

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, May 16, 2018

Call to Order

Those members present: Paul Brady, Roger Ames, Prue Dana, Michael Schnipper, and Rosmarie Shaughnessy.

Those members excused: None.

Staff members present: Amy Blankenship.

Staff Liaison: Mark Rosenberger, P.L.S., Bayer Becker

Staff members excused: Sam Perry, and Stephen McHugh.

Approval of Minutes of the April 18, 2018 Regular Meeting

Ms. Dana made motion to approve the April 18, 2018 minutes as written. Mr. Schnipper seconded the motion. All were in favor.

Adjudication Hearings

BZA-2018-09, 209 N. Campus Avenue, variance to Section 1143.05(c), minimum lot width 75' and Section 1143.05(c) maximum front yard lot coverage of 5%, Scott Webb, Appellant (Tabled March 21, 2018)

Ms. Dana made motion to enter into public hearing BZA-2018-09. Mr. Ames seconded the motion. All were in favor.

Ms. Blankenship announced that the status to allow Mr. Brady to hear and vote on this case from the Ohio Ethics Board was agreed upon for him not having to recuse himself.

Ms. Blankenship announced that Mr. Perry was unable to attend this meeting and that Mr. Mark Rosenberger, from Bayer Becker would be presenting tonight's staff reports.

Mr. Brady swore in Mr. Rosenberger.

Mr. Rosenberger provided a PowerPoint. Mr. Rosenberger described the intent of the owner to demolish an existing structure and replace with a new two family structure. Mr. Rosenberger described the variances requested regarding lot width and front yard lot coverage. The existing lot is 60 feet wide. The required lot width for a two-family is at least 75 feet. Front yard coverage requirement is 5% and the proposed coverage was 6.6%, due to the proposed sidewalk.

Mr. Rosenberger reviewed the decision criteria. Whether or not a reasonable return or whether there can be any beneficial use of the property without the variance, the evidence shows that as being a single family home demonstrates beneficial use exists without the variance. Mr. Rosenberger noted the property had an active rental permit. The staff report states that neither variances was substantial. The essential character would not negatively alter the neighborhood as there is a mix of family structures in the area. The delivery of government services would not be affected. The owner's awareness of the zoning restriction prior to purchase, Mr. Conrad purchased the property in 2016 with knowledge of the zoning code requirement for lot width. The owner's stated predicament appears that the zoning code stands in the way of gaining compliance with city codes. Mr. Rosenberger stated that staff believed there was no predicament at all because all applicable codes were in compliance. Also, Schmates Rentals lists the property as rented through 2019-2020 school year. In regards to the spirit and intent and substantial justice done by granting the variance, the lot width ratio is to ensure a predictable ratio of building size with space between buildings. The lot width is already sufficient for a single family. Granting the front

yard lot coverage variance for a standard sidewalk would not be contrary to the intent of the zoning code.

Mr. Scott Webb was sworn in. Mr. Webb stated he would be focusing on the lot width. Mr. Webb reviewed the existing zoning code stating the application met or exceeded all other parts of the zoning code. Mr. Webb referred to having made a recent attempt to rezone this face of this block but the Planning Commission just wasn't ready to change more zoning having recently updated the R3MS zoning district nearby. Mr. Webb also pointed out that nearly none of the lots in the Mile Square met the lot width requirement for R2 and was R3 Districts. 75' lot width is inappropriate in their opinion. Mr. Webb reported that of the six properties in the 1/2 block, 5 are non-conforming uses; his client is the only single family structure in the area. Mr. Webb stated the new dwelling reflected the style and scale of the previous frame structure. Also, the intent is to improve parking. Mr. Webb described the current parking and that they would provide parking from the alley and more than the required parking. Mr. Webb stated they want to build a two family structure in a two family district. Mr. Webb reviewed the decision criteria. Mr. Webb stated they did not feel the width variance was substantial and disagreed with City staff. Mr. Brady inquired what the practical difficulty was. Mr. Webb responded that the practical difficulty is that the zoning code doesn't reflect the existing lots in the district and that the Planning Commission needs to address this. There is no way to build a two family structure in a two family district with the width requirement. Mr. Brady responded that he doesn't see this being an issue for the BZA. Mr. Webb responded that the practical difficulty applies to all of the lots. Discussion followed.

Ms. Dana made motion to approve BZA-2018-09 Section 1143.05(c), lot width and front yard lot coverage, based upon criterion there is a practical difficulty in the use, and the essential character of the neighborhood would not be negatively altered. Mr. Ames seconded the motion.

AYE: Ms. Dana, Mr. Ames, Mr. Schnipper, Ms. Shaughnessy (4)

NAY: Mr. Brady (1)

ABS: None (0)

BZA-2018-10, 207 W. Collins Street, variance to Section 1143.03(c), 35' rear yard setback; variance to Section 1143.03(c) front yard lot coverage limited to 5% when the site is accessed from an alley; variance to Section 1149.04(a)(1) parking limits in the required front yard to one required parking space, Scott Webb, Appellant (Tabled March 21, 2018)

Mr. Ames made motion to enter into public hearing BZA-2018-10. Mr. Schnipper seconded the motion. All were in favor. Ms. Dana recused herself as she lives within 200 feet.

Mr. Rosenberger was sworn in by Mr. Brady. Mr. Rosenberger provided a PowerPoint for this case. Mr. Rosenberger stated that the plan of the owner was to construct a new single unit building on a vacant alley lot. There are three variances requested: rear yard setback from 35' to 17', front yard lot coverage increase from 5% to 58% and to allow for an increase in the number of parking spaces in the front yard from one to four. Surrounding properties were described. Mr. Rosenberger stated that the parcel appears as a rear yard and parking area for a four unit building on the adjacent lot; however, it is a separate and distinct land parcel. Mr. Rosenberger continued that there was no city record connecting the parking spaces to this parcel or to the front building in order to meet the parking requirement. Mr. Rosenberger referenced Mr. Webb's narrative stating that there was no zoning code text that required the City of Oxford to permit construction or waive other requirements because the minimum lot size requirement is satisfied. Mr. Rosenberger stated that the applicant was proposing to build a single family structure on a lot that meets the square footage and lot width requirements. Staff review states that after the front and rear setbacks are deducted there is only 11 feet of buildable area remaining; therefore, the lot may be too small for a dwelling of this size. Mr. Rosenberger stated the request proposes to reduce the rear yard setback to 17 feet. Mr. Rosenberger also stated the proposal is to provide four parking spaces instead of

the two required; this increases the front yard lot coverage from 5% to 58% and the allowable number of parking spaces in the front by fourfold. Mr. Rosenberger referred to notifications having been mailed to property owners within 200 feet.

Mr. Rosenberger reviewed the decision criteria:

Criterion A, whether there can be a reasonable return without the variance, or whether there can be any beneficial use of the property without the variances, the property is currently being used as a rear parking area including three other parking spaces with a sidewalk, so there is an existing beneficial use of the property. Regarding criterion B, that the variances were substantial, City Staff believe they are: the rear yard setback distance is reduced by half; the number of parking spaces in the front yard is four times the permitted; and the front yard coverage is 11 times the limit. Criterion C, the essential character of the neighborhood negatively altered, staff stated it would be altered by granting the variance since the re-development of an alley lot has a more limited impact on the character of the neighborhood than a street lot. Mr. Rosenberger also stated that the parking space demand is a net increase that can affect the conditions of adjacent streets and alleys. Criterion D, the delivery of government services could be adversely affected, based upon the Fire Chief comments regarding any emergency situations. Criterion E, property owner awareness, the transaction of this property occurred in 2005, when both parcels were transferred simultaneously. Criterion F owner's predicament, it appears that the City of Oxford guarantees that the alley lot can be developed; therefore, any variances should be granted to facilitate that guarantee, however staff does not believe there is a guarantee or predicament. The BZA should consider that the lot is too small for this type of building and requested additional parking. Criterion G, spirit and intent, substantial justice would be better served by maintaining the current use or finding another less conflicting use. Mr. Rosenberger referred to other relevant factors being that the 2008 Comprehensive Plan does prefer infill development as opposed to suburban sprawl; however, does not mention alley lots in the Mile Square. Staff believes there is not substantial evidence to support the request.

Mr. Scott Webb was sworn in. Mr. Webb provided a PowerPoint, Mr. Webb referred to Section 1137.05 nonconforming lots, and stated the lot met the minimum lot width of 33', that there are two separate distinct parcels, and the lot was over the required minimum area 3,000 square feet. Height, lot coverage, vehicular access, yard and setback requirements are met. The setbacks in the district are in conflict with this provision. Mr. Webb described the surrounding properties. It can be a buildable lot and the setbacks are inappropriate for a small lot.

Mr. Webb stated they were asking for relief for the rear yard setback. Mr. Webb stated he understood it is substantial but less substantial when viewed in the context of the neighboring properties; the new building as proposed provides greater separation between buildings than the adjacent properties.

Mr. Webb reviewed the Decision Standards. Mr. Webb disagreed with staff and denied the variances would be to prohibit development of a vacant property that meets the guarantees provided in Section 1137.05(a). Mr. Webb stated that whether the variances were substantial, mathematically yes, but because of the code conflict inherent in the lot location and access from the alley. Property owners predicament feasibly be obviated through some method other than a variance, and the spirit and intent Mr. Webb explained that the buildable area between the front and rear yard setbacks do not allow the construction of a single family residence as is guaranteed through Section 1137.05(a).

Mr. Webb then reviewed the parking and front yard lot coverage. Mr. Webb displayed pictures of the existing property. Mr. Webb stated that he was asking for additional parking that is required, Mr. Webb reviewed Section 1149.04(a)(1) No matter what is proposed is over the lot coverage. Mr. Webb described how the zoning code is conflicting.

Mr. Schnipper inquired about the parking taking place on the lot.

Stephanie Morton, 230 W. Collins was sworn in by Mr. Brady. Ms. Morton inquired about the garage having been demolished and what the house in front of the lot would do without parking.

David Morton 230 W. Collins, was sworn in by Mr. Brady. Mr. Morton reviewed parking and the vacant lot looking like a used car lot. Mr. Morton expressed concern about the substantial increase in cars on the street already.

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

Mr. Schnipper stated he found 58% front yard coverage very substantial. Mr. Schnipper stated he took note of Mr. Webb's ability to cherry pick some of the code and that saying that you can build on a lot 33 feet wide, and 3,000 area wasn't a guaranteed approval; we have to look at it being a building of that size that will comply to the code. Mr. Ames stated that guarantees are relative to the variances being granted.

Mr. Schnipper made motion to deny BZA-2018-10, variances to 1143.03(c) rear yard setback, 1143.03(c) front yard lot coverage, and 1149.04(a)(1) parking space allowance in the front yard as they are all substantial, could affect delivery of government services, and the owner was aware of the predicament. Mr. Ames seconded the motion.

AYE: Mr. Schnipper, Mr. Ames, Ms. Shaughnessy, Mr. Brady (4)

NAY: None (0)

ABS: None (0)

Old Business

There was none.

New Business

There was none.

Adjournment

Mr. Ames made motion to adjourn the meeting. Ms. Dana seconded the motion. All were in favor. The meeting was adjourned at 7:40 p.m.