



MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

October 6, 2016

A. Call to Order – 7:00 p.m.

1. Roll Call - the following members were present: M. Coulter; B. Seitz; and L. Reibel. Also present was D. Phillips, Chief Building Inspector.
2. Pledge of Allegiance
3. Approval of minutes of September 9, 2016 meeting. Mr. Seitz moved to approve the minutes, seconded by Mr. Coulter. All Board members voted “aye”.
4. Affirmation/swearing in of witnesses.

B. Items of Public Hearing

1. Variance – Side Yard Setback – Fence – 335 Loveman Ave. (Jordan Graham) BZA 49-16

Mr. Phillips reviewed the staff memo.

Findings of fact:

1. This property is an existing lot of record in the R-10 district where the minimum front yard requirement is 30 feet. Corner lots are permitted to reduce the adjacent yard to 20 feet. Fencing is not permitted between the right-of-way line and the building setback line. Fencing within 10 feet of the right-of-way cannot exceed a height of 2 feet 6 inches above the street grade.
2. The applicant has erected a 5 feet 11 inch tall fence along approximately 63 feet of the Greenwich Street right of way. The requested setback variance is 20 feet.
3. Assuming the grade from Greenwich Street is relatively flat with a 6 inch curb, the fence is approximately 77 inches above the Greenwich Street grade. The requested variance is approximately 47 inches.

The following conclusions are presented:

1. The property is on a corner with additional setback requirements not typically required on other properties in the district, creating a practical difficulty. In this particular case, the property is much more narrow than typically found in the district, which reduces in half the amount of rear yard that can be fenced. These factors mitigate the substantial nature of the setback variance request.

2. The purpose of preserving intersection sight lines is to allow vehicle drivers to see vehicles, pedestrians, bicyclists, and other users of roads and sidewalks well before reaching an intersection. The fence should not impact the sight lines at the Loveman Avenue and Greenwich Street intersection since it is set back far to the south of the intersection. These factors mitigate the substantial nature of the fence height variance request.
3. The essential character of the neighborhood should not be altered.
4. The delivery of governmental services should not be affected.

Discussion:

Jordan Graham, 335 Loveman Avenue, said that he has a newborn daughter, two dogs, there is an elementary school down the street, and the street is also crowded and busy with traffic. He would like to construct a fence for safety reasons to keep his daughter and their dogs within the yard. The contractor told him that he had applied for the necessary fence permit, but he found out that was not true. He discussed building the fence with his neighbors ahead of time with the height, material, and style of his fence matches that of the neighbors. He said he was not aware of a setback requirement. When he moved in this house, it was the only house that did not have a fence.

Mr. Coulter said that he did not have an issue with the fence height because the fence sits back quite a bit on the property, the fence also matches the style of the neighbor's fence, and does not appear to cause any sight lines issue.

Mr. Seitz said that he agreed with Mr. Coulter.

Ms. Reibel said that the other three houses on the corner do not have fences. Mr. Coulter stated one house does not sit on the corner, and another house is located within the middle of the block.

Ms. Reibel asked if there was anyone to speak either for or against this application.

Motion:

Mr. Coulter moved:

THAT THE REQUEST BY JORDAN GRAHAM FOR A VARIANCE FROM CODE REQUIREMENTS FOR SETBACKS AND FENCE HEIGHT TO CONSTRUCT A FENCE AT 335 LOVEMAN AVENUE, AS PER CASE NO. BZA 49-16, DRAWINGS NO. BZA 49-16 DATED AUGUST 22, 2016 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. Coulter and Mr. Seitz voted “aye” and Ms. Reibel voted no and the motion failed. Mr. Coulter asked if Ms. Reibel was staying with her no vote and deny the application. Ms. Reibel moved to reconsider the vote, seconded by Mr. Coulter, all members voted “aye”, and the motion to reconsider was approved. Mr. Seitz moved to table the application, seconded by Mr. Coulter. All members voted “aye” and the application was tabled.

2. Variance – Front & Side Yard Setbacks – Front Porch; Fence & Screened Porch – 59 W. New England Ave. (Richard K. Stovall) BZA 50-16

Mr. Phillips reviewed the staff memo:

Findings of fact:

1. This property is an existing lot of record in an R-10 district with a front yard setback of 30 feet. Corner lots are permitted to reduce the adjacent setback to 20 feet. Fencing is not permitted between the right-of-way line and the building setback line. Fencing within 10 feet of the right-of-way cannot exceed a height of 2 feet 6 inches above the street grade.
2. The West New England Avenue and Oxford Street rights-of-way are 66 feet wide.
3. The existing dwelling is within the 30 foot front setback, is approximately 20 feet from the West New England Avenue right-of-way, within the 20 foot side yard setback, and is approximately 15 feet from the Oxford Street right-of-way.
4. Variances were granted on November 1, 2012 to construct a 4 foot 9 inch by approximately 6 foot wide roofed front stoop, and a 12 foot by 22 foot roof over a patio at the rear of the house. Those additions were not constructed.
5. Variances were granted on May 2, 2013 to construct a 13 foot 6 inch by 34 feet 6 inch rear deck with a 4 foot by 12 foot canopy over the rear door. This deck and canopy were constructed.
6. The applicant is proposing to construct a 6 foot by 9 foot roofed front stoop within the 30 foot front yard setback. The requested variance is to allow the entire stoop and roof within the front yard setback.
7. The applicant is also proposing to construct a screened room over the existing deck, approximately 15 feet from the Oxford Street right-of-way. The requested variance is 5 feet.
8. Lastly, the applicant is proposing erecting a 3 foot 7 inch tall, open picket fence along the Oxford Street right-of-way. The requested setback variance is 20 feet.

9. Assuming the grade from Oxford Street ascends approximately 12 inches above the street grade at the right-of-way, the proposed fence is approximately 44 inches above the Oxford Street grade. The requested variance is approximately 14 inches for fence height.
10. The property is subject to, and the additions have been approved as noted by, the Architectural Review Board.

The following conclusions are presented:

1. The proposed roofed front stoop is not substantially larger than previously approved and the requested additional variance is not substantial.
2. The property is on a corner with additional setback requirements not typically required on other properties in the district, creating a practical difficulty. In this particular case the typical challenges are compounded with wider than the normal 50 foot rights-of-way, encroaching upon the property 8 feet more than other similar properties in Worthington. The side yard variance request for the screened porch is not substantially larger than the previously approved roof over the patio, and is further mitigated by the extra wide right-of-way.
3. The same factors mitigate the substantial nature of the requested side yard variance for the fence. In addition to the extra 8 feet of right of way, the fence is not very tall and is an open style.
4. The purpose of preserving intersection sight lines is to allow vehicle drivers to see vehicles, pedestrians, bicyclists, and other users of roads and sidewalks well before reaching an intersection. The fence should not impact the sight lines at the Oxford Street and West New England Avenue intersection since it is set back far to the south of the intersection. These factors mitigate the substantial nature of the fence height variance request.
5. The essential character of the neighborhood should not be substantially altered.
6. The delivery of governmental services should not be affected.

Discussion:

Richard Stovall, 59 West New England Avenue, said that he moved into the house on August 30 and was aware of the previous Architectural Review Board and Board of Zoning Appeals approvals from 2012. He said that the deck that was approved and built in 2013 extends further into the setback on Oxford St. Mr. Coulter said that the Architectural Review Board was pleased when they discussed that the fence would match that of the Historical Society and is appropriate for the time period of the house.

Ms. Reibel asked if there was anyone to speak for or against this application.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY RICHARD STOVALL FOR A VARIANCE FROM CODE REQUIREMENTS FOR FRONT AND SIDE YARD SETBACK TO CONSTRUCT A FRONT PORCH, SCREENED PORCH, AND FENCE AT 59 WEST NEW ENGLAND AVENUE, AS PER CASE NO. BZA 50-16, DRAWINGS NO. BZA 50-16 DATED SEPTEMBER 9, 2016 BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Coulter seconded the motion. All Board members voted “aye” and the motion was approved.

3. Variance – Front Yard Setback – Fence – 5732 Hartford St. (Marie Charvat) BZA 51-16

Mr. Phillips reviewed the staff memo:

Findings of fact:

1. This property is an existing lot of record in the R-10 district where the minimum front yard requirement is 30 feet. Fencing is not permitted between the right-of-way line and the building setback line.
2. The applicant is proposing to replace the existing fence with a 3 foot tall wooden fence with a 6 foot tall post that will have a light fixture at the top, approximately 24 feet from the Hartford Street right-of-way. The requested variance is 6 feet.

The following conclusions are presented:

1. The fence is existing and may have been erected around the same time the house was constructed, perhaps in 1951. Given the steep grade of the front yard, the fence does provide protection, as well as an element of privacy, to the users of the front patio. These factors mitigates 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.

Discussion:

Mr. Coulter asked if the applicant is replacing the existing fence and Marie Charvat, 5732 Hartford Street replied yes. She said her friend handmade the pickets to match exactly what is there now. The fence has rotted and needs to be replaced.

Ms. Reibel asked if there was anyone to speak either for or against this application.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY MARIE CHARVAT FOR A VARIANCE FROM CODE REQUIREMENTS FOR FRONT YARD SETBACK TO ERECT A FENCE AT 5732 HARTFORD STREET, AS PER CASE NO. BZA 51-16, DRAWINGS NO. BZA 51-16 DATED SEPTEMBER 12, 2016 BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Coulter seconded the motion. All Board members voted “aye” and the motion was approved.

**4. Variance – Freestanding Sign – 893-905 High St. (Ed Mershad/Worthington Center)
BZA 52-16**

Mr. Phillips reviewed the staff memo:

Findings of fact:

1. This property is in the C-1 district where signs are limited to 2 styles of lettering plus 1 logo, and 3 sizes of lettering including the logo.
2. The freestanding sign is mostly legally non-conforming and the graphics portion of the sign were granted variances on December 7, 2000 to allow its reconstruction after the sign was damaged by a fire. The approved sign included 6 tenant panels but did not allow for more styles of lettering or number of sizes than permitted by the zoning code.
3. The applicant is proposing to make many exterior changes to the site including the updating of the freestanding sign that would allow the various tenants to having matching lettering styles corresponding to their wall mounted sign. The applicant is asking for 5 different styles. The requested variance is 2 additional styles.

4. The property is subject to, and the Architectural Review Board has approved each tenant to have a lettering style, a logo, and 2 lettering sizes.
5. If each of the 6 tenants were permitted a style, a logo, and 2 lettering sizes, the number of styles could be 6 styles plus 6 logos. Assuming some of the tenants will share lettering sizes, 6 sizes of lettering would seem reasonable. The variances for this scenario is 4 additional styles, 5 additional logos, and 3 additional sizes. Staff prepared an alternate motion for consideration.

The following conclusions are presented:

1. The Architectural Review Board recognized the need for matching letting styles and logos on the freestanding sign to be similar to those on the building, which is very similar to the 2 freestanding signs at the Shops of Worthington Place. To accomplish this, staff prepared an alternate motion that allows the Board to consider additional variances to reach this goal.
2. The essential character of the neighborhood should not be substantially altered.
3. The delivery of governmental services should not be affected.

Discussion:

Mr. Coulter said that he was not sure if the sign that was presented this evening was the same sign that was originally approved by the Architectural Review Board. If the sign is different, then Mr. Mershad may need to go back to that Board for approval. Mr. Phillips replied the Board of Zoning Appeals is only hearing the variance request and does not have the authority to approve the design of the sign. Mr. Mershad said that he showed the concept of the sign at the Architectural Review Board meeting and briefly discussed what the sign would look like.

Mr. Seitz asked if there were any plans to divide the building up into more spaces and Mr. Mershad replied no, there are only six store fronts and the building will remain that way.

Mr. Coulter said that the Architectural Review Board was very pleased with the investment of improvements to the building.

Ms. Reibel asked if there was anyone to speak for or against this application.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY ED MERSHAD AND WORTHINGTON CENTER LLC FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIGNAGE TO ALLOW 6 LETTERING STYLES, 6 LOGOS, AND 6 LETTERING SIZES AT 893-905 HIGH STREET, AS PER CASE NO. BZA 52-16, DRAWINGS NO. BZA 52-16 DATED SEPTEMBER 12, 2016 BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Coulter seconded the motion. All Board members voted “aye” and the motion was approved.

5. Variance – Side Yard Setback – Addition – 293 Franklin Ave. (Steve Kolwicz) BZA 53-16

Mr. Phillips reviewed the staff memo:

Findings of fact:

1. This property is an existing lot of record in the R-10 district where the minimum front yard requirement is 30 feet. Corner lots are permitted to reduce the adjacent yard to 20 feet. The minimum side yard requirement is 6 feet.
2. The existing dwelling is 10 feet 9½ inches from the Pingree Drive right-of-way, and 5 feet from the west property line.
3. The applicant is proposing to construct an addition and rear porch by extending it from the existing dwelling. The addition and porch would be 10 feet 9½ inches from the Pingree Drive right-of-way, a requested variance of 9 feet 2½ inches. The addition is also proposed to be 5 feet 4 inches from the west property line, a requested variance of 8 inches.

The following conclusions are presented:

4. The property is on a corner with additional setback requirements not typically required on other properties in the district, creating a practical difficulty. In this particular case, the property is very narrow, the existing dwelling is in both side yard setbacks, and the proposed addition will not extend farther into these setbacks than the existing dwelling. These factors mitigates the substantial nature of the variance request.
5. The essential character of the neighborhood should not be substantially altered.
6. The delivery of governmental services should not be affected.

Discussion:

Steve Kolwicz, 293 Franklin Avenue, was present for questions.

Motion:

Mr. Coulter moved:

THAT THE REQUEST BY STEVE KOLWICZ FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO CONSTRUCT AN ADDITION AT 293 FRANKLIN AVENUE, AS PER CASE NO. BZA 53-16, DRAWINGS NO. BZA 53-16 DATED SEPTEMBER 12, 2016 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. All Board members voted “aye” and the motion was approved.

C. Other

There was no other business.

D. Adjournment

Mr. Seitz moved to adjourn, seconded by Mr. Coulter. The meeting adjourned at 7:43 p.m.