

BOARD OF ZONING APPEALS

Meeting Minutes

Wednesday, November 20, 2019

Call to Order

Those members present: Paul Brady, Roger Ames, Michael Schnipper, Dan Haizman, Chris Allison

Those members excused: None.

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

Staff members excused: None.

Approval of Minutes of the October 16, 2019 Regular Meeting

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

Adjudication Hearings*

BZA-2019-11, 102 Oberlin Court, Appeal of Administrator's Decision, allowing for the construction of a fence and materials used, Brinley Varchol, 109 Oberlin Court, Appellant

Mr. Ames made motion to enter into public hearing BZA-2019-11. Mr. Haizman seconded the motion. All were in favor.

Mr. Zach Moore was sworn in. Mr. Moore presented that Mr. Brenley Varchol, 109 Oberlin Court, has filed an appeal, based on a Staff decision to approve a fence permit for 102 Oberlin Court. Mr. Moore stated that Staff based their decision to approve after having discussed the project with the applicant, Mr. Nick Fears. Mr. Varchol does not believe that the fence design that was approved and constructed at 102 Oberlin Court conformed to, and was in violation of the standards stated in 1143.03(c)(9)(C) specific to fences in the R-1MS District.

Mr. Moore noted that Brinley Varchol was present, and Nick Fears was also in the audience. Mr. Fears is the owner of the property.

Mr. Moore provided a location map, and stated that the fence was most visible from S. Main Street. Mr. Moore read aloud Section 1143.03(c)(9)(C) "that fencing shall only be constructed of wood, wrought iron, decorative metal fencing, or fencing material that resembles wood materials". Mr. Moore noted that the fence in question, which has already been built, was located in the rear yard of the property. Mr. Moore stated that the fence was approved by zoning July 24, 2019, the permit was issued July 26, 2019, and passed final zoning on August 14, 2019. The property owner checked with Community Development to assure it met zoning. Mr. Moore displayed photographs of the fence in question. Mr. Varchol, in his appeal, characterized it as a turkey wire fence; however, staff would call it livestock panels. Mr. Moore stated the BZA was tasked with to either affirm or reverse the zoning administrator's determination; staff would not force the owner to remove the fence, however deny future fences that could come in for approval. Mr. Haizman inquired the color of the fencing. Mr. Moore reported it wasn't galvanized, but more like chain link. Mr. Moore continued that if the owner would have had metal posts, the fence would not have garnered approval. Mr. Ames inquired what criteria was used to approve it. Mr. Perry was sworn in by Mr. Brady. Mr. Perry stated he took into consideration past practice to look at the zoning code and the guide it gives. Faced with interpreting the term "decorative metal" in the Mile Square Architectural Guidelines, staff identified the material used as a multi-purpose heavy weight wire panel. Mr. Allison inquired if you had a split rail fence with panels to hold animals in would staff approve that? Mr. Perry responded yes. Mr. Schnipper inquired if staff was aware of any other fences like this in Oxford. Mr. Perry reported no.

Mr. Brinley Varchol, 109 Oberlin Court, was sworn in. Mr. Varchol believed his application regarding the permit to install a fence stood on its own merit. Mr. Varchol pointed out, that: the analysis provided by planning directive used the term "decorative design"; there is nothing in the code that refers to decorative design. This section of code only refers to decorative metal fencing. Mr. Varchol stated he felt the Director's decision was wrong, and that if searched, this kind of fence on the internet is installed in barnyards with wood posts. Referencing turkey wire, the application actually described the fence as goat wire in the building permit application; using wood posts with goat wire does not make it decorative. Mr. Varchol provided his opinion that landlords do minimal effort on care of their properties. Mr. Varchol stated that he would respectfully request that the Planning Director decision be overturned. Mr. Varchol stressed that he

hoped that the BZA would stand as a guide for further fences.

Mr. Nick Fears was sworn in. Mr. Fears is the owner of 102 Oberlin Court. Mr. Fears stated that his intent was to provide a short term way to enclose space for an animal. Mr. Fears stated that he wished to improve the neighborhood, be a good citizen, and that the idea of installing a 4' wood privacy fence, would totally eliminate any view. Mr. Fears expressed how wood fences eventually were not kept up. In his personal opinion this was an attractive fence.

Mr. Haizman inquired if there were finished posts? Mr. Fears stated they were of cedar; wears naturally and unstained initially. Mr. Fears added that the fence wouldn't be in this yard past August.

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

Mr. Haizman stated he had looked at the fence and noted the posts were landscape timbers. Mr. Haizman stated that he had worked in the lumber business for many years and that supplies used for the fence were the least expensive materials you could buy. Mr. Haizman concluded that there was nothing decorative about the fence. Mr. Brady stated that the code didn't address that issue. Mr. Allison stated it made sense why he installed the fence and agreed it was a short-term situation. Mr. Allison stated there didn't seem to be any downside to reversing the staff decision. Mr. Brady inquired how you would say the fence wasn't decorative. Mr. Schnipper disagreed with Mr. Brady. Mr. Schnipper noted that the owner went through the proper process and got everything approved; decorative was a subjective term. Mr. Ames added that the code needed better defined; we have a fence and we won't have any more like this.

Mr. Haizman made motion to reverse the Zoning Administrator's decision, as the fence was not decorative. Mr. Ames seconded the motion. Mr. Brady announced that a yes vote would reverse the Administrators decision.

AYE: Mr. Schnipper, Mr. Ames, Mr. Allison, Mr. Haizman (4)

NAY: Mr. Brady (1)

ABS: None (0)

BZA-2019-12, 100 W. Church Street, Variance to Section 1137.04(b)(5)A occupancy reduction requirement for alteration of an existing 4-family structure in the RO District, Scott Webb, Appellant

Mr. Perry announced, that, after further review by Staff and the Law Director, Staff had made an interpretation error. Mr. Perry reported that there was a code provision that this reconfiguration did not require an occupancy reduction because a two-family building with an occupancy of 8 was to be constructed. Since the final occupancy is no different than the current occupancy of 8, it would not require a reduction.

Mr. Allison inquired if it was in noncompliance any other way. Mr. Perry stated it is a legal nonconforming use.

BZA-2019-13, 802 S Beech Street, Variance to Section 1143.03(c) front, side and rear setbacks requirements for the reconstruction of an existing single family structure in the R1MS District, Scott Webb, Appellant

Mr. Haizman made motion to enter into public hearing BZA-2019-13. Mr. Ames seconded the motion. All were in favor.

Mr. Moore was sworn in. Mr. Moore reported the variance request was for front, side and rear setbacks for the reconstruction of an existing single family structure. The new structure will be built on top of the existing foundation. Mr. Moore reported that earlier in 2019 a stop work order was issued when staff discovered that the property owner had begun demolition without a permit. The property was not habitable at that time.

Mr. Moore reviewed the aerial location map and provided an aerial bird's eye view. Mr. Moore reported that there was an alley right of way which has not been paved or improved. Mr. Moore displayed a photo from November 11, 2019 of the site. Mr. Moore referred to 1137.06(f), and read aloud that "reconstruction of damaged and demolished nonconforming structures may be permitted provided that the reconstructed portion satisfies the site development regulations of the district".

Mr. Moore provided a timeline as events occurred, between the initial stop work order and variance application submission.

Decision criteria was reviewed:

- A. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance. Mr. Moore reported that at the present time the structure is uninhabitable and would not yield a reasonable return until the dwelling is reconstructed.
- B. Is the variance substantial? Mr. Moore reported they were.
- C. The essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. Mr. Moore reported that staff did not believe the essential character would be negatively affected.
- D. Whether the variance would adversely affect the delivery of government services. No.
- E. Whether the property owner purchased the property with knowledge of the zoning restriction. Mr. Moore stated that had the property owner been aware of the proper procedures to have first obtained a building/zoning permit before beginning work, it would be likely that many of the issues leading up to the variance request could have been avoided.
- F. Whether the property owner's predicament feasibly be obviated through some method other than a variance. Mr. Moore noted that given the condition of the existing dwelling, the only option is to reconstruct.
- G. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. Mr. Moore reported that given the existing condition of the structure, and the property being unbuildable because of its narrow depth, the spirit and intent is upheld.
- H. Any other relevant factor, Mr. Moore referred to a letter the applicant provided for any other additional factors.

Mr. Ames inquired about alley improvements. Mr. Moore responded that improvements were not probable in the near future. Mr. Allison inquired about closeness of the alley to the structure. Discussion followed.

Mr. Scott Webb was sworn in. Mr. Webb provided a history of the project. Mr. Webb reported that it started out that originally the back corner area was used as a bedroom which had no foundation under it. The owner brought in someone to repair that, which, flagged the first stop work order. Then the owner found out the roof was failing; a building permit was submitted notating a 4/12 pitch roof to the structure. Staff responded that a 6/12 pitch roof was required. The owner continued working on the building. Then more items were found wrong with the existing structure: moisture in the concrete block bearing walls. The owner decided to remove the block walls and rebuild, which now brings them before the BZA. Mr. Webb stated that building the house on the existing foundation seemed the only portion that remained usable. Mr. Webb stated the existing underground utilities would also remain.

Mr. Webb reviewed the Decision criteria noting that this was a result of discovery of damage.

- A. The building can no longer yield a reasonable return;
- B. Variances are mathematically substantial but simply allow construction to resume;
- C. Essential character not affected;
- D. Government services not affected;
- E. Owner was not aware of setback violations;
- F. Owner's predicament-the buildable area of the lot restricts the possible building footprint to an unusual shape, not typical of Mile Square construction. The alley width is 16'. The City normally paves 12'; not likely pave right up alongside the house.

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

Mr. Schnipper responded that this was a textbook of why we have variances. The BZA doesn't have any other choice, we don't have an alternative.

Mr. Schnipper made motion to approve BZA-2019-13, based upon decision criteria A, C, F, and G. Mr. Ames seconded the motion.

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

NAY: None (0)

ABS: None (0)

Old Business

Mr. Perry reported there would be one BZA case for December.

New Business

There was none.

Adjournment

Mr. Schnipper made motion to adjourn the meeting. Mr. Haizman seconded the motion. All were in favor. The meeting was adjourned at 7:30 p.m.