

**TOWN OF ELSMERE
BOARD OF ADJUSTMENT
MEETING MINUTES
January 22, 2019
6:30 P.M.**

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	JAMES PERSONTI	PRESENT
BOARD MEMBER	JOHN ACTON	PRESENT
BOARD MEMBER	PATRICIA BOYD	PRESENT
BOARD MEMBER	RON RUSSO	PRESENT
BOARD MEMBER	JOHN SMITH	PRESENT

PUBLIC COMMENT:

None

APPROVAL OF MINUTES:

Minutes from the November 27, 2018 Board of Adjustment meeting

ACTION: Board Member Russo made a motion to approve the minutes from the October 30, 2018 Board of Adjustment meeting. The motion was seconded by Board Member Smith.

VOTE: 5 – 0 Motion carried

OLD BUSINESS:

None

NEW BUSINESS:

Review Petition 18-29 Tax Parcel # 1900-500-145

Susana Mendoza spoke about her appeal application. Mrs. Mendoza stated that she and her husband purchased the property and began working on it in February, that it is their business, and that it is the first time that they have worked in the city of Elsmere. She further stated that they have received several citations, which includes for high grass, that were paid for. Then, finally, they received a \$1,000 ticket, which she understands is automatically issued once you have a certain number of tickets in 12 months. Mrs. Mendoza noted that the property has

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been sold and rather than making a lot of money, it was actually sold at a loss. She stated that they have complied with everything and taken care of things once they became aware of them without argument. Mrs. Mendoza added that she received a phone call when they placed the house on the market that she did not have a business license and received a ticket. Mrs. Mendoza noted that she has paid that ticket and the cost of the business license but has not received the business license yet, nor has she received a physical citation. Mrs. Mendoza also stated that they have complied with everything, that they are just trying to run a business, and promised that it would never happen again. She asked for forgiveness of the \$1,000 fine.

In response to a question from Board Member Boyd, Mrs. Mendoza replied that she has been flipping properties for five years. Board Member Boyd asked if she had worked in New Castle County before and whether applying for permits is new to her. Mrs. Mendoza replied that the contractors she hired went to the county to pull permits and she was relying on the contractors.

Board Member Boyd pointed out that if it is her business, then it is her responsibility. Mrs. Mendoza agreed and stated that they were relying on their contractors, that it is a lesson learned, and promised that wherever else they work, they will comply with the rules.

Board Member Acton asked whether they took action to obtain their permits after they received the citations for work without a permit. Mrs. Mendoza responded that they obtained all of their permits. Board Member Acton inquired about the November 2 citations for failure to obtain a permit and failure to obtain a certificate of occupancy. Mrs. Mendoza responded that the electric was still open and that all of the permits had to be closed in order to receive the certificate of occupancy, but that there was a permit issued.

Board Member Russo asked questions about the repeated violations and pointed out that they have multiple violations and do not seem to learn how to avoid violating the code. Board Member Russo stated that the \$1,000 fine only comes about due to repetition.

Mrs. Mendoza stated that the electrician said he had a permit from the county, but not the city, and that there was a permit involved. She further stated that perhaps she has some blame since the electrician should have obtained the permit from the Town of Elsmere rather than the county. She also stated that the failure to obtain the certificate of occupancy was due to the fact that the permits had not been closed out, but that all of the permits had been secured.

Board Member Russo replied that the code holds the homeowner owner responsible. Mrs. Mendoza stated that she should have not just said "permit" when talking to the contractor, she should have been more specific to say "City of Elsmere permit," that she should have been more clear about where the permit was supposed to be obtained from and that once he realized he needed a permit from the town, he had two permits – one from the county and one from the town.

Board Member Boyd noted that a cease and desist order was issued by the Town of Elsmere and posted on the door so she should have been aware that permits are required by the Town. Board Member Boyd stated that she could understand the first time, but she should have

learned after the first offense that permits are required from the Town, rather than the County.

Mrs. Mendoza replied that there was a miscommunication with the contractor of where the permits should have been pulled from and that since it is the first time doing business in Elsmere, she is asking for forgiveness.

Code Officer Melissa Faedtke responded that starting with the first permit that was pulled on March 2 for roofing and siding, that interior work had already begun without a permit and that is why the cease and desist was issued. Code Officer Faedtke stated that is when they came in after the fact to pull the permit for framing and drywall and HVAC and plumbing, so they were well aware that the permits needed to be pulled. In the meantime, a violation for high grass and weeds was issued and the electrical permit was not obtained until after the citation was issued for work without a permit, so they are well aware of the permits that needed to be pulled from the town.

Chairman Personti asked whether it was different contractors doing the work. Code Officer Faedtke stated that she didn't have that information. Mrs. Mendoza stated that each permit was pulled by different contractors for the HVAC, plumbing and electrical.

Board Member Boyd asked whether Mrs. Mendoza was acting as the general contractor and she replied that her husband takes care of that. Mrs. Mendoza clarified that they do not do any of the work themselves, that they hire people to do the work.

Code Officer Faedtke read a letter that was received from resident, Sally Wein. In this letter, which was marked as Exhibit 18-29AT through 18-29AV, Ms. Wein described some of the issues that she experienced with the subject property while the renovations were in progress.

Councilman Ted Pfirrmann, 2nd District, stated that the appellant's testimony does not fully describe the situation and described an experience in which one of the employees became confrontational, as well as occasions where work was going on late at night after the cease and desist notice had been posted. Councilman Pfirrmann noted that the violation for the tall grass was issued when the grass was 27 inches high and that he had received numerous complaints about rodents coming from the tall grass. Councilman Pfirrmann explained that he had met with Ron Mendoza concerning the issues experienced by Ms. Wein. When Mr. Mendoza would not reply to correspondence after this meeting, he referred Ms. Wein to the State's mediation program.

Mrs. Mendoza replied that she can't be responsible for the behavior of the contractors.

ACTION: Board Member Smith made a motion to deny the petition. The motion was seconded by Board Member Russo.

VOTE: 5 – 0

Motion carried

Review Petition 18-30 Tax Parcel # 1900-400-508

Appellant Scott Terrizzi requested leniency of the \$1,000 fine that was issued to his property and stated that the tenant is no longer there. Mr. Terrizzi stated also that there have been multiple calls that were unfounded. He explained that while out at the property, that they found a leak in the kitchen and the tenant had moved things out of the basement when it flooded and that they have since dealt with the problem. The tenant has also since moved out. Mr. Terrizzi stated that he has been responsive in the past, which is why he is asking for leniency.

Chairman Personti asked whether the fine is waived for the trash on the deck if it is corrected within 48 hours.

Code Officer Scott Allen explained that the trash on the deck was complaint driven, that the fine is not issued unless it is not corrected within 48 hours, and that the violation still existed when he returned to the property to follow up. Code Officer Allen further explained that the citations for the trash cans were issued on Monday and that trash cans are supposed to be brought in on Thursday each week.

Code Officer Faedtke noted that the ceiling leak was not corrected when she returned to the property to follow up, so the fine was issued. Shortly after, the property manager contacted her that the leak had been corrected.

Mr. Terrizzi stated that he likes having rentals in Elsmere and that he will continue to try to be a responsive landlord and take care of his properties. Mr. Terrizzi also stated that since the tenant is no longer there, he cannot share the burden of the expense of the fine with the tenant.

ACTION: Board Member Smith made a motion to deny waiver of the \$1,000 fine. The motion was seconded by Board Member Russo.

VOTE: 5 – 0

Motion carried

Review Petition 18-32 Tax Parcel # 1900-500-093

Code Officer Faedtke read the summary analysis for Petition 18-14, including the following sections from the site analysis: The Request, The Statement of Fact, The Issues, and The Grant of the Petition.

Applicant Sydney Chance explained that it is not physically possible to comply with the 20-foot egress, that he runs his business by appointment, that he has proposed to install a fence to comply with the buffer requirement, and that he does not expect there to be any issues with the neighbors.

Board Member Smith inquired about other barbers. Mr. Chance replied that it is not a goal but that he is leaving it open to have another chair for another barber. Mr. Chance also

explained that he is not going to be able to operate right away, that he needs to improve the property first.

Board Member Boyd asked about future plans for the second floor. Mr. Chance replied that he hopes to use it for his sons after school for homework while he's working.

Board Member Smith asked Code whether it is required to have a handicap ramp. Code Officer Faedtke stated that it must meet ADA requirements.

Chairman Personti asked about the operating hours of the business. Mr. Chance stated that currently the earliest is 9:00 a.m. and the latest is 7:00 p.m. during the week and, on Saturday, as early as 6:00 a.m. because his clients are professionals. He stated that he does not anticipate that he will disturb any of the neighbors.

Board Member Boyd asked for clarification whether three or five parking spots are being proposed. Code Officer Faedtke stated that the code office had met with the applicant earlier in the week. An updated plan that was submitted to the code office was identified as Exhibit 18-32U. Code Officer Faedtke confirmed that the current plan proposes five parking spaces.

Resident Robert Anderson stated that he is concerned especially with the buffer. Mr. Anderson further stated that he likes the applicant but is concerned when the applicant sells the property and the variance is in place. Mr. Anderson also discussed the fact that the property is adjacent to a resident area and mentioned concerns with water runoff.

Real estate agent Zach Rempfer stated the subject property is already zoned commercial and is not requesting a zoning change. Mr. Rempfer also stated that the applicant is going to improve the value of everyone's property as a result of his plans to improve the subject property.

ACTION: Board Member Russo made a motion to approve Petition 18-32, recognizing that it meets harmonious development, and to approve the variances to the parking buffer, reduce the size of egress, ingress, and to the number of parking spaces to five spaces with the condition that the applicant must use pervious material for any additional coverage. The motion was seconded by Board Member Boyd.

Board Member Boyd amended the motion to include a variance for the stockade fence as a buffer, a variance from the 20-foot buffer area, and to install a solid fence rather than a fence with 50 percent air and light.

Board Member Smith amended the motion to include the conditions that it meets ADA, that it is for one barber only and that if he wants to expand to more chairs, he must reapply to the Board of Adjustment.

VOTE: 5 – 0

Motion carried

Review Petition 18-33 Tax Parcel # 1900-400-027

Code Officer Faedtke read the summary analysis for Petition 18-14, including the following sections from the site analysis: The Request, The Statement of Fact, The Issues, and The Grant of the Petition.

Applicant Karla Fleshman stated that she has purchased the building at 1305 Kirkwood Highway to operate a clinical practice and hopes to rent out a couple of the offices in the building to other complimentary practitioners. Ms. Fleshman stated that she has been discussing the parking with State Farm, which is on one side of her building, and the bank, which is on the other side.

In response to a question from Board Member Boyd, Ms. Fleshman stated that she typically sees four to six patients per day and that she is typically in the office about 20 hours per week.

A short discussion followed about the proposed shared parking with State Farm Insurance and M&T Bank.

Code Officer Faedtke read a letter in support of the petition from Darren Moore, owner of the State Farm Insurance office, which is located at the adjoining property.

Councilwoman Joann I. Personti, 5th District, stated that she had previously received concerns from residents about parking and after reporting back to them after the Planning Commission meeting, they seem to be content now with the plan for parking. In addition, a resident had raised a concern about medication being prescribed or dispensed at the location, such as methadone or naloxone, which was quickly dispelled at the Planning Commission meeting. Councilwoman Personti then stated that she hasn't received any further correspondence since.

ACTION: Board Member Boyd made a motion to approve Petition 18-33, that it meets harmonious development, and to grant variances from parking and to eliminate the parking buffer. The motion was seconded by Board Member Smith.

VOTE: 5 – 0

Motion carried

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS:

None

PUBLIC COMMENT:

None

ADJOURNMENT:

ACTION: A motion was made by Board Member Russo to adjourn. The motion was seconded by Board Member Smith.

VOTE: 5 – 0

Motion carried

These minutes summarize the agenda items and other issues discussed at the January 22, 2019 Board of Adjustment meeting. Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.

JAMES PERSONTI, CHAIRMAN

PATTY BOYD, SECRETARY

UNAPPROVED