

REQUEST FOR RECONSIDERATION PARKING VARIANCE 1701 TOOMEY ROAD 10/21/15

C15-2015-0128

On behalf of the owners of the property located at 1701 Toomey Road, I am requesting that the Board of Adjustment reconsider its decision to deny a parking variance request at its October 12, 2015 on the following basis:

1. The application process for the Board of Adjustment recommends that applicants contact neighborhood associations of record as part of the filing process.
2. On June 30, 2015 I filed the application for parking variance with all required documentation.
3. City staff did not require the applicant to submit any supplemental documentation.
4. On June 30, 2015, I contacted David King, president of the Zilker Neighborhood Association requesting an opportunity to present the parking variance request before the full membership of the Zilker Neighborhood Association prior to the scheduled September 14, 2015 Board of Adjustment hearing.
5. Mr. King responded that he would contact the Executive Committee of the Zilker Neighborhood Association concerning my request.
6. On September 14, 2015 I submitted documentation the required 15 copies of documentation to the Board of Adjustment demonstrating that a meeting with the neighborhood association had been denied despite the Zilker Neighborhood Association having scheduled a special called meeting on another topic in August 2015.
7. I asked that the Board of Adjustment conduct its September 14, 2015 hearing on the parking variance and deny the Zilker Neighborhood Association's request for postponement.
8. Mr. King announced at the September 14, 2015 meeting of the Board of Adjustment had requested a postponement but was withdrawing that postponement request.
9. As applicant's representative at that meeting, I then expected all witnesses to be sworn in and a hearing to be held on all documentation including late submittals available prior to the September 14, 2015 hearing.
10. A member of the Board of Adjustment requested a hearing postponement because there had been a decision more than a decade ago on a different parking variance on the property and this decision was not included in the packet the Board had received.
11. The Board of Adjustment voted unanimously to postpone the parking variance hearing until October 12, 2015.
12. During the Board meeting of October 12, 2015, the Board Chair required all witnesses to be present and be sworn in under oath.
13. I was sworn in under oath.
14. A witness providing documentation of his version of events at 1701 Toomey Road was not present for the Board hearing of the case on October 12, 2014.
15. That witness was the former Chairperson of the Board of Adjustment.
16. That witness was not sworn in under oath.
17. The testimony offered by the only witness to speak in opposition to the parking variance request, a member of the Executive Committee of the Zilker Neighborhood Association contained a document dated October 12, 2015 that referenced a case other than C15-2015-0128. That written testimony was not provided to the property owner's representative in advance of the meeting. Among other questionable assertions and inconsistencies contained in

that testimony and reiterated at the hearing was the assertion that the property owner was not burdened by the parking requirements at issue, since the property owner was free to build a "60-foot high mixed use project," or a project with "approximately 26 residential units". The BOA variance standards do not require that a property owner have no other potential use of the property to seek a variance. The written testimony also claims that granting the variance would be out of character for the area. Such an assertion ignores the fact that the property use has been virtually unchanged for more than two decades; indeed, the property owner's use of the property is a deeply ingrained part of the character of the area.

18. During the October 12, 2015 Board hearings more than one Board member stated that they would not vote for a variance that was not supported by the neighborhood association of record.
19. A neighborhood association of record that denies an applicant's request for a meeting prior to a Board of Adjustment hearing by definition is denying an applicant an opportunity for consideration by the neighborhood association based on the merits of the case.
20. A Board of Adjustment that rewards a neighborhood association that has refused to meet is establishing a precedent that any neighborhood that may oppose a variance may simply refuse to meet with an applicant and achieve an outcome where the applicant cannot achieve at least 75% support at the Board of Adjustment because some members of the Board will not approve a variance not supported by a neighborhood.
21. In light of the fact that the ZNA refused to schedule a regular or a special called meeting of the ZNA membership as documented at the 9/14/15 Board of Adjustment postponement request, we request that any Board member that has stated publicly that he/she will not consider a case on its merits but will instead oppose any variance that is not supported by the neighborhood association of record reconsider their position at a subsequent hearing or recuse himself/herself.
22. Based on the above and forgoing, we request that this motion to reconsider be granted.
23. We request approval of the parking variance at 1701 Toomey Road.

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