

MINUTES OF A REGULAR MEETING
OF THE BOARD OF ADJUSTMENT
JULY 11, 2013

The Board of Adjustment held a regular meeting on Thursday, July 11, 2013 at 5:30 p.m. in the City Hall council chamber.

Members present: Cleveland Ellison
Frances Craddock
Diana Biggs
Charles Johnson
Kennith White
Terry Shelton
Barney Walker
Franklin Galloway
Roger Brown
David Everett

Staff present: Kelly K. Stultz, Planning Director

Others present: Ricky Young – Applicant for Special Use Case

The meeting was called to order by Chairman Cleveland Ellison. The roll was called and it was determined that a quorum was present.

APPROVAL OF THE MINUTES OF THE REGULAR MEETING ON MARCH 7, 2013.

The minutes of the meeting on March 7, 2013 were presented to the Board. Kennith White made a motion that the minutes be approved as submitted. Franklin Galloway seconded the motion. Motion carried unanimously.

UNFINISHED BUSINESS:

CARPORTS.

Kelly Stultz said that the Board had received numerous special use permits for carports in the front yard. She asked the Board to think about making a few changes in the ordinance.

NEW BUSINESS:

SPECIAL USE PERMIT APPLICATION SU-13-02 939 TYNER PLACE
CONSIDERATION OF A SPECIAL USE PERMIT FOR A CARPORT IN THE FRONT YARD AS ALLOWED FOR IN SECTION 11.26(c)(3)(11), THE SPECIAL USE REQUIREMENTS OF THE BOARD OF ADJUSTMENT SECTION OF THE CITY OF EDEN ZONING ORDINANCE. REQUEST SUBMITTED BY RICKY YOUNG, AUTHORIZED REPRESENTATIVE FOR MARY F. YOUNG.

Kelly Stultz and Ricky Young were sworn in by Chairman Ellison.

Ms. Stultz said this was the second request for a carport that had been considered by the Board this year.

Ms. Stultz said the property was located at 939 Tyner Place and was zoned Residential-20 (R-20). She said the property was zoned R-20 at the time of original zoning in 1968.

Ms. Stultz said the property was a private residence located off Mebane Bridge Road adjacent to a golf course and the City of Eden water treatment plant.

Ms. Stultz said the application was complete and eligible for consideration.

Ms. Stultz shared with the Board that after the application was received and paid for and during the period of time before the Board as to meet, Board member Charles Johnson called to say he had been to the property to look at the site and discovered that the carport had already been installed.

Ms. Stultz said she inspected the property herself and did discover that the carport was already installed which was materially against the rules.

Ms. Stultz said she decided to wait until the Board had ruled on the case before doing any enforcement action. She said that should the Board refuse to grant the request, staff would proceed with a zoning enforcement action and order that the carport be removed.

Ms. Stultz presented the Findings of Fact, Staff Analysis and Staff Conclusion which is as follows:

FINDINGS OF FACT:

- (a) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted;
- (b) That the use meets all required conditions and specifications;
- (c) That the use will not substantially injure the value of the adjoining or abutting properties, or that the use is a public necessity;
- (d) That the location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and in general conformity with the plan of development for Eden and its environs.

STAFF ANALYSIS:

With respect to the findings of fact, staff provides the following analysis:

- (a) The applicants have petitioned to erect a freestanding carport in front of their residence on the subject property. Staff is of the opinion that the use will not materially endanger the public health or safety if located where proposed.
- (b) Staff finds that the proposed special use meets all required conditions and specifications. This statement is based on the following specific findings:
 - (1) The subject property has been and continues to be used as a single family dwelling.

- (2) Placement of the carport in the front yard will create no safety hazard or hazardous conditions.
 - (3) The development adheres to all applicable district requirements including, but not limited to, maximum lot coverage, minimum yard requirements, height limitations, and development standards.
 - (4) The carport in question could not be located in the normally permitted places on the lot and the conditions preventing such location are not the direct result of any actions taken by the owner of the property.
 - (5) The massing and scaling of the carport will be proportional to the other principle and accessory structures in the area, particularly adjoining properties.
 - (6) The carport will not adversely affect the character of the area being that it adjoins a golf course and the city's water plant.
 - (7) The carport already erected is not fluorescent or bright and is of a matte finish.
 - (8) The carport will have a neutral or positive impact to property values in the area.
 - (9) The carport will be out of the public right-of-way and will not create site visibility issues.
- (c) The topography of the subject property is quite steep. The slope drops sharply from the front of the residence to the back of the property.
- (d) The 2007 Land Use Plan recommends residential-suburban uses for the subject property. Therefore, based upon this information, staff finds that the proposed use would be in harmony with the area and in general conformity with the City's plan of development.

Ms. Stultz said based upon the facts submitted and discovered at the time of this report, staff finds that sufficient facts are proven to recommend approval of the special use permit request.

Ms. Stultz said that if the Board approves the request, Mr. Young will have to get a permit for the carport and staff will have no choice but charge Mr. Young double for the permit fees. She said a permit is required before any construction is done on the property.

Mr. Young apologized to the Board for putting the carport up before Board consideration. He said he did know he was not supposed to do that. He said he bought the carport from the House of Stars in Madison, North Carolina. He said the House of Stars has a subcontracting group that goes out to install these carports. He said he had nowhere else to put the carport on his property. He said when he bought the carport and they had indicated that it would be between 2-8 weeks before they could do the installation. He said when the crew gets several installations in one area they like to go ahead and do the installation.

Mr. Young said when he was at the beach he received a call from the House of Stars indicating they were on the way to do the installation. He said if they did not put the carport in at that time it could have been two months before they could come back.

Mr. Young said when he made application for the special use permit; he did not think there would be any problem. He said he was wrong in having carport installed before Board consideration.

Ms. Stultz said the House of Stars was the worst violator that the City had for coming in and installing buildings and carports without getting a permit. She said they refuse to get the permit themselves which they are supposed to do if they are going to put it up for Mr. Young.

Ms. Stultz said assuming the House of Stars puts the carport in the wrong place then the City has no recourse but to tell the property owner to move it and not the people who installed it.

Frances Craddock asked about the size of the carport that was placed on the property. Ms. Stultz said this particular carport was well within the square footage requirements that Mr. Young is allowed to have. She said that a person can have 600 feet in accessory structures or one half the square footage that is in the house whichever is greater.

Roger Brown noted that Mr. Young had nowhere else to put the carport.

Charles Johnson said if you were not looking for the carport you would drive right by it. Ms. Stultz agreed that the carport was very concealed.

Roger Brown made a motion that the special use permit be granted as submitted. Kenneth White seconded the motion. Motion carried unanimously.

Chair Ellison noted that there were no neighbors to object to the above case.

Kennith White noted that there was the possibility that there could have been neighbors to object to the request.

Ms. Stultz said even if the neighbors had objected the Board is charged with enforcing the intent of the ordinance.

Ms. Stultz said there were a number of things where she might recommend in favor of the request even though she did not like it, but it met the intent of the ordinance.

Ms. Stultz said the Board of Adjustment had a more difficult charge in having to do that. She said the Planning Board can have a more subjective view in what comes before them.

Ms. Stultz said she was glad the full Board was present for the meeting. She said it was much better for the public when the Board was complete.

A comment was made about the carport being installed before the application was heard by the Board.

Ms. Stultz said the carport was not up when Mr. Young made the application.

Ms. Stultz said the carport was not up when Mr. Young made the application. She thought Mr. Young had told at least one person that since he had paid the \$150, he thought he could go ahead and put the carport up. She said he should not have done that before the Board heard the request.

Ms. Stultz said Mr. Young had gotten numerous permits when he built his house and felt that Mr. Young knew he had to get a permit for the carport.

Chair Ellison felt that maybe something should have been done because Mr. Young had violated the law.

Ms. Stultz said if it was something really egregious, she could have sent Mr. Young a zoning violation and required him to remove the carport and then come before the Board with an application. She said if it was something really bad she would have taken that action.

Ms. Stultz said in this case she felt the Board would approve the request because Mr. Young had no other option for the location of the carport.

Ms. Stultz said Mr. Young had flood issues as well as topography issues.

Kennith White asked if there was any way to go after the House of Stars.

Ms. Stultz said they had been told to obtain the permits. She said they were also turned in to the N. C. Department of Insurance because they did not have a state contractor's license to install a carport.

Ms. Stultz said if someone comes in to get a permit to install a carport and it was obvious that they would not be the one installing the carport, they are told the contractor is responsible for obtaining the permit. She said if something is wrong with the installation the department would go to the property owner and not to the one that did the installation.

Chair Ellison asked about Mary Young's name being on the application. Ms. Stultz said the house was in Mrs. Young's name and she had signed the application. She said that Ricky Young was Mrs. Young's agent.

ADJOURNMENT:

There being no further business to come before the Board, Roger Brown made a motion for adjournment. Terry Shelton seconded the motion. Motion carried unanimously.

Respectfully submitted,

Kelly K. Stultz, Administrative Assistant to the Board
of Adjustment

Attest:

Cleveland Ellison, Chairman