

MINUTES OF THE REGULAR MEETING  
BOARD OF ZONING APPEALS

December 6, 2012

**A. Call to Order – 7:30 p.m.**

1. Roll Call - the following members present: B. Seitz, Mr. Hunter and C. Crane.  
Also present was D. Phillips, Chief Building Inspector.
2. Pledge of Allegiance
3. Motion to approve as amended the November 1, 2012 minutes by Mr. Hunter, seconded Mr. Seitz. Minutes were approved.
4. Affirmation/swearing in of witnesses.

**B. Unfinished Business**

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

Discussion:

Mr. Phillips reviewed the staff memo.

Jason Miriello, 3718 Leap Road, Hilliard, stated they have made substantial progress on the exterior, being ninety five percent complete and stated they would maintain the same pace until completed. Photos number thirteen and nineteen were compared to see the progress. Mr. Miriello stated the last five percent is basically metal work which should take another two weeks.

Mr. Hunter asked for a completion date and Mr. Miriello said he originally requested mid February but should not take that long.

Mr. Phillips stated due to the winter weather coming they are not going to be able to do the cap stone, paving or landscaping so this project will be pushed past February. Mr. Miriello stated the paving can be done during the winter.

Ms. Crane asked if staff was recommending thirty days extension and Mr. Phillips replied that is correct.

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

Alli Gentile, 849 Oxford Street, stated crews have been there on weekends to speed up the progress and stated they have tried to be considerate of the neighbors, when they received complaints about the dumpster and the Porta John, they had them removed.

Mr. Hunter said he is inclined to go with the February date instead of making the applicant come back in January simply because of the weather. Mr. Seitz asked if they grant the sixty day extension will the Board see the applicant back and Ms. Crane said not if they are completed. Mr. Hunter stated he does not want to give a sixty day extension and then see the work slow down.

#### 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.
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 Board of Zoning Appeals granted 30 days additional time on November 1, 2012 to complete the exterior work. The building permit will expire on December 20, 2012. The last inspection, of the insulation, was conducted on November 7, 2012 by the Building Inspector. As of 3:00 pm today, the exterior work is not completed.
4. The applicant asks for 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.

#### Conclusions:

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.
2. At the November 1, 2012 hearing some of the delays were attributed to the previous roofing contractor and the complexity of the design.
3. Some of the exterior work, like landscaping, sod, driveways, and walkways may be further delayed by weather as the project moves from fall to winter.

Mr. Hunter moved:

**THAT THE REQUEST BY JASON MIRIELLO, BRIAN MCGARRY, AND ALLISON GENTILE FOR AN EXTENSION OF CONSTRUCTION COMPLETION PERIOD OF 60 DAYS FROM DECEMBER 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.**

Mr. Seitz seconded the motion and all members voted “aye” thereon.

### **C. Items of Public Hearing**

#### **1. Variance – Parking – 940 High St. (Shawn McAllister/Ace Hardware) BZA 45-12**

Discussion:

Mr. Phillips reviewed the staff memo.

Shawn McAllister, 1679 Old Henderson Road, stated the roof has been painted and matches now, the landscaping has been updated in the front sign area, trees have been added on the side street area, and they are still going to blacktop the parking area, paint the rear of the building, and add a dumpster enclosure. They are proposing to add a twenty five foot by one hundred square foot garden center on the side with plantings and wrought iron.

Mr. Hunter stated even though they do not own the property, they have done a lot to improve the property.

Mr. McAllister stated since this business is a hardware store, the customers are in and out quickly and there is more than adequate parking.

Jim Ryan, 380 Tucker Drive, stated they currently have three other stores and on an average the customers are there for only five to ten minutes. This location has five to six times more parking than the other stores. Mr. Seitz asked if the missing twelve spaces were located on the side were the garden center would be and Mr. Phillips replied yes.

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

Mr. Sietz asked to discuss the trees. Mr. Ryan stated they put seven trees on the North Street side and since they do not own the property they did not want to cut up the parking lot for landscape islands with additional plantings. They did completely redo the front landscaping and painted the sign. Mr. Hunter stated the Architectural Review Board was alright with the amount of trees planted, the Board is just happy the building will be occupied.

Findings of fact:

1. This property is an existing lot of record in a C-2 district, with a legally nonconforming parking lot. The following are current parking requirements:
  - a. 1 parking stall for each 150 square feet of gross building area,
  - b. 2 inch diameter, breast, height of tree trunk for each 6 parking spaces.
2. The existing building is 20,552 square feet in gross area, a current parking requirement of 138 parking spaces, and with existing parking of 83 spaces with no trees within the parking spaces. 23 inches of tree trunk would be required for 138 parking spaces, and 14 inches would be required for the 83 spaces.
3. The applicant is proposing to alter the striping of a portion of the existing parking lot to create a garden center along the south side of the existing building. The proposed striping will result in 71 spaces, a reduction of 12 parking spaces. The requested variance is to increase the nonconformity by an additional 12 parking spaces.
4. The parking lot currently has no trees within it and the proposed 71 spaces require 12 inches of tree trunk. The applicant has planted trees in the public right of way adjacent to the parking area being altered. The requested variance is for 12 inches of tree trunk.

Conclusion:

1. The current and proposed uses of the building do not demand the parking spaces required by the zoning code due to the transient nature of their customers. When the owner had occupied the southern portion of the building, similar in nature to the proposed use, the existing parking was more than adequate. This mitigates the substantial nature of the variance request.
2. The trees planted in the south right of way cannot be counted to meet the parking requirements but they mitigate the substantial nature of the variance request.
3. The essential character of the neighborhood should not be substantially altered.
4. The delivery of governmental services should not be affected.

Mr. Seitz moved:

**THAT THE REQUEST BY SHAWN MCALLISTER, ACE HARDWARE, AND CVS 3407 OH LLC FOR A VARIANCE FROM CODE REQUIREMENTS FOR PARKING TO CONSTRUCT A GARDEN CENTER AT 940 HIGH STREET, AS PER CASE NO. BZA 45-12, DRAWINGS NO. BZA 45-12 DATED NOVEMBER 7, 2012, BE APPROVED, BASED ON THE FINDINGS OF FACT AND CONCLUSIONS IN THE STAFF MEMO AND/OR PRESENTED AT THE MEETING.**

Mr. Hunter seconded the motion and all members voted “aye” thereon.

**2. Variance – Side Yard Setbacks – Condensing Unit – 258 W. New England Ave. (Kevin Carrier) BZA 46-12**

Discussion:

Mr. Phillips reviewed the staff memo.

Kevin Carrier, 258 West New England Avenue, stated the old condensing unit had to be replaced and it had been in same location for twenty five years. Mr. Hunter asked if there was any record of a variance in the past and Mr. Phillips said he found no record for this property.

Ms. Crane stated there was no one in the audience to speak for or against this proposal.

Findings of fact:

1. This property is an existing lot of record in an R-10 district with a minimum 8 foot side yard requirement. Refrigeration equipment is not permitted in a required yard.
2. The applicant has replaced the condenser in the side yard setback. The requested variance is to allow the condenser in the side yard to remain.
3. The Division of Building Regulation has no record of any inquiries about the past or present location of the condenser.

Conclusions:

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

Mr. Hunter moved:

**THAT THE REQUEST BY KEVIN AND NICOLE CARRIER FOR A VARIANCE FROM CODE REQUIREMENTS FOR SIDE YARD SETBACK TO ALLOW THE AN AIR CONDITIONER CONDENSER TO REMAIN AT 258 WEST NEW ENGLAND AVENUE, AS PER CASE NO. BZA 46-12, DRAWINGS NO. BZA 46-12 DATED NOVEMBER 12, 2012, 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 and all members voted “aye” thereon.

Mr. Hunter moved to adjourn, and Mr. Seitz seconded the motion. The meeting adjourned at 7:55 P.M.