JOPLIN | BOARD OF ZONING ADJUSTMENT

MINUTES
FRIDAY, JULY 15, 2022
11:00 A.M.

Mr. Beisner called the July 15, 2022, Board of Adjustment meeting to order.

Roll Call
Board members present Thomas Beisner, Matthew Smith, James Pinjuv and Chase Kraft. Keegan Stanton represented the Planning, Development and Neighborhood Services Department.

MR. SMITH MOVED, SECONDED BY MR. KRAFT TO EXCUSE MR. LAYNE AND MR. BRILEY WITH MR. PINJUV, MR. BEISNER, MR. SMITH AND MR. KRAFT VOTING, "AYE" (4 IN FAVOR, 0 NAYS, 2 ABSENT). MOTION CARRIED.

MR. KRAFT MOVED, SECONDED BY MR. SMITH TO APPROVE THE JUNE 17, 2022 MINUTES WITH MR. PINJUV, MR. BEISNER, MR. SMITH AND MR. KRAFT VOTING, "AYE" (4 IN FAVOR, 0 NAYS, 2 ABSENT). MOTION CARRIED.

A. **PUBLIC HEARING**

Mr. Beisner read the rules for the Public Hearing.

Mr. Beisner stated the case is:

Case 05-22-02: 1209 W. 7th St.- A request from El Guapo's Cigar Lounge LLC, for a waiver of the requirement that privacy fences only be permitted in the rear yard, from Joplin City Code, Appendix 29-A Zoning, Article 18, Sec. 29A-1815 Fences, Letter B, Number 1.

Case 05-22-02 was tabled last meeting.

Alex Menejias, 4507 Hickory Lane, Joplin, Missouri addressed the Board regarding his business located at 1209 W. 7th St. He stated aside from what was discussed during the last meeting he wanted to reiterate that he has offered on 2 separate occasions to purchase the property located at 1201 W. 7th St. which is the building next door to 1209 W. 7th St. He has also offered to lease the property located at 1201 W. 7th St. The offers have been rejected by the owner.

Mr. Menejias stated to please note that his fence is 7 ft. 10 ½ inches tall. It was authorized that I could go between 8-12 ft. for my commercial protection on the property. I followed all the guidelines set before me to receive a permit to build the privacy fence after the plan was discussed and put in order. Equity was invested in it. I followed every guideline. I was in violation of nothing essentially. So, I am here to get this variance granted potentially. That is about all I can say that is different from the last time I was here. I would also like it noted that there was acknowledgement that there is not a viable business next door. The business was shut down because of Covid and they have not reopened. The business is a building that is in disrepair. My security fence protects both locations. Additionally, directly across the street from my business at 1209 W. 7th St. there is another business that has a privacy fence or a security fence they added recently to protect their business and protect what they do. There is no real difference between the two entities. They have theirs and I have mine to protect our business. At any rate, plans were made, plans were approved, a permit was given, and I have been in compliance. Mr. Menejias thanked the Board.

Mr. Beisner thanked Mr. Menejias.

Mr. Beisner asked if anyone else would like to speak in favor of Case 05-22-02.

Mr. Frank Thompson, Joplin, Mo. stated he has been discussing this with Alex since he was looking for people to build this fence. I have been involved since then. He even told me that he already has the permit and everything. So I do not know what is going on here. I have drove by the place several times since that fence has been put up. I know it has made a vast improvement and along side the facility across the street. There is a vast improvement. I do know some of the issues that he has spoke about. For example, the people who own that building their power wire runs over on Mr. Menejias property, so he went above and beyond to adjust and accommodate them. Additionally, I do not even know if the actual owner of the property has actually showed up. Mr. Thompson stated he was not at the last meeting. I mean do the people who actually own it have Power of Attorney. Why are they even representing what is going on with that building. It is empty. You know I do not even know why we are wasting everyone's time here. He followed the process that he was supposed to

follow but yet he has vested time, energy and resources into this. So, that is pretty much what I have to say. Mr. Thompson thanked the Board.

Mr. Beisner thanked Mr. Thompson.

Mr. Beisner asked if anyone else would like to speak in favor of Case 05-22-02.

Mr. Charles Munn, 8306 Cedar Dr., Joplin, Missouri. He stated he was not at the last meeting so hopefully he will not be redundant. First of all, I would like to applaud any small business owner who takes a chance opening a business in Joplin downtown area or the west 7th street area especially a minority business owner. It is a risky adventure. El Guapo's has been quite successful. They are successful in their new location on west 7th street. I am a member of El Guapo's cigar lounge and as such I enjoy the property of course. There is a security issue out there as we all know on west 7th street there is a lot of foot traffic. There is some vagrancy, and the operation is open 24 hours a day unlike most businesses. So, with 24 hours a day availability it is really important especially in the nighttime hours when management is not around that the property be secured. So, we feel (when I say we, I mean my wife and myself) that there are other female participants or clients of the operation, and we feel much more secure since El Guapo's has put up the fence. Prior to that time, I know I had one occasion where there was someone outside the facility, between the two buildings in question and hanging out. I think spent the night there. I have been in El Guapo's before when people have just wandered in off the street which during business hours is one thing. After hours or early morning hours gives you a sense of uneasiness. So, the security fence certainly has a purpose. It is welcomed by the clientele. The business is very successful. I don't want to be redundant because I don't know what else was said but other than I think El Guapo's has followed all the procedures and has followed the procedures set by the City of Joplin. And with that, he is in compliance it appears. Mr. Munn thanked the Board for their time, and he stated he appreciated them and to have a good day.

Mr. Beisner asked for any questions on Case 05-22-02.

Mr. Beisner asked if there was anyone else wanting to speak in favor of Case 05-22-02.

Rhonda Thompson, Joplin, Missouri stated she is a female patron of El Guapo's I don't want to be redundant or repeat everything that has been said but the privacy fence does add that needed security that makes it feel safe. If that didn't exist, I don't think I would feel safe out there.

Mr. Beisner thanked Ms. Thompson and asked if there were any questions on

Case 05-22-02.

Mr. Beisner asked if anyone else would like to speak in favor of Case 05-22-02.

Mr. Beisner asked if anyone would like to speak in opposition of Case 05-22-02.

Melanie Blizzard, 2437 S. Loma Linda Dr. Joplin, Missouri. She stated to answer several questions that have been asked. Yes, she is the owner of the building. Yes, Mr. Guapo did actually wish to purchase the building a year or so ago, but we wasn't interested in the price he wanted to pay. However, the other thing is you know security fence or whatever kind of fence you want to say it is the City of Joplin has a city code and that is to protect your commercial buyers. So, my mom has been in business for 50 years in Joplin paid licenses and taxes we have owned the building since 1994. We have never been broken into. So, all these security issues and all these things. I mean we have owned the building since 1994. There are some people who walk back and forth to the liquor stores and stuff like that but we have never been broken into. You can check city records, we have never been broken into. So, even though that is supposed to be the big reason for building this you know when you apply for a variance, which he did not apply for a variance when he built this fence. He just built the fence. We have been more than patient. This fence was built last September. I work for municipality. So, I work for municipality for 21 years. Normally, if something is built against city code especially you know when something is five feet over code that is one thing, but this is 28 ft. past city code. And you are completely which he admitted last meeting he is completely blocking my property, my signage and everything. And you know regardless of if it is a security fence or what it is you can't go against city code and block another commercial business completely. We are closed right now due to Covid, but we will be selling the building. It is hard to sell when people can not even see the signage or see the building. He admitted he blocked it completely. So, if he has a security issue then he has to address it another way because no matter what at the end of the day city code is written for a reason and you can't just say oh, we are just going to completely ignore city code and go 28 ft. past city code. If you go to turn out of the place and you want to go left the visibility is terrible. So, I don't see how in the world, like I said we have been more than patient. Where I work if something is built against city code and people can't see and things like that and causing traffic accidents they would be given 30 days to take that fence down. If they didn't take the fence down, then the City would remove because it is against city code. So, even though he says he went through all the procedures or whatever it is against city code. Otherwise, we wouldn't be here. So, then when everything was being said, wow, he was told oh why don't you apply for a variant. So, I don't think like I said that any kind of variant 28 ft. past. I talked to the State of Missouri, and they said there is absolutely no way you can build something 28 ft. past city code even with a variant. So, anyway as a commercial plus I

don't see how in the world someone would be able to block someone's signage and their building. I pay taxes and have for years with the city so I just feel like this is totally illegal and against all city code. It is also 8 ft. 3 in. where it comes across my building. I had a roofer come last week and for him to even I can't even get to the side one of my sides of the building. We had to get an extension ladder to get on top of the roof so what if I have a fire. I can't even get to my building from the front or the back. Now, I don't think that is right. So, that is all I have to say.

Mr. Beisner thanked Ms. Blizzard.

Mr. Beisner asked if there were any questions on Case 05-22-02.

Mr. Beisner asked if there was anyone else wishing to speak in opposition to Case 05-22-02.

Mr. Beisner asked for any comments from the Board members.

Mr. Stanton stated that before we move on, he would like to address a couple of things into the record. First, in the past two days staff has received 10 letters of support in support of granting the variance. They are included in our file here, but we have received 10 letters of support. Second, after the last Board meeting some of the Board members visited the site and may have interacted with some people in this room. For the sake of the Public Hearing if we could just now disclose what you have observed or what may have been communicated at those meetings.

Mr. Smith stated he did go there after the meeting and we wasn't there probably five minutes or so. The owner there he took us through and just showed us the back in there where the fence was and stuff. I think pretty much most of the conversation was about what he did there at the cigar lounge and stuff like that. We just kinda glanced. We were not outside very long. There was a picture inside and we mainly talked about the picture more than anything.

Mr. Beisner stated he was the other person with Mr. Smith at that time and he is correct about what happened.

Mr. Kraft stated that based on the recommendations to go without any parties present I went later and so I didn't make any contact with anybody. But, I went with a 11 year old nephew and we walked around and measured. We actually got out walked on the perimeter and also got into the vehicle and drove through the parking lots with the adjacent properties.

Mr. Pinjuv stated he has been there twice to check it out and refresh my thoughts again about the property. I met with nobody either time and I did not take anyone else with me.

Mr. Stanton thanked everyone. The final item Mr. Stanton would like to address is when it comes to variances there are six criteria that are to be met to receive a variance. Those are as follow for the record:

1. **Uniqueness**
2. **Adjacent Property**
3. **Hardship**
4. **Public Interest**
5. **Spirit and Intent**
6. **Minimum Variance**

When it comes time to make a Motion whether it is to approve or disapprove the variance if you would please state your Motion in the following way: I move that we approve or disapprove the variance based on all six criteria. Just make sure you are addressing all six criteria with whatever Motion you make. That is the last instruction that I have.

Mr. Beisner asked if anyone would like to make a Motion on Case 02-22-02.

Mr. Pinjuv asked if the Public Hearing had been closed.

Mr. Stanton stated that after no further comment the Public Hearing is closed.

Mr. Kraft asked if he may call Alex back up to the podium. Mr. Kraft had a couple of other questions and he stated he would be quick. Mr. Kraft stated his questions were based on the six criteria stated. Mr. Kraft stated the two criteria he has struggled with was the minimum variance and the adjacent property. So, on the minimum variance one you were saying the main reason for having the fence was the security of the premises. When people cut through and using it in other ways as well as you described in previous meetings. So, could you tell me how the extension of the fence to the road with the 8 ft. tall height the entire way how that is absolutely necessary in securing the premises than a fence that would have met code that would have accomplished the same thing.

Mr. Menejias stated that first off, I was told I was to code because of a commercial building that I could go out forward from the building because of a commercial property

and security reasons. The patio is a square patio but even if I had just blocked off the front patio the problem, I was still having was people still sleeping in the front yard the front of the business. Getting there in the morning time and having to get into a verbal confrontation with homeless people as to why they are camped out under the front porch, the cedar areas of the front porch and the grass area. So, I needed to go out and cover the front property the grass and everything in order to secure that whole side of the property. So, when I approached the City about it, I drew up a plan and I said I want to if I can go out forward because I know on residential you can't go out behind the past back corner of the property. But on commercial it was told to me that you can go forward to protect and you would have to have an angle on one corner for visibility and I could go out so far. I gave them the measurements that I wanted to go out and that is what was approved to go out to. That is why I built it that way. I wasn't told that there was any code that said I couldn't go out that way. But to answer your question the safety of it wasn't just that little square patio and the walk through there it was the whole front yard was being used as a campground at 1:00, 2:00 and 3:00 in the morning. I would get there and have to either someone was trying to spray paint their building or someone was trying to spend the night between the two buildings. So, I protected both properties.

Mr. Kraft asked Mr. Menejias if he was still having issues with people trying to camp in the other side of the front yard that isn't fenced.

Mr. Menejias stated no. For some reason I guess it is because the parking lot is there right. So now there is I haven't had an issue since the fence was built. I haven't had any issues with transients or homeless people it is just it basically amplified that this is a secured business a business that had been remodeled a building that had been remodeled and otherwise in a difficult part of town to have a business in. So, no, to answer your questions there hasn't been any other problems.

Mr. Kraft stated ok the other thing. I am looking at the permit application you filled out way back then and I am looking for the date on July 2021. On the map there it does show that you can have a fence just about all the way where it is now except, I am reading the fine print that front fences can not exceed 4 ft. in height and must be open construction. So, I think that may be the difference and misunderstanding. The other question I have had to do with the adjacent property. So, where we go back saying that granting the variance should not have any adverse effect on the rights of the adjacent property owners. So, really two parts. The first part is do you believe the adjacent property owners have been negatively impacted. I know you have already mentioned the increased security for both of the properties. The other is what about the ease of selling. Whenever I noticed it, I had two main issues with where I could see the adjacent property owners where their frustration was because their billboard

was completely covered up. So, if they are looking at selling, I know if I was going to buy a property over there, I wouldn't buy one where the traffic from the west can not see you and you are hidden, and the billboard is hidden as well. So, can you talk about that.

Mr. Menejias stated so I am a neighborly person. I don't think I have obstructed their business because first off, the business isn't even open right.

Mr. Kraft stated if they want to sell their property.

Mr. Menejias stated he has offered to buy the place granted they said they didn't want the offer so forth. I will be realistic in offers okay. I paid $82,500 for my place. They want $150,000 for that building that is a smaller square footage than my place is so I have tried to make a reasonable offer so I can go to the bank where they would be able to justify selling me or lending me the money to buy the place because they are not going to justify paying $150,000 when I paid $82,000 for mine right. So, I say all of that because I would never prevent anyone from using their building. If they need access to the side of the building which is just a brick wall their west yes, their west side of the building is just a brick wall. There is nothing there. There is nothing to get to. You either get to it from the back which they have access to or from the front if they get to the side of the west wall they can come and do that. I would never neglect them from doing that. As far as the signage I have my property to protect. My concern was my property. I knew their sign was there but that is why I tried to build a little bit of an angle unfortunately the angle doesn't really show follow their sign. But, if I am being honest with you I have had multiple people bring up to me that or asking me if those signs were my signs because they never knew they were there before until the fence was built because there is a higher visibility of those signs now. Additionally, they never use those signs. They are not lit signs. There is not a business using those signs. So, I was doing what I felt was best for my business and I am not trying to be mean or rude about it. I wasn't trying to protect their business because there was nothing in there. The building is falling apart. The facia is falling off that building. There is nothing being done to improve the aesthetics of that building. In fact if we are being realistic about it, it makes the area look worse and it looks worse for my business that their building is not being taken care of. So, I am not trying to prevent them from using their building or selling their building. I still think we can come to some kind of adult like resolution to this whole thing. I think we might still come to an agreement on the price if they were willing to talk or negotiate. But, for some reason I am public enemy number one. I am just a small business owner in this town. I have tried to grow my business. I have done everything by the books according to what is given to me and what I am told to do when trying to improve my business. And many times, I feel like I am just met with all these problems for no reason from a building that is not

open and all I am trying to do is protect my business. That's all. It is a security issue. Their building has had the windows broke out of it. Their own mother told me that. So, it is just a security issue for me and also it does improve the aesthetics of my business. So, I don't even know if I answered your questions. I tried to.

Mr. Kraft stated yes.

Mr. Menejias stated that is basically it.

Mr. Kraft stated that was his only questions and he appreciated it.

Mr. Beisner asked if there were any other questions on Case 05-22-02.

No further questions.

Mr. Beisner asked for a Motion on Case 05-22-02.

Mr. Thompson asked if he could interject something here.

Mr. Beisner stated no.

Mr. Pinjuv stated the Public Hearing was closed.

Mr. Thompson stated, the Public Hearing is closed?

Mr. Stanton said yes, it would only be heard if invited by the Board.

Mr. Beisner asked for clarification.

Mr. Kraft stated it would only be allowed if invited by the Board.

Mr. Beisner stated he was not going to invite any further discussion.

Mr. Kraft stated with all due respect it is a matter of just time because we have had three meetings on this, and it is best if we respect everyone's time. We are beginning to become repetitious with all of this.

Mr. Beisner asked for a Motion.

MR. PINJUV MOVED TO DECLINE THIS APPLICATION BASED ON THE NEGATIVE IMPACT ON THE ADJACENT PROPERTY, SECONDED BY MR. SMITH TO DECLINE THE VARIANCE AS BASED ON THE NEGATIVE IMPACT ON ADJACENT PROPERTY. MR. PINJUV, MR. BEISNER, MR. SMITH AND MR. KRAFT VOTING, "AYE" (4 IN FAVOR, O NAYS, 2 ABSENT). MOTION CARRIED.

Mr. Menejias asked his time frame for appeal.

Mr. Stanton stated the appeal procedure from the Board of Adjustments is going to be to the Circuit Court.

Mr. Menejias stated so what is my time frame, 30 days?

Mr. Stanton stated he would have to look in the Code. He did not have that information readily available.

Mr. Menejias stated he needed to know as soon as possible.

Mr. Stanton stated yes.

Mr. Thompson stated if you would have listened to what I had to say. I tried to keep a business in town.

Mr. Pinjuv stated the meeting was closed.

Mr. Beisner asked if there was any old business.

OLD BUSINESS

Mr. Stanton said none.

NEW BUSINESS

Mr. Stanton said none.

Mr. Beisner asked if there was any other business we need to discuss.

Mr. Stanton said none.

MR. SMITH MOVED, SECONDED BY MR. KRAFT TO ADJOURN WITH MR. PINJUV, MR. BEISNER, MR. SMITH AND MR. KRAFT VOTING, "AYE" (4 IN FAVOR, 0 NAYS, 2 ABSENT). MOTION PASSED.

Approved Thomas Beisner
Thomas Beisner, Acting Chairman

Approved Vicky Copeland
Vicky Copeland, Recorder