could amend the request by taking 203 feet out of the fence. Mr. Poage declined.

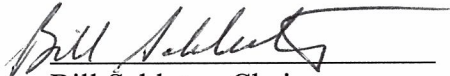
***Motion***

After considering the comments from the applicant, the public, and the board members, Brother Dooling moved to approve the variance as presented. The motion was seconded by Mr. Jones. Mr. Jones voted in favor of the motion; and Chairman Schluter, Ms. Safford, Ms. Vandebos, and Brother Dooling voted against the motion because the requested variance did not satisfy the requirements of state law and city code; public convenience and welfare would not be served by granting the variance; because the requested variance was not attributable to a special, unique condition inherent in the property itself; that the variance was not necessary to relieve an unnecessary and unjust hardship; and that the owners would not be denied the right to use their property without the variance. The variance request failed because it did not receive four affirmative votes.

IV. ADJOURNMENT

Chairman Schluter adjourned the meeting at 8:55 p.m.

ATTEST:   
Linda Gill, City Secretary

  
Bill Schluter, Chairman