October 26, 2012

To: Members of the Board of Zoning Appeals

From: Don Phillips, Chief Building Inspector

Subject: Staff Comments for the Meeting of November 1, 2012

C. Items of Public Hearing

1. Variance – Parking Setback **– 60 Old Wilson Bridge Rd.** (Eleanor Popper) **BZA 44-12**

Findings of fact:

1. This property is an existing lot of record in a C-3 district with a building setback requirement of 50 feet along freeways and expressways, and a parking lot setback requirement of 5 feet from the right of way.

2. The State of Ohio is in the process of limited access right of way acquisition for improvements to the Interstate 270 and U.S. Route 23 interchange. Part of that acquisition includes a portion of the property at this location.

3. The proposed right of way line will reduce the setback of the existing building to 22.4 feet. The requested variance is 27.6 feet.

4. Portions of the existing parking lot are within the existing freeway right of way. The proposed right of way line will cause portions of the existing parking lot to be on the freeway right of way line. The requested variance is 5 feet.

The following conclusions are presented:

1. The intent of the setback requirements is to provide landscaping buffers and open areas between buildings and parking, and the public right of way. In this particular case, the freeway is more of a visual encumbrance upon the building and the parking lot than the same upon the freeway. The property is screened to the north by vegetation and there is a significant grade difference between this property and the freeway exit ramp. All of these factors mitigate the substantial nature of the variance request.

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

3. The delivery of governmental services should not be affected.

The following motion is recommended:

THAT THE REQUEST BY THE ELEANOR POPPER FOR A VARIANCE FROM CODE REQUIREMENTS FOR SETBACKS TO ALLOW THE TRANSFER OF PROPERTY AT 60 OLD WILSON BRIDGE ROAD, AS PER CASE NO. BZA 44-12, DRAWINGS NO. BZA 44-12 DATED OCTOBER 9, 2012, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

2. Extension of Construction Completion Period – Additions **– 156 E. South St.** (Geoff Davis) **BZA 40-12**

Findings of fact:

1. Building Permit 18690 was issued on July 17, 2009 to construct additions and alter the interior of the existing dwelling. The work was started on or before June 21, 2010 when a footing inspection was conducted by the Building Inspector. The last inspection, of the insulation, was conducted on August 15, 2011. The permit expired on January 17, 2012.

2. The applicant is requesting an extension of the construction completion period but made no specific request. The Chief Building Inspector advises 6 months from today should allow sufficient time to complete all the work.

The following conclusions are presented:

1. The cause of the delay were legal proceedings against the previous contractor. It is in the best interest of the owner and the City that the permit be extended to complete the work. The site is well maintained and free from unnecessary material and rubbish.

The following motion is recommended:

THAT THE REQUEST BY GEOFF DAVIS FOR AN EXTENSION OF CONSTRUCTION COMPLETION PERIOD OF 6 MONTHS FROM TODAY TO COMPLETE THE WORK AUTHORIZED BY BUILDING PERMIT 18690 AT 156 EAST SOUTH STREET, AS PER CASE NO. BZA 40-12, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

3. Variance – Front and Side Yard Setbacks – Additions **– 59 W. New England Ave.** (Adam Moore) **BZA 41-12**

Findings of fact:

1. This property is an existing lot of record in an R-10 district with a front yard setback of 30 feet. Corner lots are permitted to reduce the adjacent setback to 20 feet. Refrigeration equipment is not permitted in a required yard.

2. The West New England Avenue and Oxford Street right of ways are 66 feet wide.

3. The existing dwelling is within the 30 foot front setback and is approximately 20 feet from the West New England Avenue right of way, and within the 20 foot side yard setback and is approximately 15 feet from the Oxford Street right of way. There is an existing air conditioner condenser along the west side of the dwelling within the 20 foot setback.

4. The applicant is proposing a 5 foot 8 inch by approximately 14 foot front porch. This porch includes a 3 foot by approximately 7 foot roof, and 2, 2 foot by 2 foot brick piers approximately 5 feet 6 inches tall. The requested variances are to allow the entire porch roof and brick piers within the front yard setback.

5. The applicant is further proposing a 12 foot by 28 foot addition to the rear of the house, including alterations to portions of the existing dwelling within the 20 foot setback. The requested variance is 5 feet.

6. The existing condenser will one day need to be replaced and granting a variance now will not delay its replacement in the future. Staff has no record of any inquiries regarding the location of the condenser. The requested variance is to allow the condenser to remain.

7. The property is subject to, and the additions have been approved by, the Architectural Review Board.

The following conclusions are presented:

1. Smaller existing lots of record face a challenge attempting to comply with setback requirements. Corner lots are further challenged by the additional side yard requirements. In this particular case the typical challenges are compounded with wider than the normal 50 foot right of way, encroaching upon the property 8 feet more than other similar property in Worthington. The variance requests are not substantial and are further mitigated based upon these factors.

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

3. The delivery of governmental services should not be affected.

The following motion is recommended:

THAT THE REQUEST BY ADAM AND MARY MOORE FOR A VARIANCE FROM CODE REQUIREMENTS FOR FRONT AND SIDE YARD SETBACK TO ALLOW THE CONSTRUCTION OF A FRONT PORCH AND REAR ADDITION, AND THE PLACEMENT OF AN AIR CONDITIONER CONDENSER AT 59 WEST NEW ENGLAND AVENUE, AS PER CASE NO. BZA 41-12, DRAWINGS NO. BZA 41-12 DATED OCTOBER 3, 2012, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

4. Extension of Construction Completion Period – Addition & Renovation **– 849 Oxford St.** (Jason Miriello/McGarry) **BZA 42-12**

Findings of fact:

1. Building Permit 19438 was issued on May 20, 2011 to construct additions and alter the interior of the existing dwelling. The work was started on or before October 21, 2011 when a footing inspection was conducted by the Chief Building Inspector. The last inspection, of a portion of the framing, was conducted on October 22, 2012 by the Building Inspector. The electrical construction documents have not been approved. The building permit will expire on November 20, 2012.

2. The Division of Building Regulation, the Department of Engineering, and the Department of Administration including the City Manager's office have been contacted by neighbors numerous times since October, 2011 about various issues including the lack of construction activity for long periods of time.

3. The applicant is requesting an extension of the construction completion period until February 15, 2013. The Chief Building Inspector advises this Board to grant 30 days additional time to complete the exterior work and have the applicant report back to the Board to consider additional time for the interior work.

The following conclusions are presented:

1. No cause for delay of the project has been given and due to community concerns, the project should be monitored to ensure timely completion.

The following motion is recommended:

THAT THE REQUEST BY JASON MIRIELLO, BRIAN MCGARRY, AND ALLISON GENTILE FOR AN EXTENSION OF CONSTRUCTION COMPLETION PERIOD OF 30 DAYS FROM NOVEMBER 20, 2012 TO COMPLETE THE EXTERIOR WORK AUTHORIZED BY BUILDING PERMIT 19438 AT 849 OXFORD STREET, AS PER CASE NO. BZA 42-12, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

5. Variance – Temporary Office Trailer **– 5750 N. High St.** (Corna Kokosing/St. Michael Church) **BZA 43-12**

Findings of fact:

1. This property is in an S-1 district and office trailers are subject to Architectural Review and setback requirements. The Worthington Design Guidelines typically does not support office trailers. A Temporary Use Permit is valid for 6 months and can be renewed 1 time for an additional 6 months.

2. The applicant applied for and was granted a Temporary Use Permit for an office trailer on February 3, 2011 to begin when the Certificate of Occupancy for the trailer was issued. That certificate was issued on March 24, 2011. The trailer houses the parish office on a temporary basis until an addition to the existing building is constructed.

3. The applicant applied for a variance with a sunset provision on September 9, 2011. It was approved on October 6, 2011 and will expire on January 1, 2013.

4. The applicant is now proposing a variance from code requirements to allow the existing trailer to remain through June 30, 2014.

The following conclusions are presented:

1. The original plan of the owner was the addition to be under construction when the Temporary Use Permit extension was applied for. The addition was to be completed and ready for occupancy of the parish office when that permit expired. Due to slower than expect fundraising, construction has been delayed. Recent leadership changes within the parish had further slowed the fundraising efforts. The new timeframe assumes construction will begin in the spring of 2013 with occupancy spring 2014.

2. Staff has no record of inquiries since the trailer became operational in 2011. It is well screened from the neighbors to the north and cannot be seen from Selby Boulevard. It is set back and partially screened from portions of North High Street. Placing a sunset provision on the variance will allow the temporary office to remain until the addition is completed.

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

4. The delivery of governmental services should not be affected.

The following motion is recommended:

THAT THE REQUEST BY CORNA KOKOSING CONSTRUCTION CO. AND ST. MICHAEL CHURCH FOR A VARIANCE FROM CODE REQUIREMENTS FOR A TEMPORARY OFFICE TRAILER TO REMAIN AT 5750 NORTH HIGH STREET UNTIL JUNE 30, 2014, AS PER CASE NO. BZA 43-12, DRAWINGS NO. BZA 43-12 DATED OCTOBER 5, 2012, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.

Reference

Portion of Section 1129.05

(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 Chapter 1305 of 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 will safeguard the public health, safety, convenience and general welfare.

(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.