

BOARD OF ZONING APPEALS
Meeting Minutes
Wednesday, May 20, 2020

Call to Order

Those members present: Roger Ames, Michael Schnipper, Dan Haizman, Kate Rousmaniere, and Chris Allison.

Those members excused: None.

Staff members present: Sam Perry, Zachary Moore, and Chris Conard.

Staff members excused: None.

Mr. Schnipper called the Virtual BZA meeting to order at 6:30 p.m. Mr. John Detherage Fire Chief was also present. Mr. Schnipper announced that members had been sworn in and officers were elected at the May 13, 2020 BZA Virtual Work Session. Mr. Schnipper announced that Mr. Perry would be the Host at tonight's meeting.

Approval of December 18, 2019 Minutes of the Regular Meeting

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

Adjudication Hearings

BZA-2020-01, 5111 Morning Sun Road variance to Section 1143.16(c)(4) 50% lot coverage in an Neighborhood Business District, Scott Webb, Appellant (postponed April, 2020)

Mr. Ames made motion to enter into adjudication hearing BZA-2020-01. Mr. Haizman seconded the motion. All were in favor.

Mr. Moore, Planner, was sworn in by Mr. Schnipper. Mr. Moore provided an overview that this was a lot coverage variance request to increase maximum lot coverage. Mr. Moore reviewed the location map, noting it a little under one acre, zoning map, and stated that the maximum lot coverage was 50% in a Neighborhood Business District. Mr. Moore read aloud the purpose statement for this district. Mr. Moore provided a bird's eye view of the property. Mr. Moore described the surrounding uses and reviewed the proposed site plan. Mr. Moore described the intent of the property for two buildings, each comprising residential and commercial space. A recent lot split was approved on the property and awaiting proof of recording. Mr. Moore stated the design took into consideration the NB (Neighborhood Business) District standards. The southwest lot is 19,837 sq. ft., lot coverage 50.53%; the second lot is 20,608 sq. ft. with 56.51% lot coverage. Mr. Moore displayed/reviewed Mr. Webb's renderings and reviewed the decision criteria:

- A. Whether the property can yield a reasonable return. Mr. Moore reported that the property currently was vacant and had been for a long time and was developable by-right.
- B. Whether the variance was substantial. Mr. Moore stated the applicant was asking for a 6.51% increase.
- C. Essential character of the neighborhood would be complemented by this development.
- D. Mr. Moore referred to the Fire Chief comments concerning accessibility; staff did not believe the allowable lot coverage would have a more adverse impact on this issue.
- E. Whether the owner was previously aware. Mr. Webb stated that the owner was aware of the lot coverage restriction.
- F. Whether the property owner's predicament could be obviated through some other method other than a variance. Mr. Moore stated that possibly it could be obviated by redesigning the site in a way that the 50% coverage maximum was adhered to.
- G. The spirit and intent would be observed. Mr. Moore referred to the required parking in the NB District and that the applicant had made a good faith effort at adhering to the most important standards of the

underlying district while only slightly compromising the resulting lot coverage.

Mr. Moore concluded that granting the variance would uphold the spirit and intent of the zoning code.

Mr. Ames inquired about the lot split. Mr. Moore reported that it was needed in order to have two buildings on the site.

Mr. Allison inquired about the parking requirement and the number of parking spaces and possibly if eliminating, it would dramatically reduce the lot coverage without a variance.

Mr. Scott Webb, Appellant, was sworn in. Mr. Webb stated that parking was never addressed for this district. Mr. Webb described the amount of grade on the property as significant grading difference between the two buildings. Mr. Webb reviewed the site plan, referring to the northern most entrance and needing to keep away as much as possible from the intersection. Mr. Webb described the potential customer parking. Mr. Webb wishes to encourage a pedestrian friendly site and accommodate the grading. Mr. Webb reviewed the Decision Standards. Mr. Webb referred to the site having been undeveloped for a number of years and that the variance was necessary to accommodate the buildings and parking in the NB District. Mr. Webb stated that the variance was not mathematically substantial since having to accommodate parking and offering shared outdoor space. The essential character of the neighborhood would be improved. Mr. Webb stated that utilities and government services were available at the location, and the two access points have been facilitated through a shared access agreement between the two parcels. Mr. Webb stated that the property owner was aware of the restriction. Mr. Webb stated that the development would meet the minimum parking requirements and that in order to reduce the lot coverage, the exterior plaza connecting the two buildings could be eliminated. Mr. Webb noted that the project aligned with the goals of the Comprehensive Plan. Mr. Haizman inquired how many residential apartments. Mr. Webb responded two apartments in each building and two parking spaces per unit for a total of 8.

Mr. John Detherage, Fire Chief, was sworn in. Mr. Schnipper asked Mr. Detherage about the accessibility with fire equipment on this property and if he was satisfied with Mr. Webb's testimony. Mr. Detherage stated that as long as the equipment can get through, as he was worried people would park where there are no parking spots. Mr. Allison asked Mr. Detherage if he looked at fire hydrants. Mr. Detherage responded that there was at least one at the corner and one by the veterinarian office and a couple on Sycamore Street, so we should have plenty of coverage.

Mr. Perry reported that there were no attendees wishing to speak at this time.

Mr. Ames made motion that, BZA-2020-01, 1143.16(c)(4) be approved based upon Criterion B, not substantial, Criterion C, maintains the essential character, and Criterion D, government delivery not affected and Criterion G is within the spirit and intent of the zoning code. Ms. Rousmaniere seconded the motion.

AYE: Mr. Haizman, Mr. Ames, Mr. Allison, Ms. Rousmaniere, Mr. Schnipper (5)

NAY: None (0)

ABS: None (0)

BZA-2020-02, 220 E. Withrow Street, Variances to Section 1149.03(c), size of the minimum parking space and 1149.04(a), location of parking spaces, Scott Webb, Appellant

Mr. Schnipper disclosed that Tom Conrad was a customer of his; and that there was not an ongoing relationship and was strictly on an as-needed basis.

Mr. Haizman made motion to enter into Public Hearing BZA-2020-02, 220 E. Withrow. Mr. Allison seconded the motion. All were in favor.

Mr. Zach Moore, Planner, was sworn in. Mr. Moore noted there were two variance requests, 1149.03(c) and 1149.04(a). Mr. Moore provided the location map, zoning map, and reviewed site photographs taken April 29, 2020. There was a stop work order March 26, 2020 as it was discovered the attached garage was being converted into living space without a permit. A building permit was then submitted April 14, 2020 by Mr. Webb. Zoning denied the request on April 16, 2020 after having reviewed the parking code. They are converting it to an additional bedroom thus expanding the use. The change triggered parking compliance. Mr. Moore reviewed the existing floor plan and the proposed site plan. Mr. Moore noted that they do provide the two parking spaces, however, some of it overlaps over the driveway. Mr. Moore described the parking dimensions, going from 18' to 15'. Mr. Moore referred to two retaining walls on either side of the driveway. Mr. Moore noted that setbacks would be met; however, the setback from principal structure is touching right upon the garage. Mr. Moore displayed images of the current view of structure.

Decision criteria:

Criterion A whether the property will yield a reasonable return, Mr. Moore stated that the property's previous and continued use as a single-family dwelling was sufficient to demonstrate that there can be beneficial use of the property without the variance.

Criterion B whether the variance was substantial. Mr. Moore reported that reducing a car stall's dimensions down to 8' x 15.7' was substantial.

Criterion C whether the essential character of the neighborhood would be substantially altered. Mr. Moore described the possibility of cars parking in a 90 degree manner thus overhanging the alley, impeding access, inconsistent parking angles, maneuverability issues, thus affecting adjoining properties and utilizing the alley.

Criterion D affecting the delivery of governmental services, Mr. Moore stated it was unlikely garbage collection would be affected.

Criterion E property owner knowledge of the zoning restriction. Mr. Webb stated that the property owner didn't know the unused garage was considered a required parking space; however, the owner has previously submitted building permit applications and should have been familiar with the required process before undergoing work at the property.

Criterion F owner's predicament could be obviated through some other method. The owner has completed work on the property thus making it more complex and could lead to more substantial structural changes to accommodate parking in another way.

Criterion G, whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Staff does not believe the requested variances uphold the spirit and intent of the zoning code. Had the request been brought to Staff before the work, the same conclusions would have been reached.

Criterion H any other relative factors. There are none. Mr. Haizman inquired if prior to this it seemed the parking spaces was used. Mr. Moore stated he didn't know history of when property was developed.

Mr. Perry, Community Development Director, was sworn in. Mr. Perry reported having a floor plan from the approved rental permit which showed the garage labeled as a garage. Mr. Perry displayed the floor plans showing the label "garage". Mr. Haizman referred to the displayed floor plan having a date of 1993, so it has been that way for 30 years, so probably would be grandfathered in. Mr. Perry responded that at the time the rental permit was approved Staff wouldn't know what the code was.

Mr. Allison inquired that the BZA are only interested in how it is used after the change. Staff responded that is correct.

Mr. Scott Webb, Appellant, was sworn in. Mr. Webb noted that it was not his recommendation to begin working without a permit. Mr. Webb referred to the expansion of the use and yes, the property owner was changing the use, but were not expanding the use, nor adding more people, or more cars, and wouldn't affect the use of the building. Mr. Webb agreed that they were taking over a used garage but the occupancy was not changing. There were never any parking spaces here except inside the garage. The property owner was not aware that the garage was a required parking space.

Mr. Ames asked Mr. Webb if Mr. Conrad has been a client of his a number of times. Mr. Webb stated yes. Mr. Ames stated Mr. Conrad should have known better to build without asking and yes the variance would have ended up here one way or another. Mr. Ames expressed that it bothered him most adding to a nonconforming use. Mr. Ames states Mr. Conrad was adding more living space which meant having to bring it up to code. Mr. Webb responded that the practical difficulty was that the existing parking did not meet the code.

Mr. Haizman inquired what the intended purpose of this new use was. Mr. Webb responded to just be another room in the house; we called it a bedroom so that egress windows were used just in case. Mr. Webb noted that they would not or were not allowed to increase occupancy.

Mr. Schnipper referred to page two of Mr. Webb's presentation and directed everyone to look at the upper left hand corner which appeared to be white like a vehicle. To him it showed the impracticality as the tail of the car stuck out into the alleyway. Therefore, there was nowhere on the site with code compliant parking.

Mr. John Detherage, Fire Chief, was sworn in. Mr. Detherage reported that without a permit someone was planning to put people in those rooms, as no one really knows what the true intent was. Mr. Detherage advised that the property owner doesn't participate in in-person rental inspections, therefore, we wouldn't know if additional people were living there. Mr. Ames asked Mr. Detherage if someone parked at the back of the house, would Fire have difficulty getting a ladder truck through the alley? Mr. Detherage responded they do have issues getting through alleys and cars hanging out into the alley. Mr. Schnipper inquired the Fire Chief, what the reason is for a 3' separation from a principal structure. Mr. Detherage responded that a fire could spread to a car and to the structure.

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

Mr. Allison inquired about giving Mr. Webb the opportunity to choose whether to withdraw his request since it looked more like parking was the problem and maybe applying for a different variance to eliminate parking. Mr. Webb was asked if he wanted to proceed, which he responded yes that he did.

Decision Standards were reviewed:

A. Agreed with staff there was a beneficial use without the variance.

B. Was the variances substantial. Staff says it is, applicant says it is not. Mr. Ames agreed with staff it was substantial.

C. Essential character of the neighborhood affected? Staff says it would affect the character, Applicant says it would not. Mr. Allison stated he agreed with staff. This would not support the granting of the variance.

D. Whether the variance will adversely affect government services? Both agreed it would not. Therefore this supports the variance being granted

E. Was there knowledge of the zoning restriction? Staff stated Mr. Conrad knew. Applicant said he was not aware of it. Mr. Schnipper responded that the owner should have known. It was shown that the

garage was not being counted as a parking spot. The BZA agreed. This does not support the variance being granted.

F. Can the owner's predicament be feasibly obviated through some other method? Staff says it can. The Applicant says it cannot. Therefore, this does not support the variance being granted.

G. Would the spirit and intent be observed? Staff said it would not. Applicant says it would. Therefore, it does not support the variance being granted.

H. Other factors? Mr. Ames brought in Chief Detherage' comments regarding his safety concerns. Applicant says there are none. Therefore, this does not support the variance being granted.

It was noted that Staff proposed not granting the variance and other City staff (Fire, Engineering) recommended denial.

Mr. Ames made motion to deny BZA-2020-02 Section 1149.03()size of the minimum parking space and 1149.03(a) parking space location, based upon criteria A, B, C, E, F G, H. Mr. Haizman seconded the motion.

A roll call yes vote would deny the variance

AYE: Ms. Rousmaniere, Mr. Ames, Mr. Allison, Mr. Haizman, Mr. Schnipper (5)

Nay: None (0)

ABS: None (0)

BZA-2020-03, 230 E. Withrow Street, Variance to Section 1137.05(c) setback requirements for an alteration., Scott Webb, Appellant

Mr. Ames made motion to enter into public hearing BZA-2020-03. Mr. Haizman seconded the motion. All were in favor.

Mr. Moore, Planner, was sworn in by Mr. Schnipper.

Mr. Moore reported this request was to reduce the front yard setback requirement from the minimum required 20 feet to 11 feet, 4 inches. Mr. Moore reported that a stop work order was issued March 26, 2020 because of work taking place for the conversion of an open-air porch to living area without a building permit. Mr. Moore reported that the Appellant filed a building permit April 14, 2020 which triggered a front yard setback issue and the permit was denied by zoning.

Mr. Moore reviewed the location map, zoning map and bird's eye view map. Mr. Moore described the property. Mr. Moore stated that the porch measured a little over 100 square feet and that the porch would not be air conditioned, and that the thermal break between the home and the porch would remain. Mr. Moore noted the additional living space was considered an expansion of the use which increased the structure's nonconformity. Mr. Moore reviewed the proposed drawing from Mr. Webb. Reviewed elevations showing enclosing porch plans, intend to keep the existing roof, they are just filling in the walls, no expansion to the footprint.

Mr. Moore stated that Staff believed there was substantial evidence to support the variance.

Mr. Moore reviewed Decision criteria:

Criterion A. Whether the property in question can yield a reasonable return. Mr. Moore reported that the property's previous and continued use was sufficient to demonstrate that there can be beneficial use of the property without a variance.

Criterion B. Whether the variance was substantial. Mr. Moore stated the applicant was asking for a 43.33% reduction in the frontyard setback. Staff did not believe the variance request was substantial.

Criterion C. Essential character of the neighborhood would be substantially altered. Mr. Moore stated

that the outward appearance of the porch will not be substantially different from what already exists, therefore staff believes granting the variance would not result in any other substantial detriment to the neighborhood.

Criterion D. Whether the variance would affect delivery of government services. Mr. Moore stated staff believed it would not.

Criterion E. Whether the owner was previously aware of the zoning restriction. Mr. Webb stated initially the porch was screened and was removed and changed to an open-air setup. Mr. Webb stated the owner was not aware that erecting walls and windows would be in violation of the zoning setback. Mr. Moore referred to the owner having submitted building permits in the past and should have been familiar with required processes.

Criterion F. Whether the property owner's predicament could be obviated through some other method other than a variance. Mr. Moore stated that the only way to add more living space within the front setback area is through the means of a variance. Should the variance not be granted, the porch could be returned to its previous function.

Criterion G. Whether the spirit and intent would be observed by granting the variance. Staff believed granting the variance would uphold the spirit and intent behind the front setback requirements.

Criterion H. Any other relevant factor. There were none.

There were no questions from the BZA.

Mr. Webb, Appellant, was sworn in by Mr. Schnipper.

Mr. Webb reviewed the request for variances in regards to a nonconforming structure, that no nonconforming building or structure may be enlarged or altered in a way that increases the nonconformity; and a variance to the minimum front yard setback requirements. Mr. Webb stated that while the existing porch was located on the side of the house, being a corner lot, front yard setbacks are required on two sides. Mr. Webb stated that the existing porch would not be enlarged. Mr. Webb stated that his client wished to change an existing porch to a 3-season room and would not affect the occupancy of the building or negatively affect the neighborhood. Mr. Webb stated that replacing screens with glass while repairing an existing porch was not enlarging this nonconforming structure.

Criterion A. Whether the property in question will yield a reasonable return. Mr. Webb reported that the repair to the porch presented an opportunity to restore and improve this amenity.

Criterion B. Whether the variance was substantial. Mr. Webb stated the variance was not substantial. Replacing screen panels with windows in the original openings was not a significant enlargement. And, installation of windows has no effect on the porch's location in the second required front yard setback.

Criterion C. Essential character of the neighborhood would be substantially altered. Mr. Webb stated it would not since this is repairing an existing porch.

Criterion D. Whether the variance would affect delivery of government services. Mr. Webb stated it would not.

Criterion E. Whether the owner was previously aware of the zoning restriction. Mr. Webb stated the owner was not aware that screens could not be replaced with windows.

Criterion F. Whether the property owner's predicament could be obviated through some other method other than a variance. Mr. Webb stated that denying the variance would simply prohibit this improvement.

Criterion G. Whether the spirit and intent would be observed by granting the variance. Mr. Webb stated the zoning code would be observed through allowing improvements to existing buildings.

Criterion H. Any other relevant factor. This redevelopment project aligns with the Comprehensive Plan.

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

Ms. Rousmaniere questioned why the code says a structure cannot be made more nonconforming, yet Staff recommends approval. Ms. Rousmaniere and Mr. Schnipper were confused with the staff recommendation. Mr. Allison stated that for this case he sided with staff as he saw it as making an improvement to the porch, however, he disagreed that it didn't change the character of the neighborhood as it is the only building that stuck out. Mr. Schnipper felt they were simply improving a screened in porch and didn't perceive it as that much of a negative.

Mr. Ames made motion to approve BZA-2020-03, based upon criteria that it was not substantial, would not affect the essential character of the neighborhood, wouldn't affect government delivery, and that the spirit and intent behind the zoning requirement would be enforced. Mr. Haizman seconded the motion.

AYE: Mr. Ames, Ms. Rousmaniere, Mr. Allison, Mr. Haizman, Mr. Schnipper (5)

NAY: None (0)

ABS: None (0)

Old Business

Mr. Perry reported there were no cases for June. The BZA discussed continuing virtual meetings until a majority wants to go back or Ohio House Bill 197 expires as virtually or in person is solely upon the discretion of this body. Mr. Schnipper asked if any board member objected. Overall response was no.

Adjournment

Mr. Ames made motion to adjourn meeting. Ms. Rousmaniere seconded the motion. The meeting was adjourned at 8:52 p.m.