



MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

November 1, 2018

A. Call to Order – 7:00 p.m.

1. Roll Call - the following members were present: M. Coulter; B. Seitz; and C. Crane; and also present were L. Brown, Director of Planning & Building, L. Nofer, Planning & Building Assistant and T. Lindsey, Law Director.
2. Pledge of Allegiance
3. Approval of minutes of September 6, 2018 & October 4, 2018 meetings

Mr. Coulter moved to approve both September 6, 2018 & October 4, 2018 meeting minutes, Seconded by Mr. Seitz. All Board members voted, "Aye," and the minutes were approved with the following corrections to the September, 6, 2018 minutes:

Page 8, 4th application, order of the vote was corrected, listing Mrs. Crane last.
Page 17, 3rd paragraph, the word instruction was changed to construction.

4. Affirmation/swearing in of witnesses

B. Items of Public Hearing

1. Reconsideration & Clarification - 410 Tucker Dr. (Aaron and Susan Bakhshi) BZA 34-18

The following motion is proposed for the Board to discuss an item that was previously approved:

Motion:

Mr. Seitz moved:

THAT THE PREVIOUS APPROVAL FOR AARON AND SUSAN BAKHSHI FOR A FOUR MONTH EXTENSION OF THE CONSTRUCTION COMPLETION PERIOD TO ALLOW THE CONSTRUCTION OF A DWELLING TO CONTINUE AT 410 TUCKER DRIVE AS PER CASE NO. BZA 34-18, DRAWINGS NO. BZA 34-18 DATED AUGUST 10, 2018, BE RECONSIDERED FOR THE PURPOSE OF CLARIFYING CONDITIONS.

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

Mr. Brown reviewed the following from the staff memo:

Background & Request:

The Board of Zoning appeals approved a 4-month extension of a Building Permit at the September 6, 2018 meeting. Three of the four conditions that were placed on the extension may not be legally enforceable. The conditions involving the settlement agreement, paying liens and obtaining financing all require affirmative actions by someone other than the applicant. The Board will need to clarify their intent of the conditions and reconsider the applicant’s request for an extension of time for the Building Permit.

Updates:

Since the Board heard this item in September, the applicant has completed the following:

- Settlement Agreement was executed
- Site has been mowed
- Garage doors have been installed, thus shoring up the house

Discussion:

Ms. Crane asked if the applicant was present. Mr. Steve Justice, an attorney representing the Bakhshi family, said they have addressed the three conditions that were unlawful and could not be enforced. His understanding is that those conditions are to be removed from the Permit which was granted in September. Mr. Justice said they have made effort since then to proceed. The Settlement Agreement, which is a Conditional Agreement, was finalized the day after the last hearing. The conditions for the contractor have not been completely satisfied yet but they have 90-days in which to do so. They still remain hopeful that will be fulfilled and some time in December the lawsuits will be finally dismissed after the case is entirely resolved.

Mr. Justice said they have endeavored to begin work on the site again and shore up the house, and have put on garage doors and other things at ground level. The confusion over the Permit and the fact that a final Permit has not been issued yet has been problematic in terms of finding roofers to come out and work on the site. The house has a reputation and the roofers are hesitant to do any work until the Permit situation had been resolved. Other workers in the past have been heckled and harassed by the neighbors. No one wants to go out and work on the house unless there is a clear Permit for them to do so. Mr. Justice said they have lost two months during the Permit ordeal and trying to figure out what the Permit was and whether the conditions were enforceable or unlawful. He requested an extension for the full four months if not six months and then they can come back after that time frame and provide an update. Back in September they gave the Board a construction timeline and Mr. Coulter opined he felt six months was a reasonable time frame. He said it will

probably take at least a year to finish the house. Ms. Crane asked for clarification when Mr. Justice said “Permit”, and Mr. Justice replied, and said he was referring to the Permit Extension. He requested a full four to six months from today. Mr. Coulter said his main concern was that he just wanted to see some progress. Ms. Crane asked if there was anyone present to speak for or against this application and no one came forward. Mr. Lindsey suggested stating a six month extension from the September date so there would not be a lapse in the Building Permit since the Board did originally approve the extension. Mr. Coulter made a friendly amendment to change the wording to six months from the September date.

Motion:

Mr. Seitz moved:

THAT THE RECONSIDERED APPROVAL FOR AARON AND SUSAN BAKHSHI FOR A SIX MONTH EXTENSION (FROM THE SEPTEMBER 6, 2018, MEETING), OF THE CONSTRUCTION COMPLETION PERIOD TO ALLOW THE CONSTRUCTION OF A DWELLING TO CONTINUE AT 410 TUCKER DRIVE AS PER CASE NO. BZA 34-18, DRAWINGS NO. BZA 34-18 DATED AUGUST 10, 2018, 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. Mr. Brown called the roll. Mr. Coulter, aye; Mr. Seitz, aye; and Ms. Crane, aye. The motion was approved.

2. Variance – Sign Height - Directional Signage – 627 High St. (La Chatelaine) BZA 38-18

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. The applicant is proposing a “Private Parking” directional sign to be mounted approximately 7 feet above grade on an existing utility pole along the west side of the La Chatelaine parking lot.
2. A variance would be required for the sign as it intends to exceed the 3 foot height limit.
3. The property is subject to, and the sign has been approved by, the Architectural Review Board on September 27, 2018.

The following conclusions are presented:

1. The sign is necessary for patrons to identify appropriate parking locations for the La Chatelaine establishment. The sign is intended deter unwanted traffic and parking from other neighboring establishments and residents.
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 explained the Architectural Review Board (ARB) has already discussed this matter and the reason they approved the higher sign was due to traffic in the area. If the sign is too low people would not be able to see it. Mrs. Nofer explained the applicant was unable to attend the meeting but would like to move forward with hearing the item. Mr. Brown said typically the Board would like to have the applicant present to answer questions and answer any questions for the neighbors but this item is different since the applicant has already gone before the ARB for approval and has gone through their first public hearing. Staff felt comfortable moving forward. Ms. Crane said she was okay with moving forward and if there seemed to be controversy they could always table the item.

Ms. Nofer said the applicant is La Chatelaine restaurant. They have already put up directional signage to help direct their patrons. The sign is 7 feet tall and the base will be 2 feet by 2 feet. Since the sign exceeds the 3 foot height limit the sign would need a variance. The sign was approved by the ARB at the September 27, 2018, hearing, and the applicant felt the sign was necessary to help direct their patrons to the parking lot. The restaurant owner said people are parking in their private lot but not patronizing the restaurant. Ms. Nofer said the restaurant owner preferred the existing sign that is already installed instead of the taller sign. Ms. Crane asked if there was anyone present to speak for or against this application and no one came forward.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY LA CHATELAINE FOR A VARIANCE FROM CODE REQUIREMENTS TO INSTALL A SIGN NO HIGHER THAN 7 FEET IN THE REAR PARKING LOT AT 627 HIGH ST., AS PER CASE NO. BZA 38-18, DRAWINGS NO. BZA 38-18, DATED OCTOBER 4, 2018, BE APPROVED BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND PRESENTED AT THE MEETING.

Mr. Coulter seconded the motion. Mr. Brown called the roll. Mr. Coulter, aye; Mr. Seitz,

aye; and Ms. Crane, aye. The motion was approved.

3. Variance – Bollards – 893-905 High St. (Ed Mershad) BZA 39-18

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. The applicant is proposing to install two bollards 2 feet west of the sign base. As the bollards would be a structure within the front setback, a variance is required.
2. There have been several occasions where cars have struck the base of the monument sign. The intent of the bollards would be to protect the sign.
3. The bollards would be painted the same color as the monument base.
4. The property is subject to, and the bollards have been approved by, the Architectural Review Board on September 27, 2018.

The following conclusions are presented:

1. The essential character of the neighborhood should not be substantially altered.
2. The delivery of governmental services should not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mr. Ed Mershad, 10334 Wellington Blvd., Powell, Ohio, said he would like to paint the bollards the same color as the sign and add reflective taping. He said he will be repairing the brick base. Ms. Crane asked if there was anyone present who wanted to speak either for or against this application and no one came forward.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY ED MERSHAD FOR A VARIANCE FROM CODE REQUIREMENTS TO CONSTRUCT BOLLARDS AT 893-905 HIGH ST, AS PER CASE NO. BZA 39-18, DRAWINGS NO. BZA 39-18 DATED OCTOBER 4, 2018, 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. Mr. Brown called the roll. Mr. Coulter, aye; Mr. Seitz, aye; and Ms. Crane, aye. The motion was approved.

4. Variance – Front Yard Setback - Garage Extension – 518 S. Haymore Ave. (Harmeyer) BZA 40-18

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. This property is zoned R-10 with a minimum front yard requirement of 30 feet.
2. The applicant is proposing to construct a 6 foot extension to the front of their current two car attached garage. The total extension is 6 by 20 feet, for a total of 120 square feet.
3. The current garage is 30.6 feet from the right-of-way. With the 6 foot extensions, the garage would be 24.6 feet from the right-of way, thus a 6 foot variance would be required.
4. The applicant intends to use the space for a mudroom and storage space, as well as creating additional space for cars and vans to park so they do not block the driveway with vehicles.

The following conclusions are presented:

1. The dwelling immediately connects behind the current garage space, and there is equipment and mature trees in the side yard next to the garage. These factors would impede the opportunity of having the garage extended into either the rear or side yard.
2. There is a 5 foot utility easement in the rear of the property, which could hinder the opportunity for a storage-like structure in the rear yard. There are no other accessory structures on the property.
3. The essential character of the neighborhood should not be substantially altered.
4. The delivery of governmental services should not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mrs. Erin Harmeyer, 518 Haymore Ave., Worthington, Ohio, Mrs. Harmeyer explained her car would not be hanging over the sidewalk. Ms. Crane asked if there was anyone present who wanted to speak either for or against this application and no one came forward.

Motion:

Mr. Coulter moved:

THAT THE REQUEST BY EZRA WENGERD ON BEHALF OF JAY AND ERIN HARMEYER FOR A VARIANCE FROM CODE REQUIREMENTS FOR FRONT YARD SETBACK TO CONSTRUCT A GARAGE ADDITION AT 518 HAYMORE AVE. AS PER CASE NO. BZA 40-18, DRAWINGS NO. BZA 40-18 DATED OCTOBER 5, 2018, 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. Brown called the roll. Mr. Coulter, aye; Mr. Seitz, aye; and Ms. Crane, aye. The motion was approved.

5. Variance – Side & Rear Yard Setback - Shed – 178 Abbot Ave. (Moog) BZA 41-18

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. The applicant has replaced a deteriorating shed that was 1 foot from the side yard property line, and 2 feet from the rear yard property line, with a new shed that is 4 feet from the rear yard property line, and 3 feet from the side yard property line. The shed has already been constructed without prior approval.
2. This case started as a Code Enforcement issue.
3. The size of the shed is 10 feet by 15 feet, totaling 150 square feet. A variance of 6 feet from the rear yard property line, and 5 feet from the side yard property line is required.
4. There is a 5 foot sanitary easement in the rear of the property. The new shed is 1 foot in this easement. The applicant stated they would be willing to relocate the shed, should the city need access into the easement.

The following conclusions are presented:

1. Comparing to the previous structure, the newly erected shed is further away from the rear and side yard property lines.
2. Existing lots of record tend to be narrower than the 80 feet typically found in the district. For this particular property, the width is 70 feet, and the length is 145 feet for a total of 10,150 square feet, making it less than the required minimum lot area. These factors mitigate the substantial nature of the setback variance request.
3. The essential character of the neighborhood should not be substantially altered.
4. The delivery of governmental services may be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mr. Glen Moog, 178 Abbot Ave., Worthington, Ohio, said he was not exactly sure where his back yard property line was but he was assuming the chain link fence was on the property line and the neighbor was not sure either. He said the shed has been built with old barn siding so the shed is very heavy. The shed would be difficult to move because of the weight of the beams but the builder said moving the shed may be possible on skids, but Mr. Moog said he preferred to leave the shed where it is now. Mr. Seitz said he was okay with where the shed is now instead of moving the shed a foot.

Mr. Seitz asked who owned the chain link fence and Mr. Moog said he believed the fence was his. Mr. Lynn Bender said he lived directly behind Mr. Moog at 177 Highland Ave., Worthington, Ohio. Mr. Bender said he has lived in Worthington for thirty years, and the houses in area were mostly construction in the 1960's and all of the houses have the same kind of chain link fence. He said no one knows who put the fences up, it was possible the fences were constructed when the homes were built. Ms. Crane asked if there was anyone else who wanted to speak for or against this application.

Mr. John Weichel, 170 Abbot Ave., Worthington, Ohio, said he lives to the west of Mr. Moog and he has lived in the neighborhood for 32 years and he knew the original home owner who built the house and the fence was part of the original equipment for the house. He said when he moved in, he had his house surveyed but he did not remember where the exact lot line was, but he owns the fence portion in the back. Mr. Weichel said if you assumed the lot line was in the middle of the fence it is really a few inches to the north of the fence. He said the sanitary sewer line has a manhole at the corner between Mr. Moog's lot line, his lot line, and Mr. Bender's lot line. Mr. Weichel said if there was a problem

with the sewer the fence might need to be removed, but he did not feel there would be a problem with the shed. There were no other speakers.

Mr. Brown discussed the encroachment of the shed in the utility easement along the rear of the property. There is a 5' sanitary sewer easement at the rear of the property, and the shed is encroaching 1' into the easement. Mr. Brown stated that the shed should be moved outside of the easement, and that the Service & Engineering Department would prefer to see the shed outside of the easement. He also stated that the applicant provided a statement that they would take on all liability related to the shed if the shed needed to be moved in the future. Mr. Brown stated that this would apply to the current property owner, and any future property owner; he also stated that they would document this in the file for the future.

Motion:

Mr. Coulter moved:

THAT THE REQUEST BY GLENN MOOG FOR A VARIANCE FROM CODE REQUIREMENTS FOR REAR AND SIDE YARD SETBACK TO CONSTRUCT A SHED AT 178 ABBOT AVE, AS PER CASE NO. BZA 41-18, DRAWINGS NO. BZA 41-18 DATED OCTOBER 5, 2018, 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. Brown called the roll. Mr. Coulter, aye; Mr. Seitz, aye; and Ms. Crane, aye. The motion was approved. Mr. Brown wanted to note the applicant was aware if there was a problem with the sewer, he would be responsible for moving the shed not the City.

6. Variance – Front Yard Setback - Garage Extension – 340 Longfellow Ave. (Posey/RAS Construction) BZA 42-18

Mr. Brown reviewed the following from the staff memo:

Findings of fact:

1. The applicant is requesting a garage extension of 4 feet into the front yard setback which would be 26 feet from the right of way. A variance of 4 feet is required.
2. The proposed garage addition would be 4 feet by 20 feet for a total of 80 feet.
3. The applicant is requesting this variance to allow for wheelchair accessibility into home through the garage.

The following conclusions are presented:

1. The depth increase is a necessity to allow wheelchair maneuverability in and out of the garage space.
2. The spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.
3. The essential character of the neighborhood should not be substantially altered.
4. The delivery of governmental services should not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mr. Sean Kocheran, 351 W. South St., Worthington, Ohio. Ms. Crane asked if there would be adequate room for parking in the driveway and Mr. Kocheran said yes. Ms. Crane asked if there was anyone present who wanted to speak for or against this application and no one came forward.

Mr. Brown discussed the need for single-level living in the City of Worthington, and discussed the need for flexibility to help our residents age in place in their community.

Motion:

Mr. Coulter moved:

THAT THE REQUEST BY SEAN KOCHERAN ON BEHALF OF DICK AND MARYLOU POSEY FOR A VARIANCE FROM CODE REQUIREMENTS FOR FRONT YARD SETBACK TO CONSTRUCT A GARAGE EXTENSION AT 340 LONGFELLOW AVE, AS PER CASE NO. BZA 42-18, DRAWINGS NO. BZA 42-18 DATED OCTOBER 5, 2018, 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. Brown called the roll. Mr. Coulter, aye; Mr. Seitz, aye; and Ms. Crane, aye.

C. OTHER

1. Discussion of Future Staff Memorandums
 - i) Staff is considering making slight modifications to the current structure of the Board of Zoning Appeals Memorandums.

Discussion:

Ms. Crane said she would like to hear the history of the properties if they have come before the Board before. Mr. Coulter said he liked Mr. Brown's comments about an aging population and some of the reasons behind the requests for variances. Mr. Brown said city staff's goal is to help provide enough information so Board members can make informed decisions. Ms. Crane asked if hardship was taken off the list of criteria and Mr. Brown said it was taken off the criteria about 16-18 years ago, and that the review criteria for granting variances are always listed on the last page of the memo.

Mr. Lindsey said area variances would be the only applications you would see under Worthington's codified ordinances. There are codes that permit Boards to do both use and area variances but Worthington does not have use variances in their code. Mr. Lindsey echoed Mr. Brown's comments about tying the Boards discussions back to the original criteria standards. He said most Boards would take the view, if no one had objections and if the request was reasonable, the variance would be granted. The challenge then becomes, if down the road, somebody comes in with a similar request and the neighbors did have objections. Mr. Lindsey said it is important to make sure the applicants substantiate the reasons why a variance is needed.

1129.05 POWERS AND DUTIES.

(a) Generally. The Board of Zoning Appeals shall have the following powers, and it shall be its duty to: hear and decide appeals where it is alleged there is an error of interpretation made by the Building Inspector in the enforcement of this Zoning Ordinance, the Building Code, or the Property Maintenance Code, or any amendment thereto.

(b) Exceptions. In hearing and deciding appeals, the Board shall have the power to grant an exception in the following instances:

(6) Extension and construction completion periods. The Board may authorize, for good cause shown, extension of the time period provided for the completion of structures in the Building Code. However, the Board may not authorize extension of the period for greater than a one-year extension of time subject to one-year renewals and such conditions as well safeguard the public health, safety, convenience, and general welfare.

Review Criteria for Granting Area Variances by the Board of Zoning Appeals:

(c) Area Variances. The Board shall have the power to hear and decide appeals and authorize variances from the provisions or requirements of this Zoning Ordinance. In authorizing a variance, the Board may attach conditions and require such guarantee or bond as it may deem necessary to assure compliance with the objective of this Zoning Ordinance. The Board may grant a variance in the application of the provisions of the Zoning Ordinance when it is determined that practical difficulty exists based on the following factors:

(1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

(2) Whether the variance is substantial;

(3) Whether 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;

(4) Whether the variance would adversely affect the delivery of governmental services (e.g. water, sewer, garbage).

(5) Whether the property owner purchased the property with knowledge of the zoning restriction;

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and,

(7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

D. Adjournment

Mr. Seitz moved to adjourn the meeting, seconded by Mr. Coulter. All Board members voted, "Aye," and the meeting adjourned at 8:18 p.m.