



MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

September 4, 2014

A. Call to Order – 7:30 p.m.

1. Roll Call - the following members present: D. Falcoski, L. Reibel, R. Hunter, B. Seitz and C. Crane. Also present was L. Brown, Director of Planning and Building, and D. Phillips, Chief Building Inspector.
2. Pledge of Allegiance
3. Mr. Hunter moved to approve the July 3, 2014 minutes, seconded by Mr. Falcoski and the minutes were approved
4. Affirmation/swearing in of witnesses.

B. Unfinished Business

**1. Variance - Accessory Structure Area – Garage – 123 W. North St. (Thomas R. Zack)
BZA 26-14**

Discussion:

Mr. Phillips reviewed the staff memo.

Ms. Reibel asked if the Architectural Review Board has approved this and Mr. Phillips replied it will be heard next week.

Thomas Zack, 123 West North Street, stated it should not make the house look any different and the home is on a double lot.

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

Peggy Barnum, 120 West Clearview Avenue, state her property is immediately south of this property, the existing garage will be demolished and a new one built, and she would like the tree roots or branches not be damaged. She is also concerned the garage will be closer to her property than the existing potting shed which is about eight feet from her property. Mr. Phillips replied the required rear yard setback is ten feet and that is what is proposed.

Mr. Zack said the tree that is being removed is an evergreen west of the garage and Ms. Barnum said it is old and needs removed.

Ms. Reibel asked if she was in favor and Ms. Barnum replied she is fine with it and is only concerned with a large wall coming close to her property.

Findings of fact:

1. This property is in the R-10 district where total accessory structure area is limited to 850 square feet.
2. The applicant is proposing to replace the existing detached garage with a new, 24 foot by 38 foot detached garage with storage above. The garage footprint is 912 square feet and the second floor storage above is approximately 876 square feet for a total proposed accessory structure area of approximately 1,788 square feet. The requested variance is 938 square feet.
3. The garage is subject to the approval of the Architectural Review Board.

Conclusions:

1. The property is larger than a typical lot in the district and the accessory structure area limitation does not take into account the overall size of a property. If the second floor is not used for storage or if the garage were attached, the requested variance would be 62 square feet and would not be significant. The attic area would not significantly add to the mass of the detached building and the added dormers make the attic usable for storage. These factors mitigate the substantial nature of the variance request.
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 THOMAS ZACK FOR A VARIANCE FROM CODE REQUIREMENTS FOR TOTAL ACCESSORY STRUCTURE AREA TO CONSTRUCT A GARAGE AT 123 WEST NORTH STREET, AS PER CASE NO. BZA 26-14, DRAWINGS NO. BZA 26-14 DATED JULY 11, 2014, 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. Mr. Falcoski, Mr. Hunter, Mr. Seitz, and Ms. Crane voted yes. Ms. Reibel voted no. Motion was approved.

C. Items of Public Hearing

1. Variance – Side Yard Setback – Condensing Unit – 243 Sanbridge Circle E. (Judy Spratlen) BZA 28-14

Discussion:

Mr. Phillips reviewed the staff memo.

Judy Spratlin, 243 Sanbridge Circle, said the condenser has been in this location since 1966 when her father bought the home and two of the neighbors are in the audience and that they are fine with the location.

Mr. Falcoski asked if she was aware that there are screening requirements and Mr. Phillips replied that the permit it will explain the screening requirements.

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

Trent Bowers, 234 Sanbridge Circle, stated he is directly across from the applicant and said it has never been an issue with the location.

Findings of fact:

1. This property is an existing lot of record in the R-10 district where the minimum side yard requirement is 6 feet. Building service equipment is not permitted in a required yard.
2. The existing dwelling is approximately 5.6 feet from the east property line.
3. The applicant replaced an air conditioner condenser within the east side yard. The requested variance is to allow the entire condenser within the side yard setback.

Conclusions:

1. The condenser will require screening on the front and side.
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 JUDY SPRATLEN FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW A CONDENSER TO REMAIN AT 243 SANBRIDGE CIRCLE EAST, AS PER CASE NO. BZA 28-14, DRAWINGS NO. BZA 28-14 DATED JULY 15, 2014, 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.

2. Variance – Accessory Structure Area – Garage – 178 E. New England Ave. (Robert M. Obringer) BZA 29-14

Discussion:

Mr. Phillips reviewed the staff memo.

Ms. Crane asked if this includes a second floor for the garage and Mr. Phillips replied there may be some attic storage with a pull down ladder, but no stairs. Ms. Crane said so if it has stairs it becomes a two story and Mr. Phillips replied he believes so.

Bob Obringer, 7557 Polo Lane, Powell, stated they would like the shed to remain.

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

Findings of fact:

1. This property is in the R-10 district where total accessory structure area is limited to 850 square feet.
2. The property has an existing 8 foot by 10 foot shed totaling 80 square feet.
3. The applicant is proposing to build an addition to the existing dwelling with a 25 foot by 32 foot 8 inch attached garage. The new garage area will be 816.7 square feet. The total proposed accessory structure area is 896.7 square feet. The requested variance is 46.7 square feet.

Conclusions:

1. The requested variance is not significant.
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 ROBERT OBRINGER FOR A VARIANCE FROM CODE REQUIREMENTS FOR TOTAL ACCESSORY STRUCTURE AREA TO CONSTRUCT A GARAGE AT 178 EAST NEW ENGLAND AVE, AS PER CASE NO. BZA 29-14, DRAWINGS NO. BZA 29-14 DATED AUGUST 8, 2014, 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.

3. Variance – Side Yard Setback – Fence – 5603 Indianola Ave. (ProXterior/Estep) BZA 30-14

Discussion:

Mr. Phillips reviewed the staff memo.

Ms. Crane stated they are not looking specifically at the height, but it can be part of our discussion of the location. Mr. Phillips replied that is correct, historically the Board has approved four foot tall fences in the twenty foot side yard setback when it sits back from the intersection like this property, to preserve the visual openness of the front yards.

Courtney Estep, 5603 Indianola Avenue, said she was unaware of the process and is willing to make any needed changes. She had a six foot tall installed because of her two small children. The property is a corner lot on a busy street. She would like to keep it where it is at and is willing to lower the portion in the side yard setback.

Mr. Hunter said he drove it in both directions and had no sight line issues and asked if she has spoken to the neighbors. Ms. Estep replied the neighbor to the right did call someone and complain, then the neighbor just trimmed a bush down which went out further then her fence does currently. Mr. Hunter stated this is a very small lot and very restricted and has no problem granting this variance even with the six foot tall fence sections.

Mr. Brown stated one of the staff's concerns is with the cedar fence when driving on Loveman Avenue, the six foot cedar fence gives a visual barrier where a four foot fence would not. Ms. Crane stated she could not support a six foot tall fence in this area. Ms. Estep stated she has no problem shortening the fence to four foot. Mr. Hunter stated if the fence company did come before the board prior to installation of the fence this is what the Board would have been telling them.

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

Findings of fact:

1. This property is in the R-10 district where the front yard setback requirement is 30 feet. Corner lots are permitted to reduce the adjacent setback to 20 feet. Fencing is not permitted between the right-of-way and the building setback line. Fencing cannot exceed 6 feet in height.
2. The applicant erected 30 lineal feet of a 6 foot tall vinyl fence with approximately 8 inch post caps outside a side door of the dwelling, most of which is in the 20 foot side yard setback. The requested variance is to allow approximately 24 lineal feet of fence to remain within the 20 foot side yard with an 8 inch post cap.
3. The applicant erected 98 lineal feet of a 6 foot tall cedar fence along the west property line and the north right of way line. The requested variance is to allow 49 lineal feet of fence to remain within the 20 foot side yard.

4. Lastly, the applicant erected 34 lineal feet of cedar fencing varying from 6 feet in height to 4 feet tall from the right of way line towards the dwelling. The requested variance is to allow 20 lineal feet of fence to remain.

Conclusions:

1. Corner lots are challenged by additional setback requirements. The fencing is a substantial distance from the Indianola Avenue and Loveman Avenue intersection and should not cause intersection sight distance issues.
2. The vinyl fencing near the dwelling side door is not as visually intrusive as other fencing within the setback since it seems to be part of the dwelling. The 8 inch tall post cap variance request is not substantial.
3. Corner lots tend to have smaller rear outdoor spaces and enclosing some of the 20 foot side yard to protect younger children seems reasonable. A 4 foot tall fence should be able to offer that protection. The 49 lineal feet of 6 foot tall cedar fencing can be cut down to 4 foot to reduce the visual impact when traveling along Loveman Avenue.
4. The delivery of governmental services should not be affected.
5. Staff prepared 2 sample motions for the Board's consideration.

Mr. Seitz moved:

THAT THE REQUEST BY MIKALE CONLEY & COURTNEY ESTEP FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW SIX FOOT VINYL FENCING WITH POST CAPS, AND FOUR FOOT CEDAR FENCING TO REMAIN AT 5603 INDIANOLA AVENUE, AS PER CASE NO. BZA 30-14, DRAWINGS NO. BZA 30-14 DATED AUGUST 11, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

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

4. Temporary Use Permit – Food Truck – 923 High St. (Schmidt's/Sprint Lube) BZA 31-14

Discussion:

Mr. Phillips reviewed the staff memo.

Mr. Brown read into the record the letter received from the manager of Dairy Queen as follows;

"Distinguished Members of the Board,

As I have had time to reflect on the issue of the Schmidt's Food Truck and my earlier remarks, I cannot help but feel at least a little embarrassed for allowing my fears to get the better of me in this situation. Specifically the fear of how having the Schmidt's Truck in its current location might negatively affect my business. And those negative thoughts make it very easy to come up with reasons why I should oppose this request. But as both a resident and business owner in Worthington, I have to look at these situations from both perspectives before choosing what I believe is best.

As a resident, my first thoughts should be in regards to what the community wants or needs. It is quite evident by the number of customers visiting the food truck that this is something the community is in favor of keeping and as a resident what it good for the community is ultimately good for me.

As a business owner, I have the power to make or break my business; the Schmidt's food truck does not. I believe I forgot that when this issue first arose. My focus should be on growing my business and finding new ways to do that - and the best thing I can do for my business is support the community in which it operates. I am in favor of allowing the Schmidt's Food Truck to operate in its current capacity through the end of the year. Thank you for your time in considering my comments in this matter.

Sincerely, Ron Overstreet.”

Mr. Brown also read into the record the letter from the Olde Worthington Business Association as follows:

“The decision before the Board of Zoning Appeals tonight is one that will set the stage for city policy on food trucks in Worthington. The Old Worthington Business Association endorses recommendations proposed by the National League of Cities in their report, *Food on Wheels: Mobile Vending Goes Mainstream*.

1. Hold Town Hall Forums and Private Meetings with Core Stakeholders.
2. Encourage Dialogue and the Building of Relationships Among Competing Stakeholders.
3. Implement Pilot Programs to Determine What Regulations to Adopt.
4. Use Targeted Practices as a Way to Address Underserved Areas of the City.
5. Identify Private Vacant Lots and Create Partnerships for Mobile Vendors to Gather and Vend in the Same Location.

If the permit renewal is issued, we recommend that the community be asked for feedback to the BZA through existing channels, such as Anne Brown's e-mail to residents and a request that OWBA provide feedback from our merchants.

As such, the Old Worthington Business Association recommends that a policy be established by the City of Worthington only in cooperation with organizations such as ours. We welcome the opportunity to share our thoughts on food trucks within our community.

Sincerely, Jaime Moore Executive Director”

Ms. Crane stated currently our policy does not allow food trucks and Mr. Brown stated that is correct, but City staff has been reviewing this situation using the ninety day test to get feedback from residents and businesses, then they are questioning whether or not to allow food trucks, if so how many to allow, for how long, and whether to amend the zoning code.

Mr. Falcowski if this motion is passed, how do we comply with what Jaime Moore is asking for with the community to be asked for feedback and then given to the Board of Zoning Appeals. Mr. Phillips replied that is a policy decision and tonight this Board is not setting policy.

CJ Swan, 923 High Street, stated that Andy Schmidt suggested the truck be moved away from the corner and away from the street for safety reason. They had a lot of feedback and disappointment with the truck no longer being there. She said they do not desire Schmidt's to be at their site more than one day per week or past Thanksgiving.

Brett Holland, 135 West Clearview Avenue stated this is an important decision even though you are not setting policy you could be setting a precedent for the future. He complimented both Sprint Lube and Schmidt's on their service he then read a letter from Subway as follows:

"To whom it may concern,

On behalf of our Subway Sandwiches location at 905 N. High Street, I would once again like to voice my concern in writing on any potential renewal plans for the Schmidt's mobile food truck. We are concerned for a couple of reasons. First and foremost, we are concerned by the potentially negative impact the truck could have on our sales, thereby hurting our business. Of course there are several factors and variables that come about while analyzing sales data, but over the past 8 weeks our sales have been down 8%. Another concern we have is the general appearance of the truck's presence affecting the neighborhood. Worthington is a respectable suburb who has taken pains not to allow neon signage in businesses for the sake of appearance. The CVS across the street is set apart from other CVS stores with its refined brick facade and upscale architecture. The Schmidt's truck does not seem a reasonable fit to the nice family neighborhood around it, but rather something that belongs at a community festival. Thank you for your time and consideration.

Sincerely, Bob Gierhart Director of Operations"

Mr. Holland stated he spoke to the owner of Candle Lab who is also in favor of food trucks, but only for a short time in select areas. Mr. Holland quoted from the Minutes of the May 1, 2014 and the staff memo dated May 1, 2014 and stated it passed in the voting 3 yes to 2 no. The criteria for the eighteen Columbus locations was it had to be in underserved areas and that there is nowhere in Worthington that is underserved on High Street, and suggested the item be tabled.

Mr. Hunter stated this was done as a test and now should be back to the policy makers of the City for review.

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

Alan Edinger, 240 East Kossuth Street, Columbus, stated they do pay income tax to Worthington and said most people that come to the truck are walking and not drive by traffic. He also believes that once a week the residents would like the option to eat a high quality product without having to travel a long distance.

Andy Tilton, 580 Hartford Street, stated as a resident and business owner that the permanency of this business should be considered compared to the brick and mortar businesses that have made an investment in this community.

Ms. Reibel stated she has great respect for all the businesses in Worthington and does not believe Schmidt's is a direct competitor of fine dining establishments, has only heard positive responses about the food truck, believes permitting one food truck will not mandate the City accepting all food trucks that apply, and supports the truck staying there for another couple months.

Mr. Seitz stated even though he has a percentage of ownership in the business House Wine since the Board is not setting policy he does not feel he must recuse himself from this vote.

Findings of fact:

1. This property is in the C-4 district where restaurants are a permitted use. Temporary signs, including menu boards, are not permitted in this district.
2. A restaurant is defined as: "a place located in a permanent building wherein food and beverages are sold to the general public to be primarily consumed within the building and is the principal business of the place; this meaning excludes drugstores, confectionery stores, lunch stands and gasoline service stations."
3. Fast food restaurants are further defined as "those establishments which dispense food from counter-type operations to be consumed on or off the premises away from the counter and are recognized as fast food operations because of high turnover of customers."
4. A Food Truck would not be a permitted or conditional use in any zoning district within the City of Worthington.
5. The applicant is proposing a renewal of the Temporary Use Permit to operate a Food Truck on this property next to the existing building, on Tuesdays, with a trash container to be removed at the end of the shift.
6. The applicant's proposed hours of operations are from 4:00 PM to 8:00 PM.
7. The duration for this request is from September 2 through December 30, 2014.

8. The Temporary Use Permit was previously granted by the Board from May 6, 2014 to August 5, 2014, with conditions. Staff issued a Temporary Use Permit for August 5 and 12 with the same conditions. The food truck's new location on the site is in response to queuing blocking the sidewalk along High Street.
9. In addition to the 2 food service owners adjacent to this property previously objecting to this use, staff has heard from another food service business in the central business district objecting to this use. In front of you is one of those businesses which objects and a letter from the Old Worthington Business Association.
10. Staff has received numerous positive inquiries from the general public.

Conclusions:

1. Previous staff discussions with property owner CJ Swan indicated a maximum of 5 vehicles are expected at any one time.
2. Staff was previously concerned with northbound traffic attempting to turn into the property especially during peak traffic periods of 4 PM to 6 PM. Onsite parking, stacking, and maneuvering were also a concern if the number of vehicles exceeded 5 while Sprint Lube was in operation. Staff received no reports of northbound High Street traffic being blocked nor onsite parking, stacking, or maneuvering issues.
3. Staff was previously concerned about food, grease, trash, and general litter in the parking lot, grass areas, the public sidewalk, and the neighboring properties not being cleaned daily. Staff received no complaints about such food, grease, trash, or general litter.
4. A Food Truck for a special event would seem reasonable but would seem out of place in most parts of the City.
5. Temporary Use Permits are revocable.

Mr. Falcoski moved:

THAT THE REQUEST BY ANDY SCHMIDT, CJ SWAN, AND WSL LLC FOR A TEMPORARY USE PERMIT TO ALLOW THE OPERATION OF A FOOD TRUCK ON TUESDAY EVENINGS FROM SEPTEMBER 9, 2014 TO DECEMBER 30, 2014, FROM 4:00 PM TO 8:00 PM, AT 923 HIGH STREET, AS PER CASE NO. BZA 31-14, DRAWINGS NO. BZA 31-14 DATED AUGUST 12, 2014, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING AND WITH THE FOLLOWING CONDITIONS:

1. **MAINTAIN ALL REQUIRED PERMITS AND LICENSES REQUIRED BY OTHER ORDINANCES, STATUTES, AND/OR REGULATIONS.**
2. **KEEP THE SITE, INCLUDING THE ADJACENT RIGHT OF WAY CLEAN AND SANITARY AT ALL TIMES.**
3. **NO TEMPORARY SIGNAGE PERMITTED.**

Mr. Seitz seconded the motion. Mr. Falcoski, Mr. Hunter, and Ms. Crane voted no. Ms. Reibel and Mr. Seitz voted yes. The permit extension was denied.

Mr. Hunter moved to adjourn, seconded by Mr. Seitz and the meeting adjourned at 9:23 PM.