

BOARD OF ZONING APPEALS
MEETING MINUTES
WEDNESDAY, OCTOBER 21, 2015

Call to Order

Those members present: Paul Brady, Prue Dana, Jack Cohen, and Michael Schnipper.

Those members excused: Roger Ames.

Staff members present: Sam Perry, and Amy Blankenship.

Staff members excused: Jung-Han Chen, and Stephen McHugh.

Approval of Minutes of the July 15, 2015 Regular Meeting

Ms. Dana made motion to approve the minutes as written. Mr. Cohen seconded the motion. Mr. Schnipper abstained as he was not present for the July 15, 2015 meeting.

Adjudication Hearings

BZA-2015-12 365 Cobblestone Court variance to Section 1149.04(b)(6) driveway width increase, Kerry Pulaski, Michelle Frank, Applicants, Owners

Ms. Dana made motion to to adjourn to BZA-2015-12. Ms. Dana seconded the motion. All were in favor.

Mr. Perry provided an overview stating that the home was currently under construction on Cobblestone. The owner wants to make the driveway width wider than what the code allows from 18 feet to 22 feet. Mr. Perry provided an overhead of the site. Mr. Perry referred to the recent decision by City Council specifying the flare off the driveway. Mr. Perry stated that the request is to go four additional feet than what the code allows. Mr. Perry noted that this was a corner lot.

Mr. Perry discussed other properties that exceeded the driveway width in the area.

Mr. Perry reviewed the Decision Standards, noting that the property could continue to be developed without the variance. Mr. Perry noted that the request was not substantial because of the overall street frontage. Mr. Perry noted that the building permit had already been issued before staff noticed the issue on the plans and that the owner and builder came forward and applied for the variance request.

Mr. Perry shared about the two separate garage doors having a 2 foot gap between them and in order to meet the 18 feet maximum width, you would have to taper the driveway, thus decreasing the predictability of a natural travel pattern.

Mr. Doug Ward, the builder, was sworn in.

Mr. Ward stated that the home has two 10 ft. garage doors and a 2' gap, so based upon decision on 22' it isn't out of character for the neighborhood. Mr. Ward stated he has driven around the neighborhood and measured driveways. Mr. Ward provided addresses and their driveway widths. Mr. Ward stated that the variance request was not out of character for the neighborhood. Mr. Ward stated he had spoken to four

homeowners and none of them had a problem with his variance request. Those neighbors look right into this driveway.

Mr. Cohen inquired if he had poured the driveway yet. Mr. Ward stated no. Mr. Cohen inquired if it would be extra expense to pour 18 ft. Mr. Ward stated no.

Ms. Dana inquired about the maneuverability for backing out. Mr. Ward stated that an 18 foot width would cause more maneuvering.

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

Mr. Perry stated that the driveway is inspected before poured and that this is where we check it or we catch the width during permit review. Mr. Perry also referred to doing post driveway pour inspections too.

Mr. Brady stated that he didn't understand discrepancy in neighborhoods. Mr. Perry stated that he uses aerial photography and that Mr. Ward physically measures.

Mr. Cohen made motion to approve BZA-2015-12 based upon Decision Standards b, d, and h. Ms. Dana seconded the motion.

Roll call:

AYE: Mr. Cohen, Mr. Schnipper, Ms. Dana, Mr. Brady

NAY: None(0)

ABS: None (0)

Administrative Appeal

BZA-2015-13 14 N. College Avenue, Appeal of Administrator's Decision, Gursaran Shoker, Lee Ann Shoker Owners, Applicants

Ms. Dana made motion to adjourn to BZA-2015-13. Mr. Schnipper seconded the motion. All were in favor.

Mr. Perry stated that this was an Appeal of Administrator decision. Mr. Perry described the location of the property and noted that it was an area used as a parking area behind 14 N. College along the alley. Mr. Perry stated that it had come to staff attention that new gravel had been spread. Mr. Perry stated that staff visited the site and discovered that an expansion had taken place of the parking area. Mr. Perry stated that they contacted and met with the owner. Mr. Perry referred to the evidence staff had available, via aerial photography, that there had not been any parking taking place in the area recently spread by gravel, but had been along the alley. Mr. Perry referred to the enforcement letter sent to the owner. Mr. Perry added that the city does not permit unpaved parking so if gravel is put down it can only be in areas historically graveled - or legal nonconforming. Mr. Perry stated that when staff looked into there was a specific area used for parking. Mr. Shoker asked for a records request and added that the

material in the agenda was given to the owner. Mr. Perry stated that at one time there was an ordinance passed for an additional use for a residential unit on the ground floor that required a surface for parking so that added evidence to the case; however, we don't know if it was actually done, we just know an ordinance was approved. Mr. Perry stated that site plans were also discovered where parking spaces would be in 1991 and 2002 with a central aisle way. Mr. Perry referred to property owned by the applicant located Uptown at 15-17 W. High Street who used this location for their offsite parking approved by an additional use application; however staff didn't know if the site was used for parking by 15-17 W. High tenants. Mr. Perry referred to zoning code 1137.07 where it stated that "a nonconforming land use, structure, or portion thereof, shall not be reinstated if it is discontinued for a continuous one-year period and thereafter any use of the premises shall conform to the use regulations of the District in which the building or lot is located. The intent to continue a nonconforming use shall not be assumed to be evidence of its continuance"

Mr. Perry finished by saying that if this area was used for gravel, our evidence we find is that it was discontinued so that was the decision we put into our September 21, 2015 letter to the owner.

Mr. Cohen inquired staff about basing their opinion on the aerial photography, specifically the 2014 aerial map and the variations in the grass and gravel color. Mr. Cohen inquired about the remnants of gravel. Mr. Cohen inquired if the staff basis was on anything else other than those dates of evidence. Mr. Cohen inquired if the photography was same time during the year of parking, and if any other time of day if that would change staff opinion. Mr. Perry referred to the City Parking Department ticketing vehicles whenever parking occurred on grass.

Discussion followed regarding clarity of the photography.

Mr. Cohen inquired staff if someone could lose their nonconforming use if they poorly maintained their gravel parking. Mr. Perry responded that if it is poorly maintained the owners are notified. Discussion followed. Mr. Perry responded that in 2009 a map was created to document those grandfathered nonconforming parking areas and that this area wasn't one of them. Mr. Perry noted that if the question comes up about approved parking, staff can look at this map to see; if not typically that is not a permitted nonconforming parking area. Mr. Cohen asked for staff interpretation of several of the aerial photographs.

Mr. Frank Shoker was sworn in. Mr. Shoker expressed his anger regarding this parking space abandonment. Mr. Shoker stated he had asked Mr. Perry to provide dates when properties were abandoned so that he could provide us evidence that there was regular parking taking place. Mr. Shoker continued that he has 32 persons during the time who have parked cars and have 16 people who park there during the week. Mr. Shoker stated that he has parked there since 2004 twice per week consistently. Mr. Shoker named names of people who park there weekly. will have 32 people who park there and will produce evidence/affidavits. Mr. Shoker asked the Board for more time so he can provide us sworn affidavits.

The BZA stated that they were willing to continue until December 16.

Ms. Dana inquired what was the City asking people to do. Mr. Shoker stated he needed 22 parking spaces, and inquired staff to tell him where to park. Ms. Dana inquired about the number of units. Ms. Blankenship reminded the BZA that the appeal was not whether it was graveled or the number of parking spaces but if the parking is considered abandonment.

Discussion followed on whether to continue discussion. Mr. Shoker preferred to table so that he could gather affidavits from those who use the area for parking. All agreed to continue at the December 16, 2015 meeting.

The BZA voted 4-0-0 to Table BZA-2015-13 until December 16, 2015.

Old Business

There was none.

New Business

Mr. Perry announced that there were two hearings in November. Ms. Blankenship announced that she and Mr. McHugh would be presenting at the annual Miami Valley Planning and Zoning Workshop on December 4, 2015. Discussion followed as to who would be able to attend.

Adjournment

Mr. Schnipper made motion to adjourn the meeting. Ms. Dana seconded the motion. All were in favor. The meeting was adjourned at 8:28 p.m.