



MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

December 6, 2018

A. Call to Order – 7:00 p.m.

1. Roll Call - the following members were present: T. Reis; B. Seitz; L. Reibel; and C. Crane; and also present were L. Brown, Director of Planning & Building; L. Nofer, Planning & Building Assistant; and T. Lindsey, Director of Law.
2. Pledge of Allegiance
3. Approval of minutes of the November 1, 2018 meeting

Mr. Seitz moved to approve the minutes, seconded by Ms. Reibel. All members voted, "Aye," and the minutes were approved.

4. Affirmation/swearing in of witnesses

B. Items of Public Hearing

1. **Variance** – Front Yard Setback - Flagpole – **291 Bristol Woods Ct.** (Brent Bowen and Elise Krieger) **BZA 36-18**

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. The applicant replaced an existing light post with an illuminated flagpole. The flagpole is approximately 6 feet from the right-of-way, encroaching into the 30' front yard required setback. The requested variance is 24 feet.
2. This request was heard by the Board of Zoning Appeals on September 6, 2018 and was denied.
3. Division of Building Regulation has received numerous inquiries regarding this property.

The following conclusions are presented:

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.

Discussion:

Ms. Crane asked if the applicant was present. Elise Krieger and Brent Bowen of 291 Bristol Woods Court came forward. Ms. Krieger thanked the board for their time on their case. Ms. Krieger stated that her house has a very unique property line which limits the options for the location of the flagpole. She said they chose the spot they did for the flagpole because it is the same location as the light post that was there previously. She also stated that they made sure the flagpole did not exceed the height of house so it would not be as impactful to the property.

Ms. Krieger also addressed the concerns of safety previous mentioned by the board and other residents. Regarding lighting, Ms. Krieger stated the flagpole illuminates the sidewalk and road well, making the area safe for drivers and pedestrians. Referring to the possibility of vehicles hitting the flagpole, she referenced photographs when they maneuvered their car up on the sidewalk to depict the distance of a car and the flagpole. She also stated that there were never any issues with vehicles hitting the structure before with the light post being in the exact same place. Ms. Krieger also noted that she and Mr. Bowen took a 15 minute drive around Worthington and found several properties that had flagpoles which appeared to be in front yard setback. She also stated they were aware the flagpole installed at 5616 Indianola Avenue had been granted a variance for front yard setback by the board recently based on conversations with staff.

Ms. Crane asked if there was anyone present who wanted to speak either for or against this application and reminded the audience that the types of flags flown were not relevant to this case.

Sandi Weber at 314 Bristol Woods Court, Worthington came forward. She stated the flagpole is not representative of her or the neighborhood. She stated that she felt it was an intrusive structure that could be seen clearly from her living room window; indicating the sight of the flagpole to her was unavoidable. Ms. Weber also stated that Mr. Bowen said the original owner did not obtain the necessary variances, which she deems as false according to Ordinance 106-85.

Buck Wince, 315 Bristol Woods Court, Worthington came forward. He stated he is a direct neighbor of Elise and Brent. He said he has no issue with the location and style of the flagpole. Mr. Wince stated many of the light posts are not consistent in style and height. Ms. Crane asked Mr. Wince if the current light poles in the neighborhood were as high as the flagpole at 291 Bristol Woods. Mr. Wince replied that no, they were not; the

light posts were approximately 8-10 feet in height. Ms. Crane stated that she drove through the neighborhood before the last meeting where the flagpole was heard and she did not notice any differences with the light posts.

Mr. Bowen came forward. He spoke on Ms. Weber's comment that the original property owner had obtained a variance for the light post. He stated that he knew there was no variance for the light post and asked staff to confirm. Staff stated that Mr. Bowen was correct. There was no variance issued for the original light post. Staff mentioned it was originally allowed to be in the location that it is with the understanding that it would be located in the right-of-way, not on private property.

Ms. Crane asked the applicant why they chose to put a flagpole up in replacement of the light post. Ms. Krieger replied that her father is a history buff and gifted her and Mr. Bowen a collection of flags. Also, Mr. Bowen's father installs flagpoles for a living. Mr. Bowen stated that they also knew there was no code requirement to have a light post on their property. He asked staff to confirm; staff confirmed that yes there is not a city wide ordinance where residents must have a light post in their yard.

Mr. Seitz reminded the applicant of what he said at the previous meeting which was to read the tea leaves of the room. Mr. Seitz stated that if Mr. Bowen felt the board were leaning toward a no vote, there was an option to request to table the case. Mr. Seitz stated to the applicant that in respecting the process and decision of the previous meeting, his vote was going to be a no. He stated that was not to say he would not change his vote if he were to come back with the flagpole in a different location. He said the board historically has approved flagpoles in the front yard setback, and would likely have many more properties before them due to the other properties the applicant brought to staffs attention.

Ms. Reibel asked the Law Director if the board had to hear the case as they have already heard and voted on the matter. Tom Lindsey, the Law Director, stated that the board could move to dismiss the case on the basis on res adjudicata.

Ms. Reibel moved to dismiss the case on the basis of having already heard it, and it being a repeat application in front of the board. No second. The motion died due to lack of a second.

Mr. Seitz asked staff what would happen if the applicant requested to table the case. Ms. Crane stated that the board also had the right to deny the applicants request to table if he chose to pursue that. Staff said they would have to again notify the neighbors and work with the applicant. Staff reminds the board that this case has been going through the process since July and a continuation may not be the best route. Staff would work with the applicant on proposing any new locations for the flagpole.

Mr. Seitz moved to table the case. There was no second. The motion died with no second.

Mr. Seitz asked Mr. Lindsey what would the two scenarios would be for the second item on the agenda if the variance case before them were to be approved or denied. Mr. Lindsey explained that if this variance case was denied, the second case would be heard as normal, and if the variance before them were to be approved, the second case would not need to be heard.

Tom Reis stated he has no problem with the flagpole of the location it is in.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY ELISE KRIEGER AND BRENT BOWEN FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR A FLAGPOLE WITH LIGHTING TO REMAIN AT 291 BRISTOL WOODS CT, AS PER CASE NO. BZA 36-18, DRAWINGS NO. BZA 36-18 DATED SEPTEMBER 26, 2018, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Reis seconded the motion. Mr. Brown called the roll. Mr. Reis, aye; Mr. Seitz, nay; Ms. Reibel, nay; and Ms. Crane, nay. The motion was denied.

2. Appeal of the Building Inspector Decision – Flagpole Removal – 291 Bristol Woods Ct. (Brent Bowen & Elise Krieger) BZA 47-18

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. On July 9th, 2018, Code Enforcement Officer, Chris Keppler received a report about a new structure, a flag pole, which was possibly in the right-of-way or front yard setback.
2. On July 17th, 2018, Mr. Keppler met with Brent Bowen and provided him a Board of Zoning Appeals application and a Building Permit/Certificate of Compliance application, along with Board of Zoning Appeals meeting schedule and copies of code sections 1149.01 and 1149.08.

3. On August 9th, 2018, Mr. Bowen filed for a Board of Zoning Appeals application for a variance to allow a flagpole with lighting to remain in the front yard at 291 Bristol Woods Court.
4. On August 10th, 2018 Mr. Bowen submitted a Building Permit/Certificate of Compliance application (2018-1223) for the flagpole structure. The permit was put on hold until a decision was made by the Board of Zoning Appeals at the meeting on September 6, 2018.
5. On September 6th, 2018, the Board of Zoning Appeals denied the setback variance to allow for a flagpole that encroached in the front yard setback.
6. On September 7th, the application for permit 2018-1223 was denied by the Chief Building Inspector, Don Phillips. In the denial, Mr. Phillips advised that Mr. Keppler would follow up in thirty days to verify removal.
7. On September 26, 2018, Mr. Bowen re-filed for a variance to allow a flagpole with lighting to remain in the front yard at 291 Bristol Woods Court.
8. The applicant was ordered on October 8th, 2018 by Mr. Keppler to remove the flagpole on the property within twenty days.
9. The applicant appealed the order on October 26th, 2018 on the grounds of needing additional time.

The following conclusions are presented:

1. Staff believes the grounds for the appeal is not sufficient. Section 1129.02 of the Codified Ordinances states the appellant must “specify the grounds thereof”. It is not clear to staff why additionally time is needed as the owner has known about the circumstances since July 10th, 2018.

Discussion:

The board asked staff to confirm that this was not an appeal of the original case, and was in fact an appeal of a staff procedure. Staff confirmed to the board that the appeal before them was for an order made by Code Enforcement Officer, Chris Keppler. Staff continued that the order by Mr. Keppler was enforcing the decision made by the Board of Zoning Appeals at the September 6, 2018 hearing.

The board asked if the appellant was here. Brent Bowen, 291 Bristol Woods Court came forward. Mr. Bowen stated that at the first hearing it was not clear that he was able to table the case. Had he known that, he said he likely would have tabled the case to develop

more information to bring back to the board. Mr. Bowen stated that because his previous application was denied, and he was ordered to remove the flagpole by Mr. Keppler, he appealed the order on the grounds of needing additional time to put together information towards the case.

Staff told the board that the purpose of the twenty day window after the order is given is to ensure the person being ordered has enough time to develop an appeal if they so wish. Staff stated they felt Mr. Bowen had been given an appropriate amount of time to gather information pertinent to his appeal.

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

Sandi Weber, 314 Bristol Woods Court, Worthington came forward and stated she felt the grounds of the appeal were not of good standing. She stated she felt Mr. Keppler did his job correctly.

Mr. Bowen asked staff and the board if he were to withdraw his appeal would he receive the same amount of time to remove the flagpole as if he were denied the appeal. Staff responded with yes, he would have 30 days to remove the flagpole with either course of action.

Ms. Crane stated to staff that it appeared by Chris' delivery of the order he was following standard protocol. Staff told the board that both Mr. Keppler and Don Phillips, Chief Building Inspector were in the audience if the board has any questions. The board asked Mr. Keppler if he had anything to add.

Chris Keppler came forward and stated the goal of his job is to educate the public on the code and to correct violations. He stated his action in sending the order was standard procedure for violations.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY ELISE KRIEGER AND BRENT BOWEN TO WITHDRAW THE APPEAL OF THE BUILDING INSPECTOR DECISION TO ORDER THE REMOVAL OF THE FLAGPOLE AT 291 BRISTOL WOODS CT, AS PER CASE NO. BZA 47-18, DRAWINGS NO. BZA 47-18 DATED SEPTEMBER 26, 2018, BE GRANTED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Ms. Reibel seconded the motion. Mr. Brown called the roll. Mr. Reis, aye; Mr. Seitz, aye; Ms. Reibel, aye; and Ms. Crane, aye. The motion to withdraw was approved.

3. **Variance** – Accessory Building Area – Carriage House – **1 Kenyon Brook Dr.**
(Robb Best) **BZA 44-18**

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. This property is in the R-10 district where total accessory building area is limited to 850 square feet in area.
2. The property currently contains an existing 283 square foot attached garage.
3. The applicant is proposing to construct a 24 foot by 28 foot 2 story detached carriage house that will total 1,344 square feet in area. The total proposed accessory building area is 1,627 square feet. The requested variance is 777 square feet.
4. The proposed two-story structure would allow for two cars on the first level and a studio for woodworking on the second level.
5. The property is subject to, and the accessory building has been approved by, the Architectural Review Board on November 8, 2018.

The following conclusions are presented:

1. The property is approximately 28,314 square feet in area where the minimum lot area is 10,400 square foot for the district. The accessory building area is an absolute 850 square foot regardless of the size of the property. This mitigates the substantial 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:

Mary Best, 1 Kenyon Brook Drive, Worthington came forward and said their home is traditional in the sense that it was built with only a one car garage. She stated the garage is no longer suiting their needs for both parking and storage. She stated that her husband

is also a woodworker and their basement is not suitable for transporting wood and materials up and down the stairs. The carriage house would allow for not only additional vehicle parking, but would act as a space for Mr. Best's wood working on the second floor. Ms. Crane asked the applicant if plumbing or electrical would be installed. Ms. Best replied that electrical would but not plumbing.

Ms. Crane asked if there was anyone present to speak for or against this project and no one came forward.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY ROBB BEST FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR A CARRIAGE HOUSE AT 1 KENYON BROOK DR., AS PER CASE NO. BZA 44-18, DRAWINGS NO. BZA 44-18 DATED NOVEMBER 6, 2018, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Mr. Reis seconded the motion. Mr. Brown called the roll. Mr. Reis, aye; Mr. Seitz, aye; Ms. Reibel, aye; and Ms. Crane, aye. The motion was approved.

4. **Variance** – Accessory Building Area – Carriage House – **594 Hartford St.** (RAS Construction/Huffman) **BZA 45-18**

Mrs. Nofer reviewed the following from the staff memo:

Findings of fact:

1. This property is in the R-10 district where total accessory building area is limited to 850 square feet in area.
2. The property currently contains an approximate 600 square foot barn which will be demolished.
3. The applicant is proposing to construct a 26 foot by 26 foot attached garage that will total 676 square feet in area. Additionally, the applicant is proposing a 16 foot by 20 foot carriage house to the rear of the home that will be 320 square feet in area. The total proposed accessory building area is 996 square feet. The requested variance is 146 square feet.

4. The proposed two-story attached garage would allow for two cars on the first level and would be living space on the second level.
5. The property is subject to, and the accessory buildings have been approved by, the Architectural Review Board on October 25, 2018.

The following conclusions are presented:

1. The property is approximately 25,300 square feet in area where the minimum lot area is 10,400 square foot for the district. The accessory building area is an absolute 850 square foot regardless of the size of the property. This mitigates the substantial 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:

Lynne Walter with RAS Construction at 351 West South Street, Worthington came forward and said she had nothing to add to staff's presentation.

Ms. Crane asked if there was anyone present to speak for or against this project. Greg Hopkins at 608 Hartford Street, Worthington came forward and stated he was out of town for the first Architecture Review Board hearing and would like clarification as to where the detached carriage house was to be. Staff indicated where the structure would be on the site plan to Mr. Hopkins.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY RAS CONSTRUCTION ON BEHALF OF ROBERT AND TERA HUFFMAN FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR A GARAGE AND CARRIAGE HOUSE AT 594 HARTFORD ST., AS PER CASE NO. BZA 45-18, DRAWINGS NO. BZA 45-18 DATED NOVEMBER 9, 2018, 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. Mr. Brown called the roll. Mr. Reis, aye; Mr. Seitz, aye; Ms. Reibel, aye; and Ms. Crane, aye. The motion was approved.

C. Other

There was no other business to discuss.

D. Adjournment

Mr. Seitz moved to adjourn the meeting, seconded by Ms. Reibel. All Board members voted, “Aye, “and the meeting adjourned at 8:19 p.m.