



MINUTES OF THE REGULAR MEETING
BOARD OF ZONING APPEALS

March 5, 2020

A. Call to Order – 7:00 p.m.

1. Roll Call - the following members were present: Mikel Coulter; Brian Seitz, D.J. Falcoski; Leah Reibel and Cynthia Crane. Also present were Lee Brown, Director of Planning and Building; Laney Nofer, Planning & Building Assistant; and Thomas Lindsey, Director of Law.
2. Pledge of Allegiance
3. Oaths of Office

Mr. Brown swore in Mr. Falcoski as Vice-Chair

4. Approval of the minutes of February 6, 2020.

Mr. Coulter moved to approve the minutes as corrected, seconded by Mr. Seitz. All Board members voted, "Aye," and the minutes were approved.

5. Affirmation/swearing in of witnesses

B. Items of Public Hearing – New Business

Mrs. Crane explained the Agenda item for Mr. Neil Toepfer, 100 W. South St., would be tabled until the April 2, 2020, meeting.

1. **Mr. Appeal of the Building Inspector Decision – Violation Order – Tourist Home – 142 Park Blvd. (Jacqueline Gargus & Thomas Huff) BZA 07-2020**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact

Background:

On November 13, 2019, Code Enforcement Officer, Chris Keppler received a complaint for the property in question concerning an Airbnb listing for the property.

On November 15, 2019, Mr. Keppler mailed an informational notice to the property owner stating that using the property at 142 Park Blvd as a short-term rental is neither a permitted

nor a conditional use in the R-10 Zoning District. Mr. Keppler went on to state the following:

Short-term rentals through the Airbnb website fall within the meaning of a “tourist home” under the Zoning Code (1123.73), defined as follows: ‘Tourist Home means a building other than a hotel where lodging is provided and offered to the public for compensation for not more than fifteen individuals and open to transient guests.’ Therefore, we find that your use of the property as a commercially advertised “tourist home”, subject to ongoing bookings and stays of multiple and variable lengths for transient guests, is not legally permitted under current municipal zoning ordinances, and must therefore cease.

Staff received many letters, emails, and calls from neighboring property owners regarding the status of 142 Park Boulevard being used as an Airbnb rental.

On December 2, 2019, staff sent a Violation Order to the property owners stating the following:

Your use of the above-referenced property as a commercially advertised “tourist home”, subject to ongoing bookings and stays of multiple and variable lengths for transient guests was not legally permitted under current municipal zoning ordinances and must therefore cease.

On December 23rd, 2019, Code Enforcement Officer, Chris Keppler and Planning Coordinator, Lynda Bitar met with Ms. Gargus and Mr. Huff regarding the interpretations and application of the zoning code regarding ‘tourist homes’ and ‘transient guests.’

On December 23rd, 2019, an appeal of the Violation Order was filed by Ms. Jacqueline Gargus and Mr. Thomas Huff regarding staff’s interpretation of the definition of ‘transient’.

On January 9th, 2020, Ms. Gargus requested that the city attorney clarify in writing the basis for staff’s interpretation and application of the ‘tourist home’ language to their use of the property, and staff’s rationale for using 30 days as the standard for defining ‘transient’.

On January 31st, Director of Law, Tom Lindsey, responded to the property owners request to clarify the terms of the Violation Order:

You had also requested clarification regarding whether certain short-term rentals of the property would be permitted under the City zoning code. The first situation involved the possibility of entering into a rental agreement with a company that

would involve different employees of the company staying in the house for less than 30-day periods.

In my opinion each individual employee would be considered a separate transient guest. The company, while paying the rent, is not staying in the house and would not be considered a guest.

The second situation involved the possibility of having the same individual agree to rent the house for a specific week of the month for five consecutive months (or 2 weeks of the month for 3 months). The statutory definition of transient guest found in state code is less than 30 consecutive days. I am not aware of any statutory exception or legal interpretation that permits adding separate lengths of stay to aggregate more than 30 consecutive days. Therefore, it is my opinion that both situations would be a violation of the City zoning code.

The appellant has not submitted supplemental materials to staff to accompany their appeal showing how the Building Inspector's Decision was in error. Staff would encourage the appellant to state at the hearing their case as to why they are appealing the order.

Worthington Codified Ordinances:

Section 1125.01(b) states "As provided in Chapter [1129](#), an appeal from the decision of the Building Inspector or the person designated by the City Manager, may be made to the Board of Zoning Appeals".

Section 1129.02(b)(1) states "An appeal to the Board may be taken by any person aggrieved or by an officer of the Municipality adversely affected by any decision of the Chief Building Inspector or a person designated by the City Manager. Such appeal shall be made within twenty days after the decision, by filing with the City Clerk and with the Board a notice of appeal specifying the grounds thereof. Within three days of the filing of such an appeal, the City Clerk shall transmit the same to the Director of Planning and Building. The Director of Planning and Building shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from was taken".

Section 1129.02(b)(2) states "An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Chief Building Inspector or designated person shall certify to the Board after the notice of appeal shall have been filed with it, that a stay would, in his/her opinion, cause imminent peril to life or property, in which case, proceedings shall not be stayed".

Request:

The appellant has stated via email the following: “We are hereby filing an appeal of the Violation Order so that terms may be more clearly defined.”

Staff Comments:

Staff believes the language in the code should be upheld regarding the definition of ‘tourist home’.

Staff believes the interpretation of the word ‘transient’ should also be upheld based on the statutory definition provided by the City of Worthington Director of Law.

**Notice: Motions are in the positive per Robert’s Rules of Order. In this particular case, if the board votes yes to the motion below, it would be in favor of the appellant. If the board votes no to the motion below, it would be in favor of the decision of the Building Inspector.*

Discussion:

Ms. Crane explained that she was happy to see the disclaimer related to how motions are made in the positive, and that it can be confusing to people at times. She said that this is a unique item on the agenda compared to what we typically see related to requests for variances on properties for setbacks and sizes. These are typically in the planning stages, or sometimes after the fact that are found to be in violation of City code. I.e. too close to the property line, too high or too big. These are typically related to exceptions from the Code and are then coming to the Board to present their case and explain any mitigating circumstances related to their project. This item is very different than what we typically see come before the Board. This is a dispute over the Building Inspectors finding and interpretation is correct. She stated that this Board does not have the ability to change uses and approve a use variance.

Mr. Brown explained that the Board of Zoning Appeals does not have the authority to grant use variances. He said for example, what is before them tonight for tourist homes/short-term rental, would have to go before City Council, and City Council would have to direct staff and the Municipal Planning Commission to amend the Code that short-term rentals would be permitted in the City. Mr. Brown said it was staff’s belief that the Code, as written today, that short-term rentals are not permitted in the City of Worthington and that was one of the reasons they were there tonight. He stated that staff did not receive any additional information from the appellants to review.

Ms. Crane asked for a show of hands to those in the audience that would like to speak on the case since we have other items on the agenda tonight. She stated that the applicants will come forward and present their case, and then she will open it up for comments from the audience and provided guidance on how the meeting will be conducted related to public testimony and comments.

Ms. Crane asked if the applicant was present. Ms. Jacqueline Gargus, 5880 Beechview Dr. E., Worthington, Ohio, thanked the Officers of the Board for their guidance and their patience in the matter. Ms. Gargus said they never intended to disregard the instructions from the Worthington Planning Board nor did they intend to disregard the Zoning Ordinance. She said they did everything possible to comply with the instructions and recommendations once they were made. Ms. Gargus said she wanted to note that the outline of the Memorandum that Mrs. Nofer read neglected one part of their exchange with the Worthington Planning and Zoning Board and that was after receiving the first correspondence that was written on November 15th, 2020. She said she called the Planning and Building Department and spoke with Mr. Chris Keppler and he told her that she could keep the bookings that had already been made through the end of the year because there was some concern that people had plans to visit family in the area because it was getting close to the holiday season. Ms. Gargus said she took Mr. Keppler on his word. Nonetheless, she said they cancelled the rest of the bookings that they suspected would be characterized as parties. She said she also cancelled bookings for guests whose cars could not be accommodated by their driveway. Furthermore, she said they cancelled bookings for a period of time in December while they were out of the country while they were in Peru in the Amazon Rain Forest. They did not have good cell phone connection while they were in Peru, nor did they receive snail mail from Worthington. Ms. Gargus said this was a time period in which they could not respond to letters from Worthington's Planning & Building Department. Ms. Gargus said they were filing the Appeal because they did not feel like they have broken the law, nor did they feel that the law which pertained to their property has been written in the Zoning Ordinance of Worthington. Ms. Gargus said during the duration of the Appeal process, she would like to note there was a Stay on Worthington Planning & Building's Order to Cease and Desist. That meant that they could legally operate as an Airbnb up until today, but they did not. They did not out of respect for professionalism and helpfulness of the Officers of Worthington's Building & Planning Department and because they wanted to be courteous and respectful neighbors.

She said to look at Worthington's Zoning Ordinance 1123.73, the definition of a Tourist Home. "Tourist home" means a building other than a hotel where lodging is provided and offered to the public for compensation for not more than fifteen individuals and open to transient guests.

Ms. Gargus said two words seemed vague and confusing, lodging and transient. When used in an Ordinance or law, the language must be clear. The language cannot be subject to multiple conflicting interpretations. She said she wanted to start with the word "lodging." According to the Oxford English Dictionary, which is the gold standard amongst dictionaries, the original meaning of the word lodging had to deal with accommodating military troops. Lodging in its earliest sense was a portion of space assigned to one man in a camp. That meaning of lodging was then transferred to mean the space of a bed in a hospital ward or a cell in a prison or a square on a chess board for a

game piece. The word lodge has an opposite meaning and that is the word dislodge which means freedom from a tight confining space. These were historic meanings of the word lodging. The current meaning of the word lodging retains the original sense of assigning one person to a space, hence the idea of a lodging house or a lodger. The dictionary continues to say lodging is a room or rented rooms to someone usually in the same residence as the owner.

The other ambiguous word is transient. Transient, when used as an adjective, is said to mean passing through a place without staying in it or staying only for a short time, not lasting, temporary, fleeting. She said this raises questions as to how long is a short time, how short is fleeting? Are short and fleeting legal terms or does the law demand more clarity? She said reading further in the English dictionary they even provide a definition for transient housing. Chiefly in the United States, of a hotel, lodging or etcetera designed for short term or temporary accommodation used to accommodate people without permanent housing. She said if you look at the word “transient” as a noun, it is synonymous with a vagrant or tramp. Transient guests refer to Worthington’s Code Section 1123.73 and could more clearly be understood as homeless people. Ms. Gargus said she was not operating a tourist home, and therefore not covered by Zoning Code 1123.73. She said it is a house, not a boarding house, not a bed and breakfast. She said her house is not a homeless shelter, it is a house that is being rented for short periods of time. In 1987, when the Ordinance was written, there were no Airbnb’s and the concept of house sharing did not exist. She said the Ordinance did not anticipate the arrangement that she has, where guests have the full opportunity to use the garage, the kitchen, all the bathrooms, bedrooms, the patio and so forth. Ms. Gargus said a house such as theirs becomes the domicile of the person that is living there at the time of the rental, and a lodging typically does not. She said on those terms of ambiguity they asked for an appeal and consideration of the fact that they have a different kind of arrangement than anticipated in 1987 when the Ordinance was written.

Mr. Falcoski asked Ms. Gargus if she considered the home she owns as a hotel and she said absolutely not. Ms. Crane asked Ms. Gargus what she considered her home to be and Ms. Gargus replied her home is a home that is rented for short periods, but the word short is up for grabs.

Mr. Falcoski said he had a question for city staff. He said according to the statute, “the definition of short is not up for grabs, is that correct?” He asked if the duration was clearly stated for tourist home. Mrs. Nofer referred to the Law Director, Mr. Thomas Lindsey, to see if he wanted to discuss the definition of a transient home. Mr. Lindsey said the term “tourist home” does not include a specific definition of transient. It refers to transient a guest and does not include a specific period of time. State Code and various places use the same transient word as to hotels as to the sales tax related to lodging tax and defines transient as less than thirty days. Mr. Lindsey said there is not in the Code a definition of

transient. Mr. Falcoski said if this home was to accept renters for thirty days or more, then the house would not be considered a tourist home? Mr. Brown said, “Correct.”

Ms. Crane felt that this was a precedent and there was a history before the Code anticipated it. Ms. Gargus said she was not familiar with examples, but she was aware of Bed & Breakfasts and Boarding Houses.

Mr. Coulter asked Mr. Brown if he was aware of any other properties that may be being used as an Airbnb in Worthington. Mr. Brown said in the past six years since he has worked in Worthington, there may have been half dozen cases where they have popped up. He said at least, as of right now, he was not aware of any others. Mr. Brown said as soon as they are brought to staff’s attention, they reach out to the property owner and work with the property owner. Mr. Seitz asked staff if Bed & Breakfasts were permitted in the R-10 district. Mr. Brown said not in the R-10 district, but they are considered Conditional Use in AR – 4.5. He said Bed & Breakfasts are permitted in AR – 4.5 and there are a few spots in old Worthington and scattered throughout the city. They are also permitted in AR – 3 Medium Density Apartments district, so there are two areas where they are permitted as Conditional Uses. Mr. Brown said when it is a conditional use, it is a permitted use if you can meet certain criteria and certain conditions and that would have to be approved by the Municipal Planning Commission.

Ms. Gargus said there was some chatter on the Colonial Hills Facebook page, and Council member Dorothy was not clear about what the meaning of a tourist home was, and whether that meant the entire house was rented out, or if individual rooms were rented out. She said if Council members were not clear of what the Ordinance states, then that tells her the Ordinance is ambiguous and could be understood many ways.

Mr. Seitz said he had another question for staff. He said so much like they have seen with flagpoles and six foot fences in front yards, depending on what and how this Board votes, and depending on what members of the audience have found on Airbnb.com right now, are they setting themselves up for multiple yes and no votes because they do not know how many Airbnb’s are in Worthington, but he would venture to say there are more than six. He asked if this is a one-time thing or is it like flagpoles and six-foot fences that they will have multiple people asking for the same thing.

Mr. Brown said from staff’s standpoint, they still believe this short-term rental use, whether VRBO, HomeAway, or whatever it may be, meets the definition of Tourist Home in the Codified Ordinances for the City of Worthington. Mr. Brown said if you view that this is not a Tourist Home it then opens the door for my neighbor, your neighbor, whoever, to make the same argument and go forward. He said until they receive direction from City Council to draft legislation to permit Airbnb’s or some variation of that he said he felt they

are charged with using the Codified Ordinances as they are today, and their belief that Tourist Homes fall under the definition of short term rental home are the same.

Mr. Lindsey said in terms of the matter before them at the meeting, is an Appeal by Ms. Gargus and Mr. Huff as to the Code Compliance Officer's decision that a short-term rental fell within Tourist Home. He said they do not sit as a court of law and so they do not make decisions that necessarily have impact as to other matters that might occur or not occur. This is to a specific appeal that the Board would be deciding at the meeting. Mr. Lindsey said as a matter of consistency, if they ruled that a short-term rental was not a Tourist Home, then the next person that came before staff and stated there was another complaint, there could be another Notice of Violation, at which point that property owner could appeal to this Board and this Board would once again hear the matter, in general, barring different information or a different composition might not come to the same conclusion or presumably you would follow the same way if the decision was that short-term rentals are Tourist Homes then the next person making the same challenge would have the right to the Appeal. The way our Code is written, it is an appeal of the decision of the staff charged with that task. Mr. Lindsey said, that is your process and that is what you are doing. It would take a court of law to make a determination as to whether this definition did or did not fit. It would also be up to a court of law to make a determination to whether or not the Ordinance was unconstitutionally vague. He said that would be a judicial determination made by a court of law, not an administrative Board hearing. He said he was not discrediting the argument; he was just talking about the binding effect and what would happen. Mr. Lindsey said City Council would look to amend or change the law, and in fact, as a matter of record, City Council has referred to the Municipal Planning Commission (MPC) the consideration of a possible amendment to this Code to simply clarify transients guests being similar to the State Code of 30 days or less. The fact that they have taken that action in itself does not dictate how this Board would decide the actual appeal before it. Mr. Lindsey said at this point, they do not know if there will be a recommendation to change the Code and or what action City Council might take or whether during the course of that discussion other decisions might be recommended in terms of permitting, or not permitting, regulating or not regulating.

Mr. Lindsey said city staff brought to City Council a recommended clarification of transient in part because Ms. Gargus and Mr. Huff had in their discussions with staff raised their concerns about it so in an effort to clarify that somebody else might not feel that was clear. Mr. Lindsey said he did not know whether 30 days was the magic number or not.

Ms. Crane asked if there was anyone that wanted to speak about this application.

Mr. Steven Webster, 5765 Granby St., Worthington, Ohio, said many years ago he found a historically significant building in Clintonville in which he purchased and operates his photo studio out of. He said he entered into a Purchasing Contract with the church

congregation that owned it and made the purchase contingent on him having the proper zoning to legally run his studio out of the building. Mr. Webster said he spoke with all of the neighbors who lived nearby, went through the hearings at the Columbus Department of Building & Zoning, had hearings in front of the Clintonville Area Planning & Development, the Clintonville Area Commission and finally Columbus City Council. Mr. Webster said he wanted to be sure he could operate his business on the property before making the purchase. He said the reason he was telling the story was because he wanted to make sure that he would not be stuck with a property in which he could not use for his intended purposes. The property owners at 142 Park Boulevard bought the property prior to the house going on the market with either ignorance or willful disregard to the existing Zoning Code of Worthington solely with the intent of running a commercial venture in a residential neighborhood, which is his neighborhood, and across from his house. Mr. Webster said after Mr. Huff meet with his neighbors and the city officially notified them of the legal nature of the venture, the owners continued to rent the house to transient guests and especially those who wanted to use the house for parties, in which they gave the homeowners feedback about. He said through the whole process as played out this past weekend on social media the owners of the property have tried to turn the adjacent homeowners into the bad guys and blame everyone else but themselves for the investment gamble that did not work out. Mr. Webster said the people that live around the property in question have raised their families on this street, and they are exhausted with having to deal with this, which is clearly an infraction of the zoning law, and an invasion of the neighborhood.

Mr. David Hoag, 124 Park Blvd., Worthington, Ohio, said he lives across from Granby Street, and across from the house in question. Mr. Hoag said this house was purchased fully furnished and nobody moved in. This house was bought as an investment for a rental property or a hotel. He said he and his wife did not buy their house across the street nine years ago to live next door to a revolving door or transient guests. They want to be in a neighborhood.

Mr. Gregory Wheeler, 208 Kenbrook Dr., Worthington, Ohio, said he is a new resident of the neighborhood. He and his wife have lived in Worthington for the past two years, and part of the reason they purchased the property was because of some of the rules Worthington has and their impression that those rules would be enforced. He said he had some concerns when he saw the discussion on Facebook. Mr. Wheeler said he felt there was blatant disregard for the zoning law that are pretty well laid out and that 142 Park Boulevard was being used as a Tourist Home. He stated that the appellants state this is not a tourist home, and that it is just a home. Then I would ask what exactly is a tourist home, this meets the definition of what this property is being used for.

Mrs. Martha Wiles, 5788 Granby St., Worthington, Ohio, said she and her husband Doug live adjacent to the north of the property in question. Mrs. Wiles said they live in a quiet,

friendly family-oriented neighborhood, which were the qualities that attracted them thirty years ago. She said their neighborhood currently has thirteen small children elementary age or younger that she can see from her home. Mrs. Wiles said 142 Park Boulevard has operated this past fall as a short-term whole house rental business by an owner not living on the premises. She said the short-term renters were disruptive to all five families that live in the immediate neighborhood but would not go into detail about the negative impact that it had. She said to refer to their letter dated November 19, 2019. Mrs. Wiles said for many commonsense reasons, the City of Worthington's Zoning Ordinance prohibits residential rentals of less than thirty days, granting exceptions or laxing the Ordinance would compromise the quality of their neighborhood, jeopardize the safety of the residents, and potentially devalue the nearby properties. Mrs. Wiles said this would set a terrible precedent for Worthington's residential areas and would undermine the values and quality of life that make Worthington such a desirable place to live. She thanked the Board for considering their November 19th, 2019, letter to the City's Planning Director Lee Brown before making their decision.

Ms. Crane said that she should mention they were not deciding whether there should be a Tourist Home or if this should be operated in the neighborhood, they are determining whether the Building & Planning Department Inspector was correct in designating this address as a Tourist Home. City Council would have to determine whether this type of business should be allowed in the neighborhoods because they are not. She said they are trying to decide whether this is the type of business that is not allowed as this would be a tourist home, and she wanted to keep the discussion focused on the issue at hand.

Mr. Paul Dorothy, 179 Kenbrook Dr., Worthington, Ohio, said he was present at the meeting to speak in opposition of the Appeal. Mr. Dorothy said he works as an expert witness interpreting building codes, so he is familiar with the entire Ohio Building Code and he is qualified to speak on the applicability of the Ohio Building Code in a Court of Law. Mr. Dorothy said the Ohio Building Code is very clear. Transient is defined as, an occupancy of a dwelling unit or sleeping unit for not more than thirty days. He said when you look at the ordinance, the ordinance is clear. They do not have to define every piece of the language that is contained within an ordinance, otherwise they will end up with the "Bill Clinton Defense" where they are trying to determine what the definition of "is" is and that is not where they want to be in the Codes and that is not where they can be in the Codes if they are going to be able to easily interpret them and fairly apply them so that folks understand what they are getting, despite the long language lesson on the history of the words. He said they important things are these words transient, how is it used in other documents that would apply to something like this, such as the Ohio Building Code. He said he clearly sees thirty days there in the definition and other places within the Ohio Revised Code. He said the word "lodging" despite its history, is also fairly clear, such as the advertisement for EconoLodge, "We'll leave the light on for you." This is not something people need to fuss about an interpretation. He said why this is important is

because when we enter into a community, we enter into a social contract with each other. Mr. Dorothy said these ordinances help us define that social contract with each other so that they knew what they are getting into and they know they will be treated fairly and they know their investment will be treated fairly. Mr. Dorothy said he grew up in Appalachia and living in Worthington has been the culmination of a lot of blood, sweat and tears and to have somebody coming along, and trying to twist the interpretation of the social contract that they have enacted with each other in order to make a buck is despicable. Mr. Dorothy said they need to stand together as a community and to stand against this type of abuse.

Mr. Dorothy said as he firmly believed as a Libertarian that everyone should be able to dispose of their property how they choose. He said he fully understands that his rights end the moment that his rights begin to affect someone else's rights or someone else's life, liberty and pursuit of happiness. Mr. Dorothy said when that happens, that is when the social contract is important. He said social contracts in Appalachia is easy, they are a small community, and everybody knows everybody else's business and that is how it is usually handled. In the larger cities, we need things like these Codes and Ordinances, and they have got to be followed fairly because there really is a difference. Whether the folks next door are in a single family, or multi-family construction, whether there are owners or renters, the difference in all of those things, the thing that makes all of those the same is those folks are all neighbors and they all care about what happens to the other neighbors. When dealing with transient folks, look they have even admitted they had to delete the folks that looked like they were there just to party. Mr. Dorothy said they have already had problems with Airbnb's in Worthington where that was exactly what was happening. Loud noise complaints were coming from people coming to party. He said we have already been down this road and he did not know why they must continue to keep plowing the same ground. He said the language is clear and they all know what lodging and transient mean, and if we are confused at all, the Ohio Revised Code is absolutely clear. We need to put down the Appeal.

Mrs. Amanda Cook, 186 Park Blvd., Worthington, Ohio, said she lives across the creek from the house in question. She said she was before the Board before because they wanted to live in this area and build an addition. She said the second time they came before the Board was because they wanted to build a fence, and both were approved, and they have been very happy in their community. She said the concern for her and her family, she is the mother of three young children. She has a six-year-old child who goes to Colonial Hills Elementary, a three-year-old who to preschool around the corner and an eighteen-month-old baby. She said she is concerned because the property is next to a park and there are constantly people coming in and out and they do not have ties to the community. Ms. Crane reminded Mrs. Cook the Board is discussing whether the house in question meets the definition of a Tourist Home.

Mr. Paul Cook, 186 Park Blvd., Worthington, Ohio. Mr. Cook said the word lodging means a hotel. He said if this house is not a Tourist Home, then every single listing on Airbnb is not a Tourist Home, so then he does not understand what a Tourist Home is. He said if he and his buddies were getting a house for the weekend, then that is Tourist Home.

Mr. Heinz Putz, 195 Sinsbury Dr. N., Worthington, Ohio, said he lives in a neighborhood and moved here from Chicago in 1977 and they moved here so their children could walk to school. This past fall, someone in their neighborhood started cutting trees down. Ms. Crane explained that had nothing to do with this issue. Mr. Putz asked who he should call within the City. Mr. Lindsey said if he had a question about a general concern that he should contact the City Manager's Office.

Mrs. Elizabeth Seitz, 415 E. South St., Worthington, Ohio, said she wanted to echo the comments of the earlier speaker. She felt the zoning laws were very clear and she thinks that this house does fit the definition of a Tourist Home. If she rents a house for the weekend or for a week, that is a Tourist Home. Mrs. Seitz said before the meeting she did some research on the Airbnb website itself and it states that if you want to host a house that it recommends reaching out to your municipality and look up any see if there are any permitting, zoning, rules, safety and health regulations that may apply. The local government authorities that regulate the use and development of property will have a lot of useful information, so she was not sure if the family did that prior to undertaking this venture. Mrs. Seitz said if you look on the Airbnb webpage when you go to being a host family the website has links to local municipalities which explains what their zoning laws are. She did notice that there was not a link to a smaller city such as Worthington. There are rules already set up for the City of Columbus for hotel, motel and short-term rental operations. The City of Columbus clearly states that transient means thirty days or less. She said within a half hour of online research she was able to discern the meaning of a transient home and a Tourist Home is any kind of lodging or room that is rented out and transient is thirty days or less.

Mr. Doug Wiles, 5788 Granby St., Worthington, Ohio, said there had been very little discussion on how the home has been used since his neighbors purchased it. He said speaking from his own firsthand observation, he lives in the house next door, but up the hill. He walks his dog during the day also and walks past the house frequently. Quite a few of the rentals have been little family gatherings that appear they are from out of town and very quiet. There have been some occasions that have made them concerned, including the neighbors, because of the events that were held in late fall during the October and November time period. On Friday or Saturday night there would be blow out parties with very loud music, people talking loud outside at all hours and the music would continue into the middle of the night. He said one night around 2:00 a.m. he was awakened because their bedroom window faces the house. Their outdoor patio faces the side of his house. He heard really loud talking which woke him up, so he went downstairs to see if there was

anyone in his yard. He said he saw people smoking outside, and a car go up the hill at a fast rate of speed followed by another car that pulled into their neighbors' driveway directly across the street from his home. The car backed out and hit his retaining wall and knocked a chip off the wall. Ms. Crane explained Mr. Wiles was not discussing what they were trying to focus on at the meeting. She said they are trying to determine if the City's Building Inspector was correct in determining that this house is a Tourist Home and in violation of the City's Code. Mr. Wiles said he agreed that this house met the definition of a Tourist Home.

Mr. Thomas Huff, 588 Beechview Dr. E., Worthington, Ohio, one of the owners of the home in question, said he would like a Stay for further discussion as to whether an Airbnb should be there. He said they are discussing the definition of what a Tourist Home is, and there were quiet a few people discussing things that were not relevant to things on hand. He said he had a concluding statement. In his opinion, a Tourist Home which has rooms for rent and possibly has an owner in the house and may serve breakfast. He said this is a full house, downstairs, living room, and the person has use of the entire facility. There is no owner's suite. They are renting a house. Mr. Huff believed a Tourist Home would be more like a bed and breakfast, with an owner present.

Mr. Seitz read aloud the note prior to the motion in the staff memo concerning how motions are crafted in the positive and what a yes and no vote would mean as it pertains to this case.

Motion:

Mr. Seitz moved:

THAT THE APPEAL BY JACQUELINE GARAGUS & THOMAS HUFF OF THE DECISION OF THE BUILDING INSPECTOR REGARDING OPERATING A TOURIST HOME AT 142 PARK BLVD., AS PER CASE NO. BZA 07-2020, DRAWINGS NO. BZA 07-2020 DATED DECEMBER 23RD, 2019, BE UPHELD, 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. All Board members voted, "Nay," and the motion was denied.

Mrs. Elizabeth Seitz, 415 E. South St., Worthington, Ohio, asked if there would be further discussion as to whether this type of situation would be allowed in the city. Mr. Brown explained there would be another meeting at the Municipal Planning Commission next Thursday, on March 12, 2020, at 7:00 p.m., and one of the Agenda items would be a text amendment to the Planning & Zoning Code that will go into further detail defining and clarifying that section of the Code. He explained if anyone is interested in further information they can sign up through the City's website.

2. **Variance** – Front Yard Setback – Addition – **50 E. Granville Rd.** (Schorr Architects/
Worthington Board of Education) **BZA 03-2020**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This property is in the S-1 (Special) Zoning District along regional thoroughfare Rt. 161. Kilbourne Middle School was constructed in 1938 with a renovation done in 1965. This property is also subject to, and the proposed plans have been approved by the Architecture Review Board on February 27, 2020.

The applicant is proposing to construct a ~10,500 square foot, two-story addition to the existing middle school that will extend into the required side yard along Hartford Avenue. The addition will abut the public right-of-way, making the variance request the full amount of yardage required to be setback.

The proposed addition will be on the 1965 portion of the building rather than the original 1938 building.

The applicant is requesting this addition due to the need for more office and classroom space, as well as an expansion of the student dining hall. Some existing administrative offices will be renovated into classrooms, as well as some storage rooms converted into restrooms.

Worthington Codified Ordinances:

Section 1149.03 states requires all buildings other than dwellings to be at least 50 feet from the public right-of-way.

Section 1149.07 states the setback along major traffic routes shall be 50 feet along regional thoroughfares.

Section 1149.08 states side yards fronting on the adjacent street can be reduced to two-thirds of the required front setback from the right of way of the adjacent street.

Request:

The applicant is requesting to construct the addition in the required side yard setback. With the two-third reduction, the setback is required to be 33 feet 4 inches. In addition, with the structure being proposed to abut the public right-of-way, a variance of the full 33 feet 4 inches is required.

Conclusions:

The lot which Kilbourne Middle School is located is quite confined with limited space to expand. This is so because of existing parking, open space, and the existing building footprint.

The renovations of the building are essential to preserve the existing building and grow with the increasing number of students in the district to make it the most functional space it can be.

The essential character of the neighborhood should not be substantially altered as the sidewalk connections to Worthington Library and E. Dublin-Granville Road are being maintained. In addition, the exterior façade will match the existing character of the building, and the historic entry along E. Dublin-Granville will be preserved.

The delivery of government services should not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mr. Nathan Gamella, 1064 Highland St., representing Schorr Architects. Ms. Crane said she thought it was wonderful to do something to preserve the school. She also felt it was good for the neighborhood and good for the kids to be able to walk to and from school. Ms. Crane asked if there was anyone present who wanted to speak for or against this application.

Motion:

Ms. Reibel moved:

THAT THE REQUEST BY SCHORR ARCHITECTS ON BEHALF OF THE WORTHINGTON BOARD OF EDUCATION FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR AN ADDITION AT KILBOURNE MIDDLE SCHOOL TO BE IN THE REQUIRED FRONT YARD AT 50 E. GRANVILLE RD., AS PER CASE NO. BZA 03-2020, DRAWINGS NO. BZA 03-2020 DATED FEBRUARY 7TH, 2020, 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. All Board members voted, “Aye,” and the motion was approved.

- 3. Variance – Front Yard Setback – Fence – 173 E. Wilson Bridge Rd. (Harold Careins) BZA 04-2020**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This property is in the R-10 (Low Density Residential) Zoning District and within the Wilson Bridge Corridor. East Wilson Bridge Road is considered a regional thoroughfare within the City. The dwelling on the property was built in 2015. The property is adjacent to the newly constructed Granby Place Apartments to the east.

The property owner applied for a fence permit in December 2019. The site plan indicated the fence was to be setback 50 feet from the right-of-way and be 5 feet in height.

On January 27th, 2020, a report was made to Planning and Building staff that a fence had been constructed in the front yard setback at 173 East Wilson Bridge Road. Code Enforcement Officer, Chris Keppler went out the following day to the property in question; he met with the property owner and found that the fence was not constructed per the approved drawings and that a variance would need to be sought.

The applicant made reference in their application that the fence is 6 feet from the current public right-of-way (see applicant's materials), however that 6 feet would be from the future right-of-way planned for the Wilson Bridge Road Corridor. The applicant is requesting the fence to be located ~21 feet from the current public right-of-way, which would be ~28 feet from the back of curb of East Wilson Bridge Road. The fence is proposed to be open-style and 5 feet in height. The proposed fence is for the purpose of being a visual barrier between adjacent properties.

In 2017, the property owner sought approval from the board to have a gate installed across the driveway ~24 feet from the back of curb of East Wilson Bridge Road. The proposed fence would run along the east and west side of the property; it would extend further into the required front yard than the existing gate feature to have a more "complete look".

There are three (3) relevant documents or study's regarding the future of Wilson Bridge Road; the 2011 Wilson Bridge Road Corridor Study, the Wilson Bridge Road Streetscape Improvement Plan, and the Wilson Bridge Corridor District. Based on the Wilson Bridge Corridor Study, the recommendation for the south side of East Wilson Bridge Road is to host office development. As the property in question is privy to potential future development, it is important to consider the how any new plan, variance request, or potential modification to the current site will affect this future use. The Wilson Bridge Road Streetscape Improvement Plan recommends streetscape improvements throughout the corridor and proposes a new multi-use path on the south side of East Wilson Bridge

Road. Staff would like to ensure the appropriate amount of right-of-way is secured to allow for these projects to come to fruition; thus, with the granting of this variance, the City would ask the property owner for an additional 15 feet of right-of-way dedication for the use of a future multi-use path.

Worthington Codified Ordinances:

Section 1149.01 states any dwelling or structure accessory to a dwelling must be at least 30 feet from the public right-of-way.

Section 1149.07 states the setback along major traffic routes shall be 50 feet along regional thoroughfares.

Request:

The applicant is requesting to construct a fence along the side yard property lines in the required front yard, ~21 feet from the right-of-way. A variance of 29 feet is required.

Conclusions:

As the fence is open-style and decorative in nature, this may make the variance request less substantial.

The fence aligns with the existing freestanding monument sign to the east at Granby Place Apartments. This is aesthetically more appealing and would not alter the essential character of the neighborhood.

The delivery of governmental services should not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mr. Harold Careins, 173 E. Wilson Bridge Rd., Worthington, Ohio, said he agreed with staff's comments. He just needs a variance to leave the fence where its located now. Mr. Seitz asked if there was a plan to connect the fence to the gate and Mr. Careins said his wife prefers creating a natural fence with shrubs and plants. He said the commercial development next door has been a pretty good neighbor so far.

Mr. Brown stated that City staff supported the applicant's request for a variance with the condition of the 15-feet of additional public right-of-way to be dedicated by the applicant as part of their approval, which matches with what the applicant submitted. He stated that he believes Mr. Careins request did not go against the guidelines that were put in place for the Wilson Bridge Road Corridor and that this would be an overall benefit to the property owner and the City. Mr. Brown referenced the fence that the Board approved a modified version of a fence on the property on the east side of Granby Place. Mr. Brown also reference the previous approval for the gate that the applicant installed in 2017.

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

Ms. Kimberly Peer, 199 E. Wilson Bridge Rd., Worthington, Ohio, said she lives on the other side of the apartments. She said she was in favor of the fence going up.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY HAROLD CAREINS FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR A FENCE TO BE WITHIN THE REQUIRED FRONT YARD AT 173 E. WILSON BRIDGE RD., AS PER CASE NO. BZA 04-2020, DRAWINGS NO. BZA 04-2020 DATED JANUARY 29TH, 2020, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING WITH THE CONDITION THAT THE APPLICANT DEDICATE 15 FEET OF RIGHT-OF-WAY ALONG THE PROPERTY'S FRONTAGE.

Mr. Coulter seconded the motion. Mr. Brown called the roll. All Board members voted, "Aye," and the motion was approved.

4. **Variance** – Extension of Construction Completion Period – Detached Garage - **100 W. South St.** (Neil Toepfer) **BZA 05-2020**

Ms. Crane explained the applicant has requested to table this item. Mr. Coulter moved to table this application and Mr. Seitz seconded the motion. All Board members voted, "Aye," and the application was tabled.

5. **Variance** – Rear Yard Setback – Addition – **314 W. New England Ave.** (Jonathan and Lesley Khoury) **BZA 06-2020**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This approximate 14,000 square foot property is in the R-10 (Low Density Residential) Zoning District on a corner lot. The existing house was built in 1959.

The applicant is proposing to construct a new master suite addition to the side of the existing dwelling. The addition would be 25.6 feet to 29 feet from the rear property line; the varying dimensions are due to a sloped property line. With the dwelling being built prior to the adoption of the Worthington Zoning Code in 1971, the footprint of the existing

home is within the required rear property. The proposed addition would be further from the rear property line than the existing home.

The proposed addition would be 20 feet by 23 feet 4 inches for a total of 470 square feet. The addition would not encroach into the required front or side yard. The applicant is requesting this addition for the purpose of adding a bedroom and bath for their growing family.

Worthington Codified Ordinances:

Section 1149.01 states any dwelling or structure accessory to a dwelling must be at least 30 feet from the rear yard property line.

Request:

The applicant is requesting to construct an addition to the dwelling that will encroach in the required rear yard. A variance of 4.4 feet to 11 feet is required.

Conclusions:

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, available rear yard space for building footprint is less than typical lots. These factors can mitigate the nature of this variance request.

The essential character of the neighborhood should not be substantially altered as many properties in the vicinity have been maintained as ranch-style homes.

The delivery of government services shall not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mr. Jonathan Khoury, 314 W. New England Ave., Worthington, Ohio. Mr. Khoury said he needed more space for family, and his neighbors approved of the addition. Board members had no questions or concerns. Ms. Crane asked if there was anyone present to speak for or against this application, but no one came forward.

Motion:

Mr. Falcoski moved:

THAT THE REQUEST BY JONATHAN AND LESLEY KHOURY FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR AN ADDITION TO BE CONSTRUCTED IN THE REQUIRED REAR YARD AT 314 W. NEW ENGLAND AVE., AS PER CASE NO. BZA 06-2020, DRAWINGS NO. BZA 06-2020 DATED JANUARY 31ST, 2020, 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. All Board members voted, “Aye,” and the motion was approved.

**6. Variance – Rear and Side Yard Setback – Shed – 337 Pingree Dr. (Anna Rinehart)
BZA 08-2020**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This property is in the R-10 (Low Density Residential) Zoning District. The lot is an irregular shape and is approximately 6,364 square feet.

On December 16, 2019, Code Enforcement Officer, Chris Keppler received report of a newly constructed shed, possibly without a permit at the property in question. After further review, staff confirmed the shed was constructed without a permit and advised the property owner to apply for one. After receipt of the permit application, it was discovered the shed was in the required side and rear yard property and would require a variance.

The applicant stated the newly constructed shed replaced an older, deteriorating shed that existing when they purchased the home. The neighboring property owner stated to Mr. Keppler that the previous shed was likely smaller and further away from the property lines.

The newly installed shed is 16 feet by 12 feet for a total of 192 square feet. It is 2 feet 2 inches from the rear property line, and 3 feet 4 inches from the side yard property line.

Worthington Codified Ordinances:

Section 1149.08(b) of the Worthington Codified Ordinances has the following regulations for accessory buildings:

- If the accessory structure exceeds 120 square feet, it must be setback at least 8 feet from the side yard lot line, and 10 feet from the rear lot line.

Request:

The applicant is requesting to retain the existing shed in the required rear and side yard. A variance of 7 feet 10 inches is required for the rear yard, and 6 feet 8 inches is required for the side yard.

Conclusions:

The substantial character of the neighborhood should not be substantially altered as a shed has been in place in a similar location for many years. This factor may also lessen the impact of the variance request.

The delivery of government services should not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Ms. Anna Rinehart, 337 Pingree Dr., Worthington, Ohio, said she had no where to build on the side of the property and a carport was not an option. She said before she moved in the neighbor moved the fence back so she would have somewhere to set the trash cans. Ms. Rinehart said she needed a larger shed because there is no garage, and if the shed was not in the setback area it would be in the middle of her back yard because her yard is very small. The current shed was leaking, and moldy and she needed someplace to store recreational equipment. She said she wanted her yard to look nice for the neighborhood. Board members did not have any concerns. Ms. Crane asked if there was anyone present to speak for or against this application, but no one came forward.

Motion:

Mr. Seitz moved:

THAT THE REQUEST BY ANNA RINEHART FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR A SHED TO BE IN THE REQUIRED SIDE AND REAR YARD AT 337 PINGREE DR., AS PER CASE NO. BZA 08-2020, DRAWINGS NO. BZA 08-2020 DATED FEBRUARY 4TH, 2020, 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. All Board members voted, “Aye,” and the motion was approved.

**7. Variance – Side Yard Setback – Garage – 384 Colonial Ave. (Nathan and Sarah Niese)
BZA 09-2020**

Mrs. Nofer reviewed the following from the staff memo:

Findings of Fact & Conclusions

Background:

This property is in the R-10 (Low Density Residential) Zoning District in the Colonial Hills neighborhood.

The applicant is proposing to construct an addition to the existing dwelling 6.98 feet from the eastern side yard property line. The variance request is due to an irregularly shaped lot and consists only of a small corner of the addition, not the entire length.

The applicant is requesting this variance for the purpose of needing addition garage space for vehicles, and additional living space.

Worthington Codified Ordinances:

Section 1149.01 states any dwelling or structure accessory to a dwelling must be at least 8 feet from the side yard property line, and total in 20 feet for both side yards.

Request:

The applicant is requesting to construct an addition in the required side yard. A variance of 1.02 feet is required.

Conclusions:

The property has a ravine running through the rear of the property. This can limit the location of an addition being built to the rear rather than to the side as proposed.

The variance request is not substantial as it encroaches slightly over 1 foot into the required side yard.

The essential character of the neighborhood should not be substantially altered.

The delivery of government services should not be affected.

Discussion:

Ms. Crane asked if the applicant was present. Mr. Nathan Niese, 384 Colonial Ave., Worthington, Ohio, said he has a growing family, and they really like the neighborhood. He would like the additional room for a small shop in the garage, and a place to store his vehicles. Board members had no concerns. Ms. Crane asked if there was anyone present to speak for or against this application, but no one came forward.

Motion:

Ms. Reibel moved:

THAT THE REQUEST BY NATHAN AND SARAH NIESE FOR A VARIANCE FROM CODE REQUIREMENTS TO ALLOW FOR AN ADDITION TO BE IN THE REQUIRED SIDE YARD AT 384 COLONIAL AVE., AS PER CASE NO. BZA 09-2020, DRAWINGS NO. BZA 09-2020 DATED FEBRUARY 10th , 2020, 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. All Board members voted, “Aye,” and the motion was approved.

D. Other

Mr. Brown gave an update on the status of 410 Tucker Drive and mentioned that the homeowner may be applying for a new Building Permit in the future, which means that it would not be coming back to the Board for an extension.

E. Adjournment

Mr. Seitz moved to adjourn the meeting and Mr. Falcoski seconded the motion. All Board members voted, “Aye,” and the meeting adjourned at 9:04 p.m.