

MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

October 3, 2013

A. Call to Order – 7:30 p.m.

1. Roll Call - the following members present: D. Falcoski, B. Seitz, R. Hunter, L. Reibel and C. Crane. Also present was D. Phillips, Chief Building Inspector, and L. Brown, Director of Planning and Building.
2. Pledge of Allegiance
3. Mr. Hunter moved to approve the September 5, 2013 minutes, seconded by Mr. Seitz and the minutes were approved.
4. Affirmation/swearing in of witnesses.

B. Unfinished Business

1. **Variance** - Signage – **885 High St.** (Providential Properties) **BZA 26-13**

Discussion:

Mr. Phillips reviewed the staff memo.

Ms. Crane asked if the applicant was present and then asked if the Board can still review this item without an applicant. Mr. Phillips stated the Board historically has required an applicant to be present however there is nothing in the Codified Ordinances or the By-Laws for this Board that precludes it from moving on any item without someone representing the owner.

Mr. Hunter said when this item went before the Architectural Review Board there was no one speaking against it and it was unanimously approved.

Ms. Crane asked if there were any questions from the Board for staff. Ms. Reibel asked if the freestanding sign facing High Street will remain and Mr. Phillips replied yes, the freestanding sign has no bearing on this application.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Finding of fact:

1. This property is an existing lot of record in a C-3 district. Projecting signs are not permitted.
2. The applicant is proposing each business be allowed the option of a projecting sign or a wall mounted sign. The variance request is to allow projecting signs.

3. The property is subject to, and the projecting signs have been approved by, the Architectural Review Board.

Conclusion:

1. Projecting signs are typically reserved for the C-5 district. In this particular case, the building is 'L' shaped and once one enters the property, the projecting signs may be easier for a patron to see. The requested variance is not substantial.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

Mr. Hunter moved:

THAT THE REQUEST BY PROVIDENTIAL PROPERTIES LLC FOR A VARIANCE FROM CODE REQUIREMENTS TO ERECT PROJECTING SIGNS AT 885 HIGH STREET, AS PER CASE NO. BZA 26-13, DRAWINGS NO. BZA 26-13 DATED MAY 14, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Falcoski seconded the motion and all members voted "aye" thereon.

C. Items of Public Hearing

1. Variance – Setbacks – Fence - 698 Plymouth St. (Dennis & Donna Sterling) BZA 36-13

Discussion:

Mr. Phillips reviewed the staff memo.

Donna Sterling, 698 Plymouth Street, stated she had nothing to add to staff comments.

Mr. Seitz asked to see the hand drawn site plan and asked which markings show the proposed fencing. Ms. Sterling said the straight lines represent the proposed fence.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Findings of fact:

1. The property is an existing lot of record with a single family dwelling in the S-1 district, where a single family dwelling is neither a permitted nor a conditional use. The minimum setback requirements for S-1 are 60 feet for front and rear yard, 25 feet for either side yard, and the sum of the two side yards must total a minimum of 60 feet. The entire block bound by Plymouth on the west, Greenwich on the east, Granville on the north, and New England on the south is zoned S-1. The 2005 Comprehensive Plan does not indicate any change from dwelling uses for this particular parcel.

2. In residential districts fences are permitted in the side and rear setback areas. Fences are not addressed for the S-1 Zoning District in Chapter 1180, so must be considered as structures. The existing lot is 50.30 feet wide and no structures are permitted to be constructed without setback variances.
3. The applicant is proposing to expand the existing, nonconforming use by constructing several additional sections of fencing and two gates. The proposed fencing is a combination of 48” high ornamental aluminum and wood with dog-eared pickets. The entire project requires an extension of a nonconforming use and variances from setback requirements.

Conclusion:

1. Because dwellings are the primary use in this portion of a block that is zoned S-1, fences should be permitted to be located as they are in residential districts.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

Mr. Falcoski moved:

THAT THE REQUEST BY DENNIS & DONNA STERLING FOR AN EXTENSION OF A NONCONFORMING USE AND VARIANCES FROM CODE REQUIREMENTS FOR SETBACKS TO CONSTRUCT ADDITIONAL FENCING AT 698 PLYMOUTH STREET, AS PER CASE NO. BZA 36-13, DRAWINGS NO. BZA 36-13 DATED AUGUST 28, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Seitz seconded the motion and all members voted “aye” thereon.

**2. Variance – Side Yard Setback – Condensing Units – 783 Oxford St. (Scott & Holly Heitkamp)
BZA 37-13**

Discussion:

Mr. Phillips reviewed the staff memo.

Scott Heitkamp 783 Oxford Street, stated he had nothing to add to staff comments.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Findings of fact:

1. This property is an existing lot of record in the R-10 district with a minimum side yard setback of 8 feet and the sum of the 2 side yards must be a minimum of 20 feet. The existing dwelling is approximately 6 feet from the north property line and 13 feet from the south property line.

2. The applicant is proposing to move the existing condenser from the rear to the north side yard, and install a new condenser. The requested variance is approximately 2 feet.
3. Placement of the units was approved by the Architectural Review Board with the conditions the existing landscaping to the east remain for screening, and a 4 foot high fence be erected to the north.

Conclusion:

1. The requested variance is not substantial.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

Mr. Seitz moved:

THAT THE REQUEST BY SCOTT AND HOLLY HEITKAMP FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW THE PLACEMENT OF TWO AIR CONDITIONER CONDENSERS AT 783 OXFORD ST., AS PER CASE NO. BZA 37-13, DRAWINGS NO. BZA 37-13 DATED AUGUST 30, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Falcoski seconded the motion and all members voted “aye” thereon.

**3. Variance – Side Yard Setback – Condensing Unit- 158 W. New England Ave. (Kirsten Chan)
BZA 38-13**

Discussion:

Mr. Phillips reviewed the staff memo.

Kirsten Chan 158 West New England Avenue, stated the unit was placed in the same spot as the previous unit which had been there since purchasing the home eight years ago.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Findings of fact:

1. This property is an existing lot of record in the R-10 district with a minimum side yard setback of 8 feet. The existing dwelling is approximately 6 feet from the east property line.
2. The applicant has replaced the condenser on the east side of the house. The requested variance is approximately 2 feet.

Conclusions:

1. The requested variance is not substantial.
2. The essential character of the neighborhood should not be substantially altered.

3. The delivery of governmental services should not be affected.

Ms. Reibel moved:

THAT THE REQUEST BY KIRSTEN CHAN FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW A CONDENSING UNIT TO REMAIN AT 158 WEST NEW ENGLAND AVENUE, AS PER CASE NO. BZA 38-13, DRAWINGS NO. BZA 38-13 DATED AUGUST 30, 2013, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Seitz seconded the motion and all members voted “aye” thereon.

4. **Variance** - Setbacks – New House – **6636 McBurney Pl.** (Trevor Custom Homes) **BZA 39-13**

Discussion:

Mr. Phillips reviewed the staff memo as follows:

Findings of fact:

1. This property is in an R-10 district, with the lot being created as part of The Woods of Lawndale subdivision in 2006.
2. The applicant is proposing to change two of the building setback lines of this irregularly shaped lot. A proposed building footprint is shown on the enclosed site plan.
3. With the subdivision approval, required setbacks were included. The requested variance for the northwesterly property line is 15’ (30’ was required); the requested variance for the northeasterly property line is 5’ (10’ was required).

Conclusions:

1. Due to the unique shape of the property, and relationship to adjacent properties, these variances would not alter the essential character of the neighborhood.
2. The delivery of governmental services should not be affected.

Catherine Cunningham, 65 East State Street, stated the footprint shown is an estimated placement for a building envelope, not the exact footprint but would stay within the proposed building lines. Trevor Custom Homes was before this Board previously for an area variance for lot six and part of the reason for this variance request is that the code definitions contemplate rectangular lots which cause a challenge when faced with an odd shaped lot. Ms. Cunningham stated when this was platted they decided to wait to see how the subdivision developed and what type of house would be proposed on this lot to determine if any variances would be needed to keep with the houses in the neighborhood. Ms. Cunningham introduced Steve Goebel from Trevor Custom Homes to answer any questions.

Mr. Phillips mentioned there was a letter of support to the Board from one of the neighbors.

Ms. Crane asked if there were any questions from the Board.

Ms. Reibel asked if the house is contemplated to be the entire size of the variance and asked what the square footage of the house would be. Mr. Goebel replied it is approximately thirty five hundred square feet and is two story which fits in with the neighborhood.

Mr. Falcoski asked if the yellow lines on the site plan represented the proposed setbacks and Mr. Phillips replied that is correct, and the plat shows the setbacks that were platted.

Mr. Seitz asked how far into the existing setback was being projected and Mr. Goebel relied, before the variance, they would be fifteen feet from the rear line property line.

Ms. Crane asked if there was anyone in the audience to speak for or against this proposal.

Richard Kemp, 6616 Worthington-Galena Road, stated his property butts up against the odd shaped angle of this lot and asked if the variance is approved for the five foot instead of ten feet setback, can a structure be built right up to five feet from the property line. Mr. Phillips replied that is correct.

Mr. Falcoski asked if there is an area requirement. Mr. Phillips stated there is a minimum square footage requirement of twelve hundred square feet for a dwelling, but no requirement for lot coverage.

Ms. Crane said that if this variance were approved then any future resident could add on to the structure within the approved setback.

Virginia Denbow, 6616 Worthington-Galena Road, stated her property is lot number one on the plat and if a home can be changed and built right up to these proposed setbacks then it would be a very large home with an extension right in the middle of her backyard, which concerns her.

Hal Langworthy, 6624 McBurney Place, stated his property is lot number three and they share the longest boundary line with this property. He said he shares the same concerns as Ms. Denbow, however, is more concerned about this variance not being granted and the lot not being buildable, which would have a huge impact on the neighborhood.

An unidentified man who lives next to lot number one at 6610 Worthington-Galena Road, expressed concerns that once this variance is granted there is no guarantee the home will not go all the way to the end of the lot, be two or three stories, and believes the exact size of the home should be given prior to approval. Mr. Phillips stated there is a height limitation of two and a half stories and thirty feet for the district.

Warren Hasting, 5956 Baronscourt Way, stated he is proposing to move to the property in question, they have enjoyed the area and getting to know the neighbors since their children attend Worthington Christian High School, and their intent is to build a home very much in line with what is being proposed.

Ms. Cunningham gave a couple suggestions of moving property lines here and there, but Ms. Crane stated this is not the place to design the house footprint and suggested the application be tabled so they can speak with neighbors and the get an exact design.

Mr. Seitz said he believes the Board is struggling with reducing the one property setback from ten feet to five feet then. Mr. Goebel replied by pointing out different property lines with different setback dimensions.

Mr. Phillips stated the Board may want to grant a variance to build that house, on that lot with the existing setbacks, rather than moving setback lines.

Ms. Crane stated she is not ready to approve as submitted without some restrictions and Mr. Hunter agreed saying since the applicants seem iffy on the footprint.

Ms. Cunningham asked for a recess to discuss options with her clients and the neighbors.

Motion made by Mr. Hunter to recess until 8:30 P.M., seconded by Mr. Falcoski. The Board recessed until 8:30 P.M.

Ms. Crane asked if the applicant has anything to say regarding this proposal. An unidentified man stated since the back piece is the real concern, we ask that the variance be increased to fifty feet and the other rear setback to be at ten feet.

Ms. Crane asked for thoughts from the Board or any reactions from the neighbors.

Unidentified neighbor stated the concern is still there that they have the ability to build right up to the setback line even at fifty feet, if it were moved up to sixty feet it would not infringe on the building footprint but would help the neighbors have assurance that nothing could be built in that direction.

Ms. Crane stated this is not the place to redesign this proposal, would like the applicant to have a firmer proposal including the design and footprint with the exact placement of the house, allow the neighbors a chance to review the drawings in advance before any decision is made on this matter and would like to see this matter tabled.

Mr. Falcoski asked the applicant if the intention is to move on this project now because it is seasonal or weather sensitive and if it does get tabled will it put the applicant in a bind. Mr. Goebel stated yes it is weather sensitive, it would cause the homeowner to incur winterization fees and charges for concrete foundations, and does not want to do anything that could jeopardize the quality of the home. Mr. Goebel stated if the homeowner would step forward and agree to the sixty foot and ten foot setback, he could move forward and have it ready by summer.

Ms. Crane stated this is still substantially altering the proposal and there might be people out there that may want to see this proposal's revised drawing. She stated your time table is not this Boards problem nor, the fact that the lot is such a strange shape and believes there should be a resubmission of drawings and the public informed of the changes.

Ms. Cunningham stated it is the request of the applicant that this item be tabled.

Mr. Hunter moved to table, seconded by Mr. Falcoski. The item was tabled.

Ms. Reibel moved to adjourn, seconded by Mr. Falcoski and the meeting adjourned at 8:43 P.M.