

MINUTES OF THE REGULAR MEETING
OF THE
WORTHINGTON BOARD OF ZONING APPEALS
MARCH 4, 2010

The regular meeting of the Worthington Board of Zoning Appeals was called to order at 7:30 P.M. with the following members present: R. Hunter, R. Dorothy, L. Reibel, and D. Falcoski. Also present was D. Phillips, Chief Building Inspector.

Those present recited the Pledge of Allegiance.

Mr. Falcoski told the Board that two Board members were appointed. Mr. Phillips administered the oath of office to Ms. Reibel and Ms. Dorothy.

Mr. Falcoski asked the Board members if they had reviewed the minutes of the December 3, 2009 and if so do they have any corrections, deletions, additions or motion for approval of the same. Mr. Hunter moved and Ms. Dorothy seconded for approval of the minutes. All members voted "aye" and the minutes were approved.

Mr. Falcoski asked for nominations for the officers of the board. Ms. Reibel moved and Mr. Hunter seconded, Mr. Falcoski to be chair, Ms. Crane to be vice-chair, and Ms. Dorothy to be secretary. All members voted "aye" thereon.

Mr. Phillips swore in the witnesses prepared to comment at tonight's meeting.

AGENDA ITEM B-1 – Front Yard Setback – Porch – 1 Hartford Court (Blair Davis)
BZA 01-10

Mr. Falcoski asked for Staff comments.

Mr. Phillips said this property is on a corner lot where the front yard setback is reduced to 20 feet for the adjacent yard. The applicant is proposing a front porch addition encroaching into the 20 foot setback. The encroachment will be approximately three feet with a maximum of 12 inches of architectural projections. Mr. Davis advised the projection will be approximately six inches. Mr. Phillips presented photographs to the Board. The house faces Hartford Avenue but is addressed on Hartford Court.

Mr. Hunter said the addition was approved by the Architectural Review Board.

Mr. Falcoski asked Mr. Davis to address the Board.

Blair Davis, 1 Hartford Court addressed the Board and said he has lived in the house for 35 years, has always enjoyed sitting on his stoop which almost holds a chair. Mr. Davis wants to make the porch addition deep enough for chairs, which encroaches three feet into the setback.

Mr. Falcoski asked if a five foot porch would meet his needs. Mr. Davis replied the more shallow depth would not allow seating and circulation on the porch.

Mr. Falcoski asked Mr. Hunter if this request was pretty common for these smaller, older lots. Mr. Hunter replied it is for this neighborhood and Colonial Hills. He is a proponent of what is called a Traditional Neighborhood Development that encourages porches and fronts creating a pedestrianscape.

Mr. Davis said that some front porches later become enclosed and he has no desire to enclose this porch. He wants to be able to sit outside with friends. Mr. Hunter said some of these enclosures are being removed as people want to open up their porches.

Mr. Falcoski asked if Mr. Davis' neighbors have similar porches. Mr. Davis replied there is a small porch on the house behind him. There is a similar porch addition recently constructed on the house across Hartford Street and to the north. Mr. Hunter confirmed this porch and stated there are several along Hartford Street. Mr. Davis stated there is a similar porch on East North Street with the gable front that was used as the basis of this design. Mr. Hunter pointed out the Auditor's map indicates the front porch on Hartford Street to the north of this property extends even further into the front yard setback. He stated there are similar porches into the front setback along Hartford Street and Stafford Avenue.

Mr. Falcoski asked if there was anyone in the audience that wished to speak for or against this variance request.

There being no further comments, Mr. Hunter moved:

THAT THE REQUEST BY BLAIR DAVIS FOR A VARIANCE FROM CODE REQUIREMENTS FOR FRONT YARD SETBACK TO CONSTRUCT A PORCH AT 1 HARTFORD COURT, AS PER CASE NO. BZA 01-10, DRAWING NO. BZA 01-10 DATED FEBRUARY 1, 2010, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Ms. Reibel seconded the motion and all members voted "aye" thereon. The motion carried.

AGENDA ITEM B-2 – Variance – Rear Yard Setback – Fence at Alley Right-of-Way – 5508 Emerson Avenue (Charles Glanz) BZA 02-10

Mr. Falcoski asked for Staff comments.

Mr. Phillips said this property is in an R-10 district and fences cannot be erected between the building line and the right-of-way line. The property has both a front right-of-way on Emerson and a rear right-of-way at an alley so a fence cannot be erected in the 30 foot rear yard setback. Additionally, the supporting members of fences must not be visible from adjoining properties. The fence was reportedly erected approximately four years ago and was recently discovered. Mr. Glanz was asked to apply for a fence permit, he did, and upon review of the plan, it was determined a variance for rear yard setback would be required. When staff photographed the property for tonight's hearing, the supporting member issue was discovered. Mr. Phillips displayed photographs of the neighborhood, the existing fence, the commercial parking lot that uses the alley for access out, the commercial buildings along North High Street, and the vegetation between the alley and the commercial buildings. Mr. Phillips pointed out the north portion of the fence, if erected by the neighbor to the north, would not require a supporting members variance.

Mr. Falcoski asked if the alley were not there, would Mr. Glanz require a setback variance. Mr. Phillips replied a variance would not be required. Mr. Falcoski asked if the alley was not there, only the issue of the visible supporting members would require a variance and Mr. Phillips replied that is correct. Mr. Falcoski asked if the applicant is asking for two variances and Mr. Phillips replied that is correct.

Mr. Phillips advised the Board there are two motions prepared for their use, depending on the pleasure of the Board. One motion is granting both variances, and the second to grant only a setback variance. The Board can decide to grant all or part of any of the variances being sought.

Mr. Falcoski stated if the fence were built in the style known as the "good neighbor design" where the fence appeared the same on both sides, it would not require a variance for the supporting members. Mr. Phillips replied that was correct. Mr. Hunter clarified the code requires the supporting members to be inside and not outside of the fenced in area.

Mr. Falcoski asked the applicant to address the Board.

Mr. Charles Glanz, 5508 Emerson Avenue, stated he did not know he needed a permit to erect the fence. He said he spoke to his neighbor about the supports being on her side, she plans to extend the fence along the east side of her property along the alley, and she is very happy with the fence.

Mr. Falcoski asked if there was a fence on the property before he erected the new fence. Mr. Glanz replied there was an old chain link fence and the extreme northeast post was left in place and used for the new fence. Mr. Glanz capped the metal post with wood.

Mr. Falcoski asked how the City became aware of the fence. Mr. Phillips replied a neighbor expressed a concern about material stored on the property and the Building Inspector discovered the fence. Mr. Glanz said when the material was removed, he was

advised about securing a fence permit. Mr. Glanz said he is responsible for the fence and is willing do whatever the Board desires.

Mr. Falcoski asked what materials is the fence made from and Mr. Glanz replied treated lumber stained with two coats of redwood cedar. Mr. Falcoski asked how many times has he stained the fence and Mr. Glanz replied twice.

Mr. Falcoski stated it indicates the fence is being maintained. Mr. Glanz stated he did not know he needed a permit, his neighbor was happy to have a fence along that side, and he replaced the old and rusted fence. The fence along the front of the house has a gate and the supporting members are on the correct side. He has been trying to make his house live up to the quality and beauty that Worthington offers. He does not make a lot of money so he does a lot of the work himself and is trying to make the best home he can make. He is grateful to be able to address the Board.

Mr. Hunter stated the house has had a lot work done to it and looks really nice. The front porch is a perfect example of Traditional Neighborhood Development where people can sit outside on the front and enjoy the neighborhood. Mr. Hunter has no problem with the setback. The property abuts an alley and commercial property, and this Board has granted similar variances in the past. The supporting members not being visible is a code requirement. He can think of one example along Hartford opposite to an exit of a bank parking lot where the supporting members were installed on the outside and approved by this Board. In this case, since the neighbor has the benefit of the fence and if she had built it first, the applicant would be looking at fence as it is now. He said the back alley is different. He cannot think of any other property where the Board has approved something like this.

Mr. Phillips recalled the old Bird Song house that was moved approximately five or six years ago that had a seven foot fence facing commercial property, but could not recall if the owner was required to make it a good neighbor design or allowed to keep the supporting members facing the commercial property.

Mr. Glanz said the fence faced a long of pine trees and the back of Firestone and faced the boards to his property to give himself a better looking fence.

Mr. Hunter asked if the setback variance was approved but not the supporting members, how difficult would it be to pull and re-nail the fence. Mr. Glanz replied it would all have to be torn down since they are a unit mounted to each post, however, if the north fence be approved, the east side can be modified with a lot less work to correct the board to face the alley. Mr. Glanz further stated the neighbor to the north had expressed an interest in continuing the fence on her property along the alley in the future.

Mr. Hunter stated all communication with this neighbor thus far is hearsay and the Board really cannot consider that information. Mr. Phillips confirmed he had no contact with the neighbor. Mr. Hunter observed since no one is present it must not be an issue for the neighbors. Typically, if there is an issue, the neighbors attend the meeting or submit a

written statement. Mr. Phillips stated the fence was erected approximately four years ago.

Mr. Hunter asked what the statute of limitation is for a case such as this. Mr. Phillips replied it is his understanding, and he is not an attorney nor represent the Law Director, that the statute of limitation for misdemeanor offenses is two years. Mr. Hunter remarked this fence is outside the statute of limitation and asked if the Board has authority to grant a variance. Mr. Phillips stated the Board has authority to grant a variance since the applicant made an application. Mr. Phillips continued to say if the variances are denied, he did not think he could pursue the violation.

Mr. Falcoski remarked that applicant can keep the fence even if the variance is denied. Mr. Glanz stated he wishes to do what the Board decides and he wants to do the right thing.

Ms. Reibel observed the neighbors must be fine with the fence otherwise they would be at this hearing. Mr. Glanz replied all his neighbors love him. Mr. Hunter stated that the applicant has done a wonderful job with his property and is a good neighbor. Mr. Glanz stated he takes pride in his home.

Ms. Reibel stated the house is very nice and does he has a La Crosse player in his home. Mr. Glanz stated he has two La Crosse players and is hopeful his son will be joining the Worthington Division of Fire when he completes his training in Delaware.

Ms. Dorothy asked if the neighbor to the north erects her fence along the alley, would it have to match Mr. Glanz's fence or be required to have the supporting members face her property. Mr. Falcoski replied if she followed the code, her fence must have the board face the alley and the supporting members face her house. Mr. Phillips added that is correct unless she were granted a variance from this Board. If she were building a fence in the setback, should would have to appear before the Board for the setback variance and could ask for a variance for the supporting members at that time.

Mr. Glanz can give his neighbor this information now that he knows what is required. It is something they have discussed but does not think she has decided anything. He has known her for about five years since he used to live across the street for about 18 months before buying the house.

Mr. Falcoski stated he has no doubt Mr. Glanz was not aware he needed a variance and the fence should be of a certain design. If the fence were not erected, he would have no problem granting a variance for the setback if he were to propose a good neighbor design. He did a good job with the materials and maintenance. He feels he is a good man taking pride in his property.

Mr. Hunter would like to approve the north portion of the fence with supporting members facing north but not grant the variance for the supporting members facing the alley. Ms. Dorothy agreed the supporting members facing the alley should not be approved, even if

the City cannot force compliance. Mr. Hunter stated the fence is grandfathered since it is beyond the statute of limitations but the Board should only approved the supporting members variance for the north portion of the fence and not the east portion of the fence.

With no other discussion, Mr. Hunter moved:

THAT THE REQUEST BY CHARLES GLANZ FOR A VARIANCE FROM CODE REQUIREMENTS FOR REAR YARD SETBACK AND VISIBILITY OF SUPPORTING MEMBERS TO ALLOW A FENCE TO REMAIN AT 5508 EMERSON AVENUE, AS PER CASE NO. BZA 02-10, DRAWING NO. BZA 02-10 DATED FEBRUARY 5, 2010, BE APPROVED, WITH THE FOLLOWING CHANGE; THAT THE SUPPORT MEMBERS OF THE NORTH FENCE CAN REMAIN BUT THE EAST SEGMENT BE ALTERED TO COMPLY WITH THE CODE REQUIREMENTS FOR THE SUPPORT MEMBERS, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Ms. Dorothy seconded the motion and all members voted “aye” thereon. The motion carried.

Mr. Falcoski asked if the applicant had any questions. Mr. Glanz replied that he understands he is grandfathered. Mr. Falcoski stated the Board is asking him to change the portion of the fence facing the alley. Mr. Glanz stated he has two sections that must be changed. Mr. Falcoski stated that the applicant is a stand up gentleman for making application, the Board is asking him to make a small change to his fence, and if he does not, there is nothing the City can do.

Mr. Hunter moved that the meeting be adjourned, which was seconded by Ms. Dorothy. The meeting adjourned at 7:55 P.M.