

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, January 18, 2017

Call to Order

Those members present: Paul Brady, Roger Ames, Jack Cohen, and Michael Schnipper.

Those members excused: Prue Dana.

Staff members present: Sam Perry, Jung-Han Chen, and Stephen McHugh.

Staff members excused: None.

Executive Session Election of Officers

Jack Cohen nominated Paul Brady as Chair of the Board of Zoning Appeals. Mr. Ames nominated Michael Schnipper as Secretary of the BZA. Mr. Schnipper nominated Prue Dana as Vice-Chair of the BZA. All were in favor.

Approval of Minutes of the December 21, 2016 Regular Meeting

Mr. Ames made motion to approve the minutes as written. Mr. Cohen seconded the motion. All were in favor.

Adjudication Hearings

BZA-2017-01, 5966 Fairfield Road, variances to Section 1143.02(c)(2)C side yard requirements and Section 1129 permitting requirements, Kyle Murr, Applicant

Mr. Ames made motion to enter into Public Hearing BZA-2017-01. Mr. Cohen seconded the motion. All were in favor.

Mr. Perry was sworn in. Mr. Perry reported that Mr. Kyle Murr, property owner, was requesting two variances. One for a front yard setback reduction and the other a variance from the building permit requirement. Mr. Perry noted that the side yard setback requirement would reduce the setback from 8 feet to 1.5 feet. Mr. Perry stated that the property owner wants to keep the lean-to for boat storage. As a side note Mr. Perry explained that while reviewing the application, he spoke with the building official about there being any building code issues with the variance request. The response was that if a structure is less than 3 feet from a property line, a structure would have to meet a one hour fire rating.

Mr. Perry reviewed the decision criteria:

The property can yield a reasonable return without the yard variance.

The degree of the variance request is substantial, because the variance would be an 80% reduction in the side yard setback. Mr. Perry noted that without a building permit, it would also be substantial because the addition does require a permit based upon Section 1129 of the zoning code.

Whether the variance would negatively alter the essential character of the neighborhood, Mr. Perry stated that it would because of the materials used. Mr. Perry continued that the yard reduction may not be as noticeable, but cautioned the BZA not to design the project.

The effect upon the delivery of governmental services, Mr. Perry stated that they would not be impacted.

The property owner's awareness of the restriction, Mr. Perry stated that he didn't believe the property owner was aware of the restriction.

Whether the owner's predicament could be obviated another way, Mr. Perry noted the property owner referred to the lack of protection for a boat. This may be obviated other ways which could be challenging on this narrow lot as well as the zoning code prohibiting driveway boat storage.

In regarding the spirit and intent of the zoning requirement, the zoning requirement for minimum side yard setbacks is general health (open space) and public safety (fire prevention). Substantial justice would not be done by the granting of the variance as presented.

Mr. Perry also noted that there has been a gravel drive installed but was not part of this request.

Mr. Perry concluded that he didn't believe there was sufficient evidence to support granting the variance.

Mr. Schnipper inquired if Mr. Perry has been on the property since the application was submitted. Mr. Perry stated no,

until the day of this BZA meeting, when he took a picture. Mr. Schnipper inquired if the Chief Building official would determine that the structure would have to meet the building code. Mr. Perry responded yes. Mr. Schnipper inquired if the structure would require a footer. Mr. Perry stated he didn't know. Mr. Schnipper inquired if it was possible that this could be brought up to building code. Mr. Perry responded he thought so but wasn't sure.

Mr. Kyle Murr was sworn in.

Mr. Murr reported he recently purchased the home. Mr. Murr stated he was a carpenter by trade and guaranteed the structure met building codes. Mr. Murr described how the boat won't fit into the existing garage. Mr. Murr stated his surrounding property owners were okay with the structure. Mr. Murr noted that the gravel drive was 100% for safety and explained about his property location and its traffic dangers. Mr. Murr stated he was trying to increase the value of his home.

Mr. Murr referred to having improved his property and that he was in the wrong for having not obtained a permit.

Mr. Cohen inquired about the money in material and hours. Mr. Murr responded \$1,200 and 6-8 hours. Mr. Cohen inquired why he didn't get a permit. Mr. Murr stated the structure was open on three sides and didn't think he needed one. Mr. Murr stated the boat was part of his livelihood.

Mr. Schnipper inquired since he was a contractor, and would have gotten a permit if he thought it would have been approved. Mr. Murr responded he wasn't sure.

Mr. Murr referred to having improved the yard with building it up thus doing away with the water runoff problem.

Mr. Cohen made motion to reconvene to regular meeting. Mr. Schnipper seconded the motion. All were in favor.

Mr. McHugh inquired Mr. Perry, because the property owner should have obtained a building permit and because this is deemed as a structure, if this variance is granted as a structure, and should it at some point, the four posts could it then be expanded into something more substantial as a second garage? Mr. Perry stated yes, and depending on dimensions we would determine it as a garage, parking space would be deemed parking space, and it would need to meet the parking requirement. So, it could be a solid structure 1-1/2 feet from the property line? Mr. Perry stated that the structure could become enclosed. Mr. Brady inquired Mr. Perry if the fence would require a fence permit. Mr. Perry stated yes, but no setback requirement. Mr. Brady inquired about the gravel, which is another problem. Mr. Perry responded yes it didn't meet requirements. Mr. Brady responded but that wasn't before the BZA

Mr. Schnipper made motion to deny variances to Section 1143.02(c)(2)C, side yard requirement, and Section 1129 permitting requirements, based upon the variances affect the character of the neighborhood, are substantial variances and deviate from the spirit and intent of the code. Mr. Ames seconded the motion.

AYE: Mr. Cohen, Mr. Ames, Mr. Schnipper, Mr. Brady (4)

NAY: None (0)

ABS: None (0)

BZA-2017-02, 4328 Kehr Road, variance to Section 1141.01(a)(1)C accessory total square foot area, Erik Steffen, Applicant/Agent

Mr. Schnipper made motion to enter in public hearing BZA-2017-02. Mr. Ames seconded the motion. All were in favor.

Mr. Perry was sworn in. Mr. Perry provided a PowerPoint presentation. Mr. Perry displayed the site plan, aerial photo and photographs of the site. Mr. Perry stated that the applicant was asking for a variance from the maximum square footage allowed for residential accessory buildings. The applicant wishes to build a detached outbuilding. The outbuilding limit for the subject property is 667 square feet, based upon 50% of the home size. The accessory building measures 1,152 square feet and almost the same size as the footprint of the house. Mr. Perry noted that there are also several parcels which are intending to be consolidated and the plan for paving of the driveway. Mr. Perry reported having not received any public comments. Mr. Perry reviewed the decision criteria:

Cannot yield a reasonable return without the variance, noting the owner would require a larger than average garage to store mechanical equipment in order to maintain 4.5 acres of land. Mr. Perry stated that it was a substantial variance request as it was almost double of what is permitted. Mr. Perry stated that the essential character wouldn't be affected due to size of property. Government services would not be negatively impacted. Mr. Perry stated that he didn't believe the applicant was aware of the restriction. Mr. Perry stated that there may be other ways to obviate the predicament. Mr. Perry described some other ideas, but would still be capped on the size. Mr. Perry felt that there was sufficient evidence to warrant granting the variance.

Mr. Ames, inquired if this structure was replacing a 2-1/2 car garage? Mr. Perry stated that he was not sure what was removed but understood it was in bad shape. Mr. Ames stated he was aware of the previous structure. Mr. Schnipper inquired if the dimensions were typical for a 3 car garage? Mr. Perry stated yes.

Mr. Eric Steffen was sworn in. Mr. Steffen stated he bought the property about one year ago and that there was a 2-1/2 car so called garage/wood structure along with a lean-to. Mr. Steffen stated he required the previous owner to remove the structure. Mr. Steffen described his planned use for the structure. Mr. Steffen described the central character of beautiful houses surrounding his, along with mixed designs further down the street. Mr. Steffen reported that only one neighbor could see their home however only part of the year. Mr. Steffen stated they stumbled into the code issue because of needing a building permit for the garage. Mr. Steffen stated that he felt he was country living, the new structure would improve the lot and match the house.

No questions by the Board.

Mr. Murr, 5966 Fairfield Road, inquired if there was a gravel driveway. Mr. Brady stated he didn't know.

Mr. Schnipper made motion to reconvene to regular meeting. Mr. Ames seconded the motion. All were in favor.

Mr. Ames made motion to approve 1141.01(a)(1)C based upon the variance was not substantial. Mr. Schnipper seconded the motion.

AYE: Mr. Ames, Mr. Schnipper, Mr. Cohen, Mr. Brady (4)

NAY: None (0)

ABS: None (0)

BZA-2017-03, 5299 College Corner Pike, variance to Section 1143.12(d)(4)(A) building façade window and transparent door requirements, Sheldon Jennings, O'Reilly Auto Parts, Applicant/Agent

Mr. Schnipper made motion to enter into public hearing BZA-2017-03. Mr. Ames seconded the motion.

Mr. Perry was sworn in. Mr. Perry reported the request was for a new O'Reilly Auto Parts store. Mr. Perry stated that currently was a vacant lot. Mr. Tom Lundberg, Architect, was speaking on behalf of the property owner. Mr. Perry stated the request was to allow for a decrease in the percentage of minimum window glazing requirement on the front facade. Mr. Perry noted that since the structure would be located on a corner lot, that the structure would have two storefronts, requiring both to meet the 60% glazing requirement. Mr. Perry provided a site plan; however, the applicant has not yet submitted for a building permit, so the drawings included in the packet may not be exact.

Mr. Perry displayed the building elevations. Mr. Perry described how the building would be situated on the lot. Mr. Perry explained the 60% requirement of glazing and what that would look like on the submitted drawings. Mr. Perry reviewed the decision criteria. Mr. Perry stated the property could yield a reasonable return without the variance. The variance request was not substantial as it was a 15% reduction from the required 60%. Mr. Perry stated that the variance would not negatively alter the essential character of the neighborhood due to the proposed building design. Government services would not be impacted. Mr. Perry stated that in regards to having an awareness of the zoning restriction that staff did send a letter to one of the original requestors, but was not sure they looked at all into the zoning code. Mr. Perry referred to the owner's predicament, the applicant stating that the requirement would affect the interior shelving. Mr. Perry referred to the spirit and intent of the variance was to create an atmosphere on the street, and being a corner lot location and the fact that in this case there are not that many corner lots, the overall square foot glazing adds more than if it were a single frontage.

Mr. Brady swore in Mr. Tom Lundberg. Mr. Lundberg explained the reduction in the amount of glazing. Mr. Lundberg described the interior layout. Mr. Lundberg explained wanting the design of each storefront to mimic each other in design; which, therefore, affects the interior layout design.

Mr. Ames made motion to reconvene to regular meeting. Mr. Schnipper seconded the motion. All were in favor.

Mr. Cohen made motion to grant variance 1143.12(d)(4)(A) as requested based upon the variance would not negatively alter the neighborhood, the variance was not substantial, government services would not be impacted, and the spirit and intent are not affected. Mr. Schnipper seconded the motion.

AYE: Mr. Ames, Mr. Schnipper, Mr. Cohen, Mr. Brady (4)

NAY: None (0)

ABS: None (0)

Old Business

There was none.

New Business

The February BZA meeting has been cancelled due to lack of cases.

Adjournment

Mr. Cohen made motion to adjourn the meeting. Mr. Ames seconded the motion. All were in favor. The meeting was adjourned at 8:30 p.m.