

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, November 19, 2014

Call to Order

Those members present: Prue Dana, John Barnhart, Paul Brady, Jack Cohen, Mike Schnipper, and Jung-Han Chen.

Those members excused: None.

Staff members present: Amy Blankenship.

Staff members excused: Sam Perry, and Steve McHugh.

Approval of Minutes of the October 15, 2014 Regular Meeting

Mr. Barnhart made motion to approve the October 15, 2014 minutes. Mr. Schnipper seconded the motion. All were in favor.

Old Business

BZA-2014-13 [316 E. Vine Street, Variance to Section 1143.05\(c\)\(1\)\(B\): R-2MS Single and Two-Family Mile Square Residential District, Required Minimum Lot Width, Tom & Sarah Conrad, Applicants \(BZA-07-2011 Denied 12/14/2011, Remanded back to the BZA by Court of Appeals 9/19/2014\)](#)

Mr. Schnipper announced that he wished to recuse himself in discussion of BZA-2014-13 as Mr. Tom Conrad was a customer of his and that he has physically been on the property in the last 60 days.

Mr. Barnhart made motion to enter into public hearing BZA-2014-13, 316 E. Vine Street, remanded back to the BZA by the Butler County Court of Appeals. Ms. Dana seconded the motion. All were in favor.

Mr. Brady swore in Mr. Jay Bennett, Legal Counsel for the Applicant.

Mr. Bennett inquired if the BZA should first hear the new staff report as written in the agenda.

Ms. Blankenship, City of Oxford Legal Counsel, agreed with Mr. Bennett for City Staff to provide their report.

Mr. Chen spoke. Mr. Chen stated that the applicant request was a variance from the lot width requirement of 316 E Vine Street. Mr. Chen stated that the property was zoned as an R2MS District. The lot dimensions are approximately 53'x184'. Mr. Chen reported that the case was originally heard in 2011 by the BZA and that the BZA denied the variance request. Mr. Chen stated that the owner filed a lawsuit in the Common Pleas Court and the court rendered the decision and determined that the BZA would rehear the case as a new hearing.

Mr. Chen reported that an R2MS District is a single and two-family permitted use; however, it has to meet the underlying site zoning regulations. The single family minimum lot width is 50 feet; a two-family minimum lot width is 75 feet; therefore we are looking at a 30% reduction in the necessary lot width for a two family dwelling.

Mr. Chen stated that it was likely the owner was aware of the zoning regulations since the owner owns multiple properties.

Mr. Chen stated that the property has to meet all the site development regulations. Mr. Chen noted that this was the only variance being asked for.

Mr. Bennett spoke.

Mr. Bennett distributed a document for the record to the BZA and Staff, highlighting the facts of this case since it had been so long since the first hearing.

Mr. Bennett read a short statement of facts, summarizing how his client reached this point.

Mr. Bennett reviewed the Decision Standards one by one:

1. The property in question would not yield a reasonable return. Mr. Bennett described the term “reasonable return” as somewhat vague and considered this a regulatory taking. The applicant believes that the property yields a reasonable return.
2. The variance is not substantial. Mr. Bennett referred to the Common Pleas findings and stated that even though the BZA found it to be substantial, the Court deferred back to the BZA on this. Mr. Bennett stated that even though it is a lineal substantial variance, from a land use perspective it is not; there is no land use impact; there is basically no impact on the variance of the lot width. The addition will be placed on the back of the existing structure and this is a large lot. There is no effect on setbacks, side yards or encroachments. The addition is virtually invisible from the street. Mr. Bennett referred to the Court Findings document. Mr. Bennett stated that land use impacts the variance and is not substantial.
3. The character of the neighborhood would not be substantially altered. Mr. Bennett stated that it was not a use variance but an area variance.
4. The variance would not affect the delivery of government services. Mr. Bennett stated that everyone agreed with.
5. The property owner purchased the property with knowledge of the zoning restriction. Mr. Bennett stated that even though this particular Decision Standard is used, once again this has minimal value so this Standard is inapplicable.
6. The property owners’ predicament cannot be feasibly obviated through some method other than the variance. Mr. Bennett stated that all agreed that this was true.
7. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Mr. Bennett stated that this was the most innocuous request he had ever seen. Mr. Bennett stated that once again that the addition will be hidden from the front of the structure. Mr. Bennett referred to information found in the Butler County Auditor records that 39 properties in the R2MS District were permitted for occupancies of eight, of which only 15 of such have the 7,500 square foot required area, and only 9 possess the 75 feet lot width. Of the 14 two family use properties just two properties fulfill the lot width requirement. Given these resulting nonconformities, the spirit and intent of the zoning requirement would be observed. Mr. Bennett referred to other recent BZA cases and inferred that they were of the same type case, however they were granted a variance request. Mr. Bennett referred to two cases most like this one, being in the R2MS District, and their conversion from single to two-family. Mr. Cohen referred to the Court having remanded back to the BZA for a new hearing and that they didn’t specify if the BZA needed to revisit issues. Mr. Bennett responded that his take on it was that the Court addressed most of the issues in regards to the Decision Standards, and that the Court didn’t remand back with instructions but did believe it was the decision by the trial court to remand back consistent with this Court; however, not experienced judgment entry like this where the judge goes through and rules on each one of the Decision Standards. Mr. Bennett continued that some of the complaints made in the appeal have been born out in the opinion that the Court makes some substantial findings of fact on each one of these issues. No evidence was found to substantiate the BZA’s decision.

Ms. Blankenship stated that in regards to remanding back and the process, this is a new hearing, so any consideration taken the first time should be addressed again, so it is left to the discretion of this BZA.

Mr. Barnhart stated he wasn’t sure of the basis being an area vs. width issue, because he sees it as a black and white issue to him.

Staff had no comments to add.

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

Mr. Barnhart stated he just couldn’t grasp changing the issue from width to area and that the request was a substantial variance.

Mr. Brady agreed.

Mr. Cohen stated that the code referred to area and width, and one is over and one is under and they didn’t counterbalance.

Mr. Barnhart stated that we are talking about the width here, not area.

Ms. Dana went through the issue of linear dimension versus area, and assumed the judge felt there was enough frontage versus area to accommodate this. Ms. Dana referred to parking, etc., which were determined irrelevant.

Mr. Brady stated that the Court said parking wasn't an issue. Mr. Brady continued that the BZA is dealing with a width variance and that the Board's job is to determine if the variance is substantial or not. Mr. Brady felt that in going through and looking at the Decision Standards that he didn't understand where the practical difficulty lies. The lot width is substantial. The property is being used now as a single family. Mr. Brady stated that he didn't understand why a variance was required. The applicant wishes to go to a two family; he doesn't see because of the lot width, doesn't see a practical difficulty to grant the variance.

Mr. Cohen referred to Decision Standard F "predicament cannot be feasibly obviated other than by a variance". Discussion followed.

Mr. Brady asked the Board to tell him what the practical difficulty is. Ms. Dana responded we are only dealing with front yard width.

Mr. Bennett directed the Board to page 7 of his handout which speaks of the spirit and intent of the zoning requirement and the BZA having discussed at length in 2011 about neighborhood concerns and that the Court found that there was no evidence to establish the legitimacy of their concerns.

Mr. Cohen inquired Mr. Bennett to explain why he felt the request was not substantial. Mr. Bennett responded that from a linear standpoint it is substantial; however, we are dealing with a land use here. Mr. Bennett continued that the BZA should look at what the impacts of the deficiencies are; the judge felt this to have a lack of impact.

Mr. Barnhart referred to Mr. Bennett's comment about surrounding properties. And that this was not about making comparisons to anything that the variance is being denied because the lot doesn't have enough width. Mr. Barnhart continued that what is the impact though of this property being narrower than others; there is no impact from having a skinnier lot.

Mr. Cohen inquired that no evidence was found on Decision Standard G by the judge to support the spirit and intent being observed, and asked Mr. Bennett, is that a correct characterization. Mr. Bennett referred to page 7, 3rd paragraph, of the Court's findings, reading it aloud regarding spirit and intent, and continued, that in the record as we have it, when there is no evidence, what is the evidence in supporting these concerns (referring to BZA discussion of neighborhood concerns, aesthetics, etc.). Ms. Blankenship responded by encouraging the Board to not focus on the judge's decision but the evidence.

Ms. Dana made motion to grant BZA-2014-13, a variance for lot width based upon evidence that this variance is not substantial. Mr. Cohen seconded the motion, based upon balance, because the property lot area exceeds the zoning requirement.

Discussion followed whether the request is or is not substantial. Mr. Cohen referred again to page 7, third paragraph of the Court's findings.

Mr. Barnhart responded that the BZA has not referred to any other properties.

Roll call:

AYE: Mr. Cohen, Ms. Dana (2)

NAY: Mr. Barnhart, Mr. Brady (2)

ABS: None (0)

Mr. Brady announced that the motion failed for a tied vote.

Ms. Blankenship inquired whether the Board wished to make a motion to reconsider. Such a motion could be made by Mr. Barnhart or Mr. Brady as they voted no. Mr. Brady and Mr. Barnhart stated no. Mr. Cohen made a motion to allow for a full board vote, requesting Mr. Schnipper cast his vote. Discussion followed.

Mr. Cohen stated he felt that a 2-2 vote meant denial. Mr. Brady referred to the City Charter, which states that it takes three affirmative votes from the BZA for an approval.

Mr. Brady referred to the BZA having recusals in the past. Mr. Cohen stated he sympathized with all parties, as he wants to look fair for the public. Mr. Brady stated that this is a Board of five and that it would take a Charter Amendment.

New Business

Staff announced there were no cases for the next month, and that Staff and Legal Counsel were recommending a training session. Discussion followed regarding start time. Tentatively to begin at 5:30 p.m., December 17, 2014.

Adjournment

Mr. Cohen made motion to adjourn the meeting. Mr. Barnhart seconded the motion. All were in favor. The meeting adjourned at 8:31 p.m.