

# BOARD OF ZONING APPEALS

## Meeting Minutes

Wednesday, June 18, 2008

### Call to Order

The June 18, 2008 meeting of the Oxford Board of Zoning Appeals was called to order at 7:35 p.m. by Todd Hollenbaugh, Chair.

Those members present: Todd Hollenbaugh, Gary Meyer, William Houk, and John Barnhart.

Those members excused: George Prentice.

Staff members present: Lynn Taylor, Kathryn Dale, and Scott Liberman.

Staff members excused: None.

### Executive Session

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

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

Chairman Hollenbaugh advised for a variance petition to prevail, an applicant would have to garner three votes from the board. Chairman Hollenbaugh noted the absence of one board member and offered applicants the opportunity to table their respective cases.

### Public Hearing

BZA-03-2008 5041 College Corner Pike, Variances to Section 1151.05(a)(3)C.1.b for a freestanding sign higher than 6 feet and Section 1151.03(d)(1) sign setback requirement, Patrick Reist, Applicant (Tabled)

Mr. Barnhart moved to enter into public hearing BZA-03-2008. Mr. Meyer seconded the motion. The motion passed 4-0.

Ms. Dale provided an overview of this case as outlined on page 2 of the agenda. In summary, the Applicant wished to place the proposed sign one foot from the new right-of-way instead of the required eight feet, and that the proposed sign be eight feet in height from the finished grade versus the maximum of six feet. The Applicant referred to the slope in the grading.

Ms. Dale stated no public comments were received or Agency comments.

Ms. Dale stated that overall, looking at it collectively, you could arguably say Design Standard F was not satisfied. Design Standard F referred to variances; the setback does not satisfy.

Mr. Hollenbaugh referred to page 13 in the agenda showing the sign 12" off right-of-way. Ms. Dale stated the 12" was actually the sign casement and not the pole. The casement is what is the closest to the setback. Ms. Dale stated there would be 2 feet of exposed pole; bringing a ten-foot sign down to a ground mounted sign.

Mr. Houk referred to the drawing and inquired about other possible locations for the sign.

Mr. Patrick Reist, Applicant was sworn in by Mr. Hollenbaugh. Ms. Phyllis Wilkins, Owner, was sworn in as well.

Ms. Wilkins referred to the building setting so close to the road, stated had looked at everything else that could possibly be done and only saw three choices; on top of the roof, behind the building, or no sign. Referring to the height, Ms. Wilkins stated she could purchase a new sign but was trying to use what they had already.

Mr. Reist referred to the problem with the location and in keeping at 6 feet in that location would mean having to excavate the hill in order for the sign to set properly; thus possibly hindering visibility.

Ms. Wilkins reiterated use of a 2' pole bringing the sign down to look like a monument sign.

Gary Meyer moved to reconvene to regular meeting BZA-03-2008 William Houk seconded the motion. The motion passed 4-0.

The Board reviewed the drawings submitted with the agenda. All agreed that if the sign would be placed eight feet back from the right-of-way, the sign would not be seen.

Gary Meyer moved to approve BZA-03-2008 with two conditions that the top of the sign be no higher than 6' from sidewalk grade; that bushes be planted around pole. John Barnhart seconded. The motion passed with the following roll call:

AYE:

Todd Hollenbaugh, Gary Meyer, William Houk, John Barnhart (4)

NAY:

None (0)

ABS:

None (0)

BZA-05-2008 112 S. Poplar, requesting a variance to Sections 1143.05(c)(4)B.1 & B.2, 1143.05(c)(2)C., 1149.02 (a), 1137.04(a), 1137.05(b) and 1137.06 (a) & (b), to allow a front porch addition on a nonconforming use, structure and lot that exceeds the lot coverage, encroaches into the required side yard setback and has a gravel driveway. Scott Webb, Architect, Applicant (Tabled)

Gary Meyer moved to approve removing from the table BZA-05-2008. John Barnhart seconded. The motion passed 4-0.

Gary Meyer moved to enter into public hearing BZA-05-2008. William Houk seconded. The motion passed 4-0.

Ms. Dale provided an overview of this case as outlined in the staff report on page 15 of the agenda. Ms. Dale stated the requested variances included total lot coverage, building coverage, minimum side yard (which encroaches into the alley right-of-way), vehicle management, nonconforming land use, nonconforming lot, nonconforming structure. Ms. Dale stated that the eight variances requested collectively did not satisfy the Decision Standards. Ms. Dale reviewed the Decision Standards.

Ms. Dale stated these were all intertwined variances and suggested the BZA determine under one decision.

Mr. Meyer inquired if the existing house encroached into the ROW. Ms. Dale stated yes.

Mr. Scott Webb, Applicant, was sworn in by Mr. Hollenbaugh. Mr. Webb provided a history of this rental property. Mr. Webb stated had realized was over lot coverage and knew would have to go to BZA.

Mr. Webb provided a PowerPoint presentation.

Mr. Webb argued that the use and occupancy was not increasing so there was no expansion of the use (example-more bedrooms). Mr. Webb referred to vehicle management and paving and felt this code section was an unfair burden for small projects.

Due to technical difficulties, Mr. Hollenbaugh motioned to take a break at 8:15 p.m. Motion to reconvene was made at 8:25 p.m.

The BZA reviewed the variance requests. Noted were: that, the total lot coverage for a lot with vehicular access from a rear or side alley shall not exceed 40% of the lot - lot coverage is already a nonconforming lot as it would increase from 49% to 51.3%; lot coverage of all enclosed buildings with vehicular access from a rear or side alley shall not exceed 25% of the lot - same as above - already nonconforming increasing from 33.7% to 35.8%; minimum side yard requirement 7.5 feet - the porch addition encroaches into the alley right-of-way therefore isn't permitted; regarding vehicle management - the existing gravel parking area would have to conform to the current parking regulations, including paving, unless a variance was granted; nonconforming land use (being a 3-family use) - an addition would result in an expansion of the nonconforming use; nonconforming lot - does not meet lot width requirement, has a 3-family use that is not permitted in the R2MS District, and lot coverage and side yard setbacks are not satisfied for the proposed addition; nonconforming structures - clearly this is a nonconforming 3 family use that would become more nonconforming.

Mr. Hollenbaugh stated he struggled with the encroaching into the alley right-of-way and didn't know how could get around this; Mr. Houk felt the vehicle management chapter provision wasn't a practical difficulty. It was also noted that Decision Standards e and f were not met.

Mr. Liberman noted that no utilities were located in the alley.

The BZA agreed they could not approve some variances and not others. Discussion followed. Mr. Liberman stated it would require City Council to make a legislative change in regards to Section 1143(c)(2)C - Minimum Side Yard requirement for the R2MS zoning district - 7.5 feet - and encroachments into the alley right-of-way, and it would be up to City Council if want to do.

Mr. Scott Webb agreed he was willing to wave timeframe in order to go in front of City Council.

Gary Meyer moved to table BZA-05-2008. John Barnhart seconded. The motion passed with the following roll call:

AYE:

Todd Hollenbaugh, Chair, Gary Meyer, William Houk, John Barnhart (4)

NAY:

None (0)

ABS:

None (0)

BZA-07-2008 720 S. Campus Avenue, Variances to Section 1149.03(a), Section 1129.04; and 1143.03(c)(3)C, to allow gravel parking, Susan Klein, Applicant, Agent

John Barnhart moved to enter into public hearing BZA-07-2008. Gary Meyer seconded. Motion passed 4-0.

Ms. Dale provided a case history as outlined in the staff report on page 28 of the agenda. Ms. Dale stated the Applicant had been notified of the gravel drive violation and through review, realized a Certificate of Occupancy had never been issued as well. The following variances were noted: a proposed gravel driveway is not permitted; the subject property has never officially been released an occupancy permit for the premises; lot coverage was 34.9% (allowable maximum lot coverage is 35%) - the gravel parking addition increased lot coverage to 64%. There have been no public comments received. No Agency reviews were received as well. Ms. Dale stated the Applicant was appealing notifications that staff sent in January and March, 2008.

Ms. Dale noted that the "approved" driveway at the time of the building permit issuance, was for a concrete driveway.

Decision Standards were discussed. Ms. Dale stated staff didn't feel variances for the gravel driveway and the lot coverage increase satisfied Decision Standards b, c, d, e, or f.

Ms. Kathy Klein, Applicant, was sworn in by Mr. Hollenbaugh. Ms. Klein explained the reasoning for the gravel drive and reviewed Decision Standards a through g. Ms. Klein stated the decision to place gravel was due to conditions of the back yard and the difficulty in maintaining a lawn. Ms. Klein also referred to the lack of parking on the street.

Mr. Charles Klein was sworn in by Mr. Hollenbaugh. Mr. Klein stated in 2003 a cinder block building was torn down; the architect misguidedly said gravel was permitted; stated he had worked with Mr. Scott Headly and didn't willfully ignore city requests. Stated he was willing to put up block so cars would stop parking there.

Mr. Tony Miller was sworn in by Mr. Hollenbaugh. Mr. Miller is the agent for the property. Mr. Miller inquired why the owners couldn't block it off. Mr. Miller stated the gravel was B19 and permeable. Mr. Miller stated the area could be landscaped utilizing the gravel that was down. Mr. Miller provided pictures of other properties with graveled areas.

Gary Meyer moved to reconvene to regular meeting BZA-07-2008. John Barnhart seconded. The motion passed 4-0.

Mr. Meyer stated B19 gravel was not permeable. Mr. Meyer inquired about surfaces under the zoning code.

Mr. Hollenbaugh reviewed current and requested lot coverage. Mr. Hollenbaugh inquired how BZA could give a variance to 1129.04 - Certificate of Code Compliance.

Mr. Barnhart asked if the Applicant was willing to put something up so vehicles couldn't proceed onto the back yard. The Applicant was agreeable.

Mr. Houk inquired how the Applicant didn't realize they did not have a Certificate of Occupancy. The Applicant stated they thought since they had a rental certificate that was sufficient.

The BZA reviewed the Decision Standards. a-didn't meet; b & f-no; d,e - not applicable.

William Houk moved to approve denial of BZA-07-2008 based on Decision Standards. Gary Meyer seconded. The motion passed with the following roll call:

AYE:

Todd Hollenbaugh, Gary Meyer, William Houk, John Barnhart (4)

NAY:

None (0)

ABS:

None (0)

BZA-08-2008 623 S. College Avenue, Variances to Section 1149.02(a), Section 1149.03(a), Section 1149.04(b)(6), to allow gravel parking, Holly Morrical, Applicant, Owner

William Houk moved to enter into public hearing BZA-08-2008. Gary Meyer seconded. The motion passed 4-0.

Ms. Dale provided a review of this case as provided on page 45 of the agenda packet. Ms. Dale stated that when the site plan was approved, it was noted that the driveway had to be paved. Upon final inspection, the gravel drive had not been paved and the inspection was failed. Ms. Dale reviewed the requested variances. Ms. Dale referred to the Engineering comments which stated that any improvements needed to address the drainage issue. Ms. Dale stated staff felt Design Standards b, c, d, or e were satisfied.

Ms. Holly Morrical, Applicant was sworn in by Mr. Hollenbaugh. Ms. Morrical stated the driveway had always been gravel and would be a hardship if paved for Mr. Charles Kennedy who is owner of the neighboring property due to the

water runoff. Ms. Morrical stated if the driveway were paved, Mr. Kennedy's property would flood if not covered with a permeable material.

Mr. Charles Kennedy was sworn in by Mr. Hollenbaugh. Mr. Kennedy referred to the existing water problem and stated he was afraid if the driveway was blacktopped, that it would cause a lot more water for him. Mr. Kennedy stated in the past 2-3 months, with Engineering's input, had built a little retaining wall around the property to divert water.

Mr. Roy Curtis was sworn in by Mr. Hollenbaugh. Mr. Curtis stated his property (garage) backed up to Ms. Morrical's. Mr. Curtis stated if they had to pave the driveway, this would increase water flow and would probably go into his garage. Mr. Curtis referred to the green space being filled up with houses, garages and cement and was causing the water problem.

William Houk moved to reconvene to regular meeting BZA-08-2008. Gary Meyer seconded. The motion passed 4-0.

Mr. Meyer stated that for as long as he remembers Mr. Kennedy's property has had sandbags.

Mr. Houk inquired if this was the same gravel used as case BZA-07-2008. Mr. Hollenbaugh stated this case didn't have a lot coverage issue.

BZA agreed that diverting water in any direction would cause problems.

Mr. Hollenbaugh inquired about removal of the B-19 gravel, making the area smaller, limiting the number of cars and reducing the size of the gravel drive. Discussion followed.

BZA discussed restricting parking to two cars, solve the 18' entrance to the ROW, decrease parking, and delineate parking in yard. It was noted that right now, the lot was 25' deep and that standard parking was 9x20.

Mr. Hollenbaugh led the discussion regarding Decision Standards. Decision Standards b, c, d, e, and f were felt to have been met.

Conditions for this case were discussed based on Decision Standards b,c,d,f.

Gary Meyer moved to approve BZA-08-2008 with conditions that, the existing gravel area along the northern property line may remain, but must be reduced to an 18' x 25' area that is limited to 2 parking spaces and must be bounded by railroad ties or other similar material on three sides of the parking area. And, that, the remaining gravel is removed and properly grassed. John Barnhart seconded. The motion passed with the following roll call:

AYE:

Todd Hollenbaugh, Gary Meyer, John Barnhart (3)

NAY:

William Houk (1)

ABS:

None (0)

BZA-09-2008 Courtyards of Miami, Main & Central, Variances to Section 1151.06(B)(2), 1151.06(B)(3), signage, Matt Ostendorf, Applicant, Owner

Gary Meyer moved to enter into public hearing BZA-09-2008. John Barnhart seconded. The motion passed 4-0.

Ms. Dale provided a review of this case as outlined on page 59 in the agenda packet. Ms. Dale stated the Applicant wished to keep two existing 4x8 real estate signs. Ms. Dale stated that staff did not feel the variances for real estate wall signs satisfied Decision Standards b, d, or e. Ms. Dale added that the Applicant had only recently purchased this property and that the signs had already existed. However, there was no evidence that the signs were attached to the building prior to the code requirements changing that would allow the signs to continue as nonconforming signs. Ms. Dale provided pictures from October 2005 where there were no wall signs shown.

Mr. Jeff Bray and Ms. Carolyn Ostendorf, Owners, were sworn in by Mr. Hollenbaugh. Ms. Ostendorf provided a review of the property stating there were 62 units (5 buildings) at the property site; however spaced apart. Ms. Ostendorf explained they did not want to put signs on all five buildings and that the idea was to have one sign on each street (one facing Main Street and one facing Central). Ms. Ostendorf stated the signs were meant to be temporary until permanent signage was installed. Ms. Ostendorf stated would like to have a sign on two areas of this property. Ms. Ostendorf expressed concern about signs at ground level due to vandalism. Ms. Ostendorf agreed that they had inherited this problem.

Mr. Hollenbaugh asked for clarification of which signage was currently on the building. Mr. Hollenbaugh inquired about the Owner ordering new signs and if had gotten a permit.

Ms. Ostendorf inquired if just a name sign was okay.

Gary Meyer moved to reconvene to regular meeting BZA-09-2008. William Houk seconded. The motion passed 4-0.

Mr. Hollenbaugh referred to page 65 and the photograph showing a banner hanging between two columns of the building. Ms. Dale stated there were provisions for signage and was not sure until looked more into this as to what they can and can't have.

Decision Standards were reviewed. The consensus was that b, d, and f were not met and would confer a special privilege.

William Houk moved to approve denial of BZA-09-2008. John Barnhart seconded. The motion passed with the following roll call:

AYE:

Todd Hollenbaugh, Chair, Gary Meyer, William Houk, John Barnhart (4)

NAY:

None (0)

ABS:

None (0)

Approval of Minutes of the May 21, 2008 regular meeting\*

William Houk moved to approve Minutes of May 21, 2008 with minor edits. All were in favor. Gary Meyer seconded.

Old Business

There was none.

Other Business

Discussion regarding BZA training and when it would take place was discussed. Mr. Hollenbaugh requested everyone's availability in July and August for training. It was noted since there were no cases needing a public hearing at the July 16 regular meeting, if this date would work for everyone. Ms. Dale stated she would finalize with the trainer. Start time for this training was discussed and everyone was in agreement to starting at 6:00 p.m.

Adjournment

Mr. Houk moved to adjourn. Mr. Meyer seconded. The motion passed 4-0. The meeting was adjourned at 10:23 p.m.