

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, December 18, 2013

Call to Order

The Board of Zoning Appeals meeting was called to order at 7:30 p.m.

Those members present: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, and Michael Schnipper.

Those members excused: None.

Staff members present: Sam Perry, Amy Blankenship, Jung-Han Chen, and Steve McHugh.

Staff members excused: None.

Mr. Brady made motion to approve the agenda. Mr. Barnhart seconded the motion. All were in favor.

Administrator's Appeal

BZA-12-2013 711 & 711-1/2 S. College Avenue appeal of Administrator's Decision Patrick O'Neill, Esq, Agent

Mr. Steve McHugh, Law Director, City of Oxford, addressed the BZA stating that Mr. Patrick O'Neill, Agent, advised him that he had some additional relevant evidence (documents, tax bills, utility bills) that would show there being three units at the College Avenue address, and was asking for the appeal to be tabled so that he could submit the information to the BZA at a later date. Mr. McHugh stated that Mr. O'Neill wished to come back in 30 days. Mr. McHugh added that Mr. O'Neill wished to share a brief summary before the BZA at this meeting and then provide the additional documents in 30-days.

Mr. Perry spoke. Mr. Perry stated that Mr. O'Neill was appealing the Staff decision to not allow a use variance application be heard. Mr. Perry continued stating that the R1MS District did not allow for a three-family use. Mr. Perry stated that Mr. O'Neill had originally requested a variance to allow for a three-family dwelling instead of a single-family dwelling. Mr. Perry stated that Staff interpreted the request as a use variance, which is prohibited. Mr. Perry stated that Mr. O'Neill disagreed with staff's interpretation saying that they believed it to be a same use. Mr. Perry stated that staff did not allow Mr. O'Neill to place the appeal on the October 2013 BZA agenda because use variances were not permitted. Mr. Perry stated that the code was very clear; however, Mr. O'Neill did have the right to appeal. Mr. Perry reminded the BZA that they were not hearing an appeal of the case.

Mr. O'Neill, Agent for the owner, provided an ownership history of the property. Mr. O'Neill added that the property has always been a three-family. Mr. O'Neill stated that the Fread's continue to lease as three units. Mr. O'Neill added that the property has been leased the entire time of ownership. Mr. O'Neill referred to the June 19, 2013 filed BZA petition with the City and having provided a narrative statement and documents at that time. Mr. O'Neill reviewed the decision standards of then, and that the petition was denied. Mr. O'Neill stated he has perfected the appeal and resubmitted in September, 2013. Mr. O'Neill referred to his letter of October 10, 2013 where he explained his rationale for the submittal. Mr. O'Neill stated that a use variance was not defined anywhere in the Oxford Zoning Code and that the City based their denial on this being a use variance. Mr. O'Neill felt that the City was treating the Fread's

differently than others in the same exact district and that permitting this variance was not going to change anything. Mr. O'Neill concluded that he felt the City was interfering with their private property rights.

Mr. Schnipper inquired if the property had proof of continual rentals, since the City of Oxford required rental permits. Mr. O'Neill discussed family members living at the property.

Mr. Brady referred to Mr. O'Neill's definition of a use variance and inquired if what he was saying that there was no difference between a single family and a 12-family. Mr. O'Neill referred back to his earlier comment that Oxford does not define the term in the codified ordinances; therefore, it is not clear and the application was unconstitutional. Mr. O'Neill felt the City should define that term "use variance" and that if they did define it clearly that Oxford wouldn't have people coming here challenging it.

Mr. McHugh stated that the City does define a "use variance"; do we define it as a specific definition, no, but looking at the zoning code as a whole it is. Mr. McHugh referred to 1139.01(a) where it specifically says use variances are prohibited. Mr. McHugh referred to Supreme Court language discussion as well and also, that Section 1133.02(a) of the Oxford zoning code also spells it out. Mr. McHugh continued that the fact is the use that is allowed within the R1MS District was effectively one use with exception of the listed conditional uses (daycare and accessory uses). Mr. McHugh referred to several Supreme Court cases that referred to use variances: "that which is not permitted is prohibited".

Mr. McHugh reiterated to the Board that the reason this appeal was before them was the issue of use.

Mr. O'Neill added that the City was currently charging the property for three trash bins, so treating it as a three family.

Mr. Brady stated what this is about is if Administration made a correct decision would it or wouldn't it be a use variance; this is what the applicant applied for - for the BZA to overturn the Administrators Decision.

Mr. Perry noted that this was not advertised as a variance request.

Mr. Meyer made motion to defer BZA's decision until January 15, 2014 and to Table BZA-12-2013. Mr. Barnhart seconded the motion. All were in favor.

Adjudication Hearing(s)

BZA-13-2013 [30 Josie Drive variance to Section 1143.02\(c\)\(2\)B rear yard setback John DeVore, Petitioner, Agent](#)

Mr. Barnhart requested to be recused as he was a neighboring property owner.

Mr. Meyer made motion to adjourn to BZA-13-2013. Ms. Dana seconded the motion. All were in favor.

Mr. Perry provided an overview stating that the Petitioner was requesting a rear yard setback variance on

behalf of the property owner. Mr. Perry referred to an existing open deck on the rear of the house and the plan to convert the open deck to a partially enclosed screen porch, thus allowing the porch to be built within 16.5 feet of the rear property line, rather than the 35 feet requirement in a R1B District.

Mr. Perry stated that when the home was built the uncovered deck/porch was allowed to encroach into the rear yard setback up to ten feet.

Mr. Perry provided overhead photography and a site plan and the submitted proposed drawings which showed a 3-D rendering.

Mr. Perry reviewed the Decision Standards. Regarding the variance yielding a reasonable return, Staff felt that the property could yield a return without a variance as the house has existed since 1995. Regarding if the variance was substantial, Staff felt the variance was substantial since the rear yard setback would be less than half of the required distance. Regarding the effect on the essential character of the neighborhood, Staff felt that it would not negatively alter the character. Regarding if the owner had knowledge of the zoning restriction, Staff referred to the earlier zoning code which permitted uncovered decks to encroach into the rear yard setback; however, the current deck extended 5.86 feet closer to the rear property line than would have been allowed at the time of construction; plan files show setback compliance; however, the as built condition did not. Regarding other options explored, Staff felt that the applicant made a conscious effort in considering other options. In regards to the spirit and intent of the variance, Staff noted that the rear yard setback had already been significantly reduced and that a further reduction was not consistent with the spirit and intent behind this requirement.

Mr. Perry concluded that Staff recommends that the BZA cite specific evidence in order to approve the variance request; however, at the time of Staff's reporting, they did not believe there was substantial evidence to support the variance request.

Mr. John DeVore, Petitioner was sworn in by Mr. Brady. Mr. DeVore reviewed drawings of the porch extension request versus the current footprint. Mr. DeVore described various design options he explored and his reasoning for the chosen submitted design. Mr. DeVore stated that the chosen design was the best viable, effective use of the space. Mr. DeVore reiterated that he looked at different options to minimize the variance request.

Discussion followed regarding the shape of the lot and surrounding properties. Ms. Dana referred to cul-de-sacs when developed the front yard setbacks are designed thus leaving the back yards oddly shaped.

Mr. Meyer made motion to reconvene to Regular Meeting BZA-13-2013. Mr. Schnipper seconded the motion. All were in favor.

Mr. Meyer noted that the variance involved just the corner of the deck.

Prue Dana moved to approve BZA-13-2013 based upon Decision Standards c and f as the variance request was not substantial and that the shape of the lot was a practical difficulty. Gary Meyer seconded. The motion passed with the following roll call:

AYE: Gary Meyer, Prue Dana, Paul Brady, Michael Schnipper (4)

NAY: None (0)

ABS: None (0)

BZA-14-2013 [29 N. Beech Street variance to Sections 1151.03\(b\) freestanding signs in the Uptown \(UP\) District, and 1141.03\(f\) use of the vacated right of way Matthew Troy, Petitioner, Agent](#)

Mr. Barnhart returned to BZA discussion for BZA-14-2013.

Ms. Dana made motion to adjourn to BZA-14-2013. Mr. Schnipper seconded the motion. All were in favor.

Mr. Perry provided an overview of this case to place a freestanding identification sign within the Beech Street front yard setback.

Mr. Perry provided photographs and referred to the HAPC's approval November 6, 2013 with conditions. Mr. Perry stated that the variances were not only for a free standing sign but also use of the vacated right of way for something not listed in the code.

Mr. Perry described the sign dimensions. Mr. Perry stated the sign would be 4.5 feet tall, 5 feet wide and be set back 7 feet from the right of way/sidewalk. The Oxford Zoning Code does not permit new freestanding signs in the Uptown District. Mr. Perry continued that also the Zoning Code does not specify any allowances for signs within the vacated right of way. Mr. Perry referred to the existing nameplates on the porch posts identifying the attorneys having offices in the building.

Mr. Perry referred to decision criteria reasonable return, stating that the setback of the buildings in the UP District should be considered and that the subject building is set back from Beech Street approximately 55 feet. Mr. Perry described surrounding property setbacks. Mr. Perry continued saying that the subject property could not yield a reasonable return without the variances since the building is the only commercial/office building in the Uptown District significantly set back from the street.

Mr. Perry also noted that the proposed new freestanding sign did not negatively impact the essential character of the neighborhood because it had been approved by the HAPC. Mr. Perry referred to conditions of the HAPC that the sign be shortened and the existing wall signs be removed and no future wall signs be installed unless approved by the HAPC.

Mr. Perry stated that at the time of his reporting that there was enough evidence to support the variance requests.

Mr. Brady inquired if the sign could sit outside of the 16-1/2 foot right-of-way would the sign serve the same purpose.

Mr. Matt Troy, Petitioner, was sworn in by Mr. Brady.

Mr. Troy described the variances. Mr. Troy stated that the reasoning for the sign was for business identification purposes. Mr. Troy described the surrounding properties mostly student rentals and that without the variances, identification was problematic. Mr. Troy continued that the only signage currently allowed was on the building and that the building was set so far back that clients often could not find the office. Mr. Troy referred to that by simply because of being located in the Uptown District they could only place a sign on the building whereas across the street, being of a different zoning district they could have other signage.

Mr. Troy referred to Mr. Brady's comment of could sign placement be outside of the right-of-way. Mr. Troy referred to the existing tree placement and that the sign would still be hard to see. Mr. Troy stated they wanted the sign visible to cars and walking pedestrians. Mr. Troy stated there were practical difficulties and that they went to some length to design a sign that was appropriate for the location.

Mr. Perry referred to the Zoning Code which stated that wherever the sign is allowed the sign setback would have to be equal to the height of the sign.

Mr. Barnhart made motion to reconvene to regular meeting BZA-14-2013. Ms. Dana seconded the motion. All were in favor.

Mr. Brady stated he understood the need.

Prue Dana moved to approve BZA-14-2013 based upon Decision Standards b, c, and g. John Barnhart seconded. The motion passed with the following roll call:

AYE: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, Michael Schnipper (5)

NAY: None (0)

ABS: None (0)

BZA-15-2013 [311 & 311-1/2 W. Church Street, variance to Sections 1143.05\(c\)\(2\)B, rear yard setback; 1143.05\(c\)\(4\)A.1, total lot coverage; 1143.05\(c\)\(4\)A.2, building coverage Terry Dudley, Petitioner, Property Owner](#)

Mr. Meyer made motion to adjourn to BZA-15-2013. Mr. Barnhart seconded the motion. All were in favor.

Mr. Perry provided an overview stating that the Petitioner was requesting three variances due to improvements he wished to make to the existing two-family structure. Mr. Perry provided a description of the current structure stating that the house was 100+ years old and included different additions through the years, including a log cabin addition. Mr. Perry stated that the two family use was permitted in the R2MS District. Mr. Perry stated that the log cabin portion had a failing foundation. Mr. Perry stated that the Petitioner wished to remove the additions due to necessary repairs. Mr. Perry stated that the building was a nonconforming structure because of its setbacks, building and lot coverage; however, was not a nonconforming use, meaning the occupancy would not have to be reduced. Mr. Perry described the affected zoning code sections; the current rear yard setback is nine feet, the code requires 35

feet. The Petitioner's proposal would increase the rear yard setback to 18 feet, which would still be 50% of the required setback. Regarding total lot coverage, the current coverage is 62.7%; the current code limits the lot coverage to 35%. Mr. Perry stated that the Petitioner's proposal is to not only remove the additions but also some of the existing paved/patio stone area. The Petitioner's proposal would decrease the lot coverage to 52%, which would still be 17% short of the required 35% limit. Mr. Perry then discussed the building coverage: the current coverage including the garage, was 30.7%. The Petitioner's proposal would maintain the building coverage nearly the same at 30%; however, the zoning code limits the building coverage to 25%; therefore, the proposal would still fall short 5%. Mr. Perry stated that the BZA was dealing with a structure issue not a use issue.

Mr. Perry displayed existing and proposed site layouts.

Mr. Perry discussed the Decision Standards. In regards to receiving a reasonable return, Mr. Perry felt that Staff did not receive any detailed information to base any decision upon. Regarding criterion B, substantial criteria, the nonconformities would decrease; would be less substantial than what it is now.

Mr. Barnhart inquired about any historic value of the log cabin structure. Mr. Perry stated the log cabin materials were historic but not to the site. Mr. Perry stated he did conduct a historic search and that possibly the log cabin came from out of state. Mr. Perry added that there would be some effort made to try and conserve.

Mr. Terry Dudley was sworn in by Mr. Brady. Mr. Dudley is also owner of the property. Mr. Dudley stated that because of the way the house was situated on the lot that he needed three variances. Mr. Dudley described his plans for the property. Mr. Dudley stated that some of the additions were not fully useable due to varying ceiling heights and other issues. Mr. Dudley stated he was proposing to remove the side and rear additions and rebuild new additions and that the rebuilt additions would be farther away from the side and rear property lines. Mr. Dudley shared that he felt the neighborhood would benefit by placing the cabin elsewhere.

Mr. Schnipper made motion to reconvene BZA-15-2013. Mr. Barnhart seconded the motion. All were in favor.

Michael Schnipper moved to approve BZA-15-2013 based upon Decision Standards b and c. Gary Meyer seconded. The motion passed with the following roll call:

AYE: Gary Meyer, Prue Dana, John Barnhart, Paul Brady, Michael Schnipper (5)

NAY: None (0)

ABS: None (0)

[Approval of Minutes of the September 18, 2013 Regular Meeting](#)

Mr. Barnhart made motion to approve the minutes as written. Ms. Dana seconded the motion. All were in favor.

Old Business

There was none.

New Business

Mr. Brady noted that the BZA would elect officers in January. Also, it was determined to continue BZA training before the regular meeting in January.

Adjournment

Mr. Meyer made motion to adjourn the meeting at 8:58 p.m. Mr. Barnhart seconded the motion. All were in favor.