

## Virginia Highland Civic Association Meeting

10/11/11; Church of our Saviour

The meeting was called to order by Jack White at 7:00 PM. Present were Board members Peggy Berg, Lola Carlisle, Genny Ferrero, Lauren Wilkes Fralick, Brian Gross, Nicole Foerschler Horn, John Wolfinger, and David Wolfson. Absent with notification were members Frazier Dworet, Rob Glancy, and Pam Papner.

The attached agenda was approved without objection after the addition of a welcome by Father John Bolton of Our Saviour.

The minutes of the VHCA BoD meeting of 8-8-11 were adopted without objection and will be posted on the web.

Father Bolton welcomed all in attendance and noted the frequent collaborations between the church and community on a variety of events (including the Tour of Homes). He offered the church's facilities to VHCA whenever they were needed and available. His sentiments were reciprocated by several board members.

### Reports

#### Police and Fire

Sergeant Bruce of the APD reported a low level of crimes; she specifically mentioned a car break-in associated with a laptop left visible and several other car thefts.

**No City of Atlanta or other elected officials were present.**

#### VHCA Organizational Meeting – Lola Carlisle

The meeting was held on 9/25/2011 at Pamela Papner's home. Lola reviewed the list of elected officers and chairs and members of committees. The list was amended to include Peggy Berg to oversee the Sidewalks & Roads Committee. The minutes of the meeting were approved and are posted on the VHCA website.

#### Tour of Homes – Lola Carlisle, on behalf of the Committee

It will be held on December 10 and 11. The six participating restaurants have been confirmed. Complimentary tickets will be provided to volunteers. Sponsors are being sought; seeking sponsors; sponsorship packages are going out, along with PR. Information will be posted on the Tour website regarding sponsors and volunteer opportunities.

#### Communications – Brian Gross

Brian is ready to give the developer notice to proceed with construction, incorporating the feedback received to this date. He will finalize the delivery timelines with the web developer and report back next month.

#### Safety – John Wolfinger

John is working on providing Thanksgiving dinner to the Zone 6 officers and wants 10 adjacent neighborhoods to each kick in \$100 to pay for it. He hopes to arrange for 3 different restaurants – one each from the northern, southern, and eastern parts of the zone – to provide the meals. He is also examining providing a similar meal for Fire Station 19; the amount of money needed is undetermined. John moved to allocate \$100 for VHCA's portion of the PD meals. It was passed without objection.

On October 27<sup>th</sup>, Mayor Reed, Chief Turner, and a rep from the License Review board will hold a forum at 7 PM at Inman School to discuss liquor license codes and procedures in the city. VHCA will pay \$40 toward the costs of using the auditorium.

Audience member Kevin Cronin noted that parking tickets are being written to citizens using the spaces before 8 PM on Virginia Avenue in front of the Wells Fargo bank. The spaces are signed for public parking until 8, when the area becomes a taxi waiting zone. Peggy Berg will examine this issue.

### **Planning – Mark Arnold, Lola Carlisle, Jack White**

#### **LRB – 11 – 171 - Highland Tap and Fontaine's Oyster House - Licensee Name Change:**

Applicants Gary Ney and Ivy Y. Whitener (corporation d/b/a Highland Tap and d/b/a Fontaine's Oyster House) request a change of agent only. The applicant reported no citations or complaints to the License Review Board and reviewed his mandatory server training program.

The Board unanimously recommends (Berg, Carlisle, Ferrero, Wilkes Fralick, Gross, Foerschler Horn, Wolfinger, Wolfson) that NPU-F send this forward to the BZA with no objections. It will be heard at the November NPU meeting.

#### **V-11-113 -- 970 Arcadia (fka 972 Virginia Circle):**

Applicants Daniel Millerborg and Mauri Scheidler seek (A) a variance from zoning regulations to reduce the rear yard setback from 15 ft. (required) to 5 ft. (credit for ½ depth of 10-ft. alley included) to allow for a detached garage addition to an existing single-family house. This will replace a dilapidated existing detached garage with a 1-story two-car detached garage.

(B) The applicants also seek a special exception to erect a 6-ft. wall (privacy fence) in the required ½-depth front yard, where otherwise only a 4-ft. fence is allowed.

*Planning Committee site visit:* (A) The Planning Committee noted a neighbor's tree might be affected by the proposed garage and directed applicants to the City Arborist to determine if there will be impact to the neighbor's tree, noting that the relevant neighbor had raised the issue. The applicants agreed to report the issue to the city arborist.

(B) The applicants aver that the privacy fence that they are requesting a variance for would be in the approximate location of the current fencing and would cover only 28 linear feet of the 150-ft east property line. The applicants were urged to consider a 4-ft. fence. One concern was the reduced visibility of pedestrians to those backing out of the garage.

*VHCA Planning Committee:*

The applicant presented letters of support and/or proof-of-mailing from all adjacent neighbors.

(A) The arborist had visited and had no concerns about the tree. The Planning Committee unanimously recommends approval of the variance to reduce the rear and side yard setbacks with the standard garage conditions: 60A maximum electrical service and plumbing limited to a hose bib only.

(B) The applicants argued that a number of nearby fences are in violation of this ordinance and do not believe that their proposed fence constitutes a safety issue; several members of the Planning Committee believe that it did. Code sections 16-28.008(5)(a) and 16-28.008(9) specifically prohibit walls of any height in the half-depth front yard, fences greater than four feet within the half-depth front yard, and any walls or fences that create "substantial impediments to visibility". Of particular concern to the Committee is the absence of adequate visibility of and for pedestrians at the intersection of the driveway and the sidewalk, an especially acute issue given that children use the route to access Inman Middle School ½ block away and John Howell Park. Other concerns voiced were that no significant public aspect of their back yard had changed since the house was purchased that justified the privacy or security argument.

After much discussion, the Planning Committee unanimously recommended denial of the variance for the 6-foot high wall in the required half-depth front yard.

*VHCA Board:*

(A) The Board unanimously (Berg, Carlisle, Ferrero, Wilkes Fralick, Gross, Foerschler Horn, Wolfinger, Wolfson) supported the Planning Committee's recommendation to support side and rear yard setback reductions for the garage, with standard garage conditions.

(B) The applicants averred that they had consulted with the Bureau of Buildings and thought their original proposal was legal, but they asked to defer Part B to allow themselves time to design a safer plan that might meet with approval from the Planning Committee. The Board expressed support for this concept, and the applicants were advised that the BZA might choose to defer the entire application. Understanding that possibility, the applicants chose to move forward in hopes that NPU-F and the BZA will approve (A) and defer (B). The motion to defer (B) was passed unanimously.

**V-11-124 – 946 Rosedale Rd.:**

Applicants Meka Redd and Curtis Peart of Front Porch Group (on behalf of property owner Laura Madrid) seek a variance to reduce the required rear yard setback from 15 feet to 3 feet, the required south side yard setback from 7 feet to 3 feet, and the required north

side yard setback from 7 feet to 3 feet in order to make an addition of a carport and a fireplace to a single-family dwelling.

*Planning Committee site visit:*

The removal of four mature hardwood trees in the buildable area is contemplated, the largest a 40" white oak). There are 5 trees in the rear of the neighbor's lot that may be impacted by the construction of the garage. The committee noted that the removal of the oak would result in much less storm water being absorbed; it also observed that any excess would leave the property in a gradual manner to the rear of the lot, where it would be buffered by an unbuildable lot that is well-vegetated with numerous trees, from which English ivy had been removed by the applicants. The committee also noted that the plans plainly show an increase in total impervious surface from 54% to 64%, which requires a separate variance.

The applicants subsequently submitted revised plans that used permeable concrete for the proposed patio, moved the garage forward to reduce impact on trees at the rear, added four 55-gallon rain barrels, changed the arc of the driveway, and included a planting strip on the driveway. These changes reduce lot coverage to 51% (crediting the permeable pavers as 50% coverage, which the city does not) and 54.4% without that credit.

*VHCA Planning Committee:*

The applicants presented letters of support or proof-of-mailing from all adjacent neighbors. The applicants' modified plans now feature a proposed rear yard setback reduced from 15 feet to 6.7 (revised from 3 ft in original application) feet, with the other setbacks at 3' as originally proposed. The total lot coverage is as noted above.

The Planning Committee voted to support the variance conditioned on the revised site plan dated 9/30/2011 (showing the changes referenced above), with standard garage conditions of 60A maximum electrical service and plumbing confined to a hose bib only.

*VHCA Board:*

Board voted 6 (Berg, Carlisle, Ferrero, Wilkes Fralick, Gross, Foerschler Horn) to 2 (Wolfinger, Wolfson) to accept the Planning Committee's recommendation of support for these variances conditioned on the revised site plan dated 9/30/2011, with standard garage conditions of 60A maximum electrical service and plumbing confined to a hose bib only. Wolfinger dissented, citing the increase in impervious surface; Wolfson dissented without comment.

**V-11-137 – 1002 North Highland – Yogli Mogli**

Applicant David Blum on behalf of business owner Caleb Soong seeks a special exception to reduce the required on-site parking spaces from 16 to 9 to allow for the conversion of an existing retail establishment to an eating and drinking establishment, conditioned upon the serving of frozen yogurt only.

*Planning Committee:*

The applicant argues that the circumstances specific to the nature of this business – serving frozen yogurt, which melts rapidly – result in its customers being present on the site for a very limited amount of time, usually less than 10 minutes, instead of the customary 45 minutes or longer typical of ordering and consuming a full meal. He further argues that many customers visit after patronizing other restaurants with alternative parking and that others walk to the site from surrounding neighborhoods.

After extensive negotiations and consultations with the applicant, VHCA's consultants, and the City BZA, the Planning Committee unanimously recommends approval of this variance with the following substitute conditions, to which the applicant agrees:

- The following conditions shall apply whenever the full number of parking spaces are not provided on the property.
- The amount of total kitchen area for the property shall be limited to a maximum size of 500 square feet.
- The amount of total dining area for the property shall be limited to a maximum size of 593 square feet.
- Except as allowed in 16.32.014 of the City of Atlanta Code of Ordinances, the dining area shall be restricted to being located within conditioned floor area and shall be prohibited from being located external to the building by means of outdoor patios, outdoor decks or any other form of outdoor dining area.
- There shall be no more than 4 tables and 20 seats permitted within the dining area.
- Alcoholic beverages shall be prohibited from being served or sold on the property.
- Hours of operation for any eating and drinking establishment shall be limited to the hours of 11AM to 11PM.
- No stoves or other devices for cooking or warming are allowed on the premises.
- Food that is served, sold or made available on the property shall be limited to yogurt, associated toppings and non-alcoholic beverages. (This condition may be dropped if the BZA so advises.)

*VHCA Board:*

There was extensive discussion among the board and the audience regarding the conditions and their long-term implications and effect, specifically whether or not a conventional restaurant could replace the yogurt shop with these conditions in effect. The subject of a potential private agreement between VHCA and the applicant and/or VHCA and the owner of the property was discussed, and the applicant agreed to seek and support such agreement(s), noting however that the property owner was aged and difficult to communicate with. The applicant further agreed to defer the motion at the scheduled BZA hearing should the BZA be unwilling to impose the agree-upon conditions and to supply such a guarantee in writing.

A motion was made to accept the Planning Committee's recommendation of support, as conditioned above.

A quick poll was taken of those in the audience; of those voting, 5 supported the motion, 4 voted no, and 3 abstained. Approximately 12 attendees did not vote.

The Board supported the motion 7 (Berg, Carlisle, Ferrero, Wilkes Fralick, Gross, Foerschler Horn, Wolfson) to 1 (Wolfinger); Wolfinger dissented without comment.

**V-11-138 – 825 Virginia Circle:**

Applicants and homeowners Jennifer and Nigel Packer seek a special exception from zoning regulations to erect a 5 ft. privacy fence in the required half-depth front yard, where 4' is the maximum height otherwise allowed.

*Planning Committee site visit:* After discussion, the applicants reduced the fence height to 4 feet, which does not require a variance. The fence will however be a shadowbox design that is less than 50% open; a separate variance is required for that.

*VHCA Planning Committee:*

A four-foot fence is allowed in the half-depth front yard; however, since this is a privacy fence (i.e. wall), a variance is still required. Of concern to the committee are the visibility provisions required by 16-28.008(9).

The applicant presented letters of support or proof-of-mailing from all adjacent neighbors.

Noting that the proposed fence is a continuation of the building footprint and within a few feet of it and that the design of the proposed shadow-box fence design affords adequate visibility (in this case) of and for pedestrians walking parallel to the fence along the sidewalk, the Committee voted to defer this application until it had seen a revised variance request limited to the shadowbox design that the applicant now wants and pledges to provide at the next VHCA meeting.

*VHCA Board:*

As requested by Planning Committee, applicant presented additional fence drawings and details of shadow-box fence design. A motion made to accept the Planning Committee recommendation to support a variance request for a 4' privacy fence in the half-depth front yard conditioned on site plans stamped and dated September 8 and fence specification stamped and dated Oct. 7; it passed 7 (Berg, Carlisle, Ferrero, Wilkes Fralick, Gross, Foerschler Horn, Wolfson) to 1 (Wolfinger); Wolfinger dissented without comment.

**V-11-146 – 842 North Highland: deferred**

There was no old business. There was no new business.

The meeting was adjourned at 8:45 PM.