

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, December 17, 2008

Call to Order

The December 17, 2008 Board of Zoning Appeals meeting was called to order at 7:30 p.m.

Those members present: Gary Meyer, George Prentice, John Barnhart, and Todd Hollenbaugh.

Those members excused: William Houk.

Staff members present: Lynn Taylor, Jung-Han Chen, and Rob Jacques.

Staff members excused: Kathryn Dale.

Executive Session

Chairman Hollenbaugh invited a motion for approval of the agenda with the deletion of the Executive Session.

Mr. Prentice moved approval of the agenda excluding the Executive Session. Mr. Meyer seconded the motion. The motion passed 4-0-0.

Chairman Hollenbaugh advised for a variance petition to prevail, an Applicant would need to garner three votes from the Board. Chairman Hollenbaugh noted the absence of one Board member and offered the Applicant the opportunity to table their respective case. The Applicant wished to continue.

Public Hearing

BZA-13-2008 [25 W. Spring Street, Variance to Section 1149.03 \(a\) gravel drive and Section 1149.04 \(b\)\(6\) driveway width, Ned Hoelzer, Applicant](#)

Mr. Barnhart moved to enter into public hearing BZA-13-2008. Mr. Meyer seconded the motion. All were in favor.

Mr. Chen provided a review of this case, stating that the Applicant demolished a garage without a permit and that staff mailed certified warning and notice violation letters of their need to come before BZA since they had created nonconformities to the lot. Mr. Chen noted that the garage was the only legal conforming parking on the lot and that the BZA needed to decide whether the Applicant would be allowed to have gravel parking where the garage used to be. Mr. Chen added that based on the Decision Standards, this variance request did not satisfy B, C, D, or E.

Mr. Hollenbaugh reiterated that the existing garage was the only legal conforming parking on this lot, other existing gravel parking on the lot, and Decision Standards B, C, D, and E were not met.

Mr. Chen reiterated that the BZA needed to decide whether the gravel parking that was created as a result of removing of the garage was allowed; only dealing with the area of the footprint of the garage and not dealing with the demolishing of the garage without a permit.

Mr. Tom Kakachos, Vice President, Park Place Management, was sworn in by Mr. Hollenbaugh. Mr. Kakachos stated that they didn't realize they were doing anything wrong as they thought the garage was less than 250 sq. ft. in size and did not need a permit for demolition.

Mr. Kakachos also noted that the garage had not been used for years and were obsolete.

Mr. Hollenbaugh inquired and Mr. Chen confirmed that they could not have gravel parking that it had to be paved.

Mr. Chen reiterated that the Board needed to decide if it was okay to remove a legal conforming parking space; if the Board denies the variance request, the area has to be paved. If the area is not paved, it then becomes an enforcement issue.

Mr. Hollenbaugh inquired about what happened to the demolition materials. Mr. Kakachos stated he hadn't been part of this process but thought it went into a Rumpke dumpster.

Mr. Meyer moved to reconvene to regular meeting BZA-13-2008. Mr. Barnhart seconded the motion. All were in favor.

Mr. Prentice didn't see that Decision Standards B, C, D, or E were satisfied.

Mr. Hollenbaugh outlined each Decision Standard. The Decision Standards not met by the Board were:

B. Conditions of the land, site, structure, or element for which the application is submitted are substantially different from other sites in the same zoning district because of physical characteristics of the land including dimensions, elevation, topographical variations, soil conditions or other extraordinary situations and the difference supports the application.

C. The conditions upon which the application is based are not the result of actions of the applicant.

D. The variance would not confer a special privilege to the applicant but would relieve a hardship.

E. The literal interpretation of this zoning code would deprive the applicant of the ability to develop a site or use the land as a conforming permitted use in that district.

Mr. Hollenbaugh stated that by denying the variance request, the Applicant would have to pave the garage footprint.

Mr. Prentice moved to deny BZA-13-2008 25 W. Spring Street, Variance to Section 1149.03(a) gravel drive and Section 1149.04(b)(6) driveway width, based on not meeting Decision Standards B, C, D and E. Mr. Barnhart seconded the motion. The motion passed with the following roll call:

AYE: Mr. Meyer, Mr. Prentice, Mr. Barnhart, Mr. Hollenbaugh (4)

NAY: None (0)

ABS: None (0)

BZA-14-2008 129 W. Walnut, Variance to Section 1149.03 (a) gravel drive and Section 1149.04 (b)(6) driveway width, Ned Hoelzer, Applicant

Mr. Barnhart moved to enter into public hearing BZA-14-2008. Mr. Meyer seconded the motion. The motion passed 4-0-0.

Mr. Chen provided an overview of this case, stating it was the same thing as BZA-13-2008; demolition of a garage without a permit, warning and violation letters sent to the owner, the demolition of the garage took away the legal parking space on this lot, and again failing to meet Decision Standards B, C, D, and E.

Mr. Hollenbaugh referred to other issues with this property; i.e., gravel parking encroaching into the 16-1/2 foot vacated right-of-way.

Mr. Hollenbaugh clarified what the Board was reviewing - there is a concrete pad in front of where the garage was, there is an access off the alley (which is the driveway width); now with the garage gone, the driveway is almost the entire rear lot line (almost 72 feet). Mr. Chen added that there are trees in the back, making parking occur on either side of the trees.

Mr. Kakachos, having been sworn in, spoke. Mr. Kakachos referred to the wider driveway width at the ROW being due to the driveway serving the garage, that the grading and trees limit where you can pull in. The slope of the grading will not allow for regular cars to drive up on.

Mr. Barnhart moved to reconvene to regular meeting BZA-14-2008. Mr. Meyer seconded the motion. All were in favor.

Mr. Hollenbaugh requested Board input. The Board members had nothing to add, as this case was the same as BZA-13-2008.

Mr. Prentice moved to deny the application based on the Applicant's lack of explaining why they had not satisfied Decision Standards B, C, D, and E. Mr. Hollenbaugh reviewed the Standards:

B. Conditions of the land, site, structure, or element for which the application is submitted are substantially different from other sites in the same zoning district because of physical characteristics of the land including dimensions, elevation, topographical variations, soil conditions or other extraordinary situations and the difference supports the application.

C. The conditions upon which the application is based are not the result of actions of the applicant.

D. The variance would not confer a special privilege to the applicant but would

relieve a hardship.

E. The literal interpretation of this zoning code would deprive the applicant of the ability to develop a site or use the land as a conforming permitted use in that district.

Mr. Prentice moved to deny BZA-14-2008 129 W. Walnut Street, Variance to Section 1149.03(a) gravel drive and Section 1149.04(b)(6) driveway width, based on not meeting Decision Standards B, C, D and E. Mr. Barnhart seconded the motion. The motion passed with the following roll call:

AYE: Mr. Meyer, Mr. Prentice, Mr. Barnhart, Mr. Hollenbaugh (4)

NAY: None (0)

ABS: None (0)

Approval of Minutes of the November 19, 2008 Regular Meeting

Mr. Rob Jacques, Legal Counsel, requested minor changes to Section V Old Business in the November 19, 2008 minutes.

Mr. Meyer moved to approve the BZA minutes of November 19, 2008 with minor corrections. Mr. Barnhart seconded the motion. All were in favor.

Old Business

There was none.

Other Business

Mr. Chen reviewed upcoming cases for January 2009.

BZA members asked staff to look at some properties that have parking issues similar to cases discussed at this meeting.

Adjournment

Mr. Barnhart moved to adjourn. Mr. Meyer seconded the motion. The meeting was adjourned at 7:59 p.m.