

MINUTES OF MEETING
BOARD OF ZONING AND BUILDING APPEALS
NOVEMBER 4, 2021

Members Present: Farrell, Brandt, Wright, Christ, Pempus

Presence Noted: Andrew Bemer, Law Director
Raymond Reich, Building Commissioner

Councilmembers Present: Christina Morris, At-Large Councilmember

Mr. Pempus opened the November 4, 2021 meeting of the Board of Zoning and Building Appeals at 7:00 p.m. and explained the meeting protocol. He said that all of the Board members have had an opportunity to visit each of the sites and review the variance applications and the other information submitted by each applicant. Mr. Pempus announced that the Agenda would be rearranged so that the Taft variance request is heard before the DeMarco variance request.

1. Approval of the Minutes of the October 14, 2021 Board of Zoning and Building Appeals meeting. Mr. Farrell moved to approve the minutes as presented. Mr. Wright seconded.

4 Ayes – 0 Nays – 1 Abstain (Christ)
Passed

2. ZORAN TIMIC – 21070 Lake Rd. – PUBLIC HEARING – Variance to construct a second curb cut for a circular driveway on a 60' wide lot vs. minimum lot width of 90' required for a second curb cut (Section 1187.31(d)(1)). Zoran Timic, Homeowner, came forward to present his variance request.

Board Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Pempus made note of the close proximity of the Lake Rd. and Wagar Rd. intersection. Mr. Timic explained that Lake Rd. is a busy street and this location is particularly busy because of motorists turning west onto Lake Rd. from Wagar Rd. He added that his daughter would be starting to drive soon and exiting face forward is very important for safety.

Discussion was had relating to just constructing a 3-point turnaround in front of the house rather than a second curb cut, which was drawn and referred to as Sketch "A". Other suggestions were also discussed. The applicant agreed to construct the turnaround according to Sketch "A" as drawn and labeled by Mr. Farrell. Law Director Bemer said that the parking turnaround in the front can be voted on without notice because it's a lesser variance request.

Mr. Christ moved to close the public hearing. Mr. Brandt seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ summarized all of the practical difficulties factors aloud. There were no further comments by the Board members regarding the summary.

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Mr. Christ moved to grant a variance to Zoran Timic, 21070 Lake Rd. to construct a parking pad in the front of the house as configured on Sketch "A", which will be attached to the minutes and referred to for permitting. Mr. Wright seconded.

5 Ayes – 0 Nays
GRANTED

3. DIANE MILLER – 20062 Bonnie Bank Blvd. – PUBLIC HEARING – Variance to construct a second story to an existing detached garage with a height of 17' – 3" vs. 15' maximum height permitted for detached garages; a Variance to enlarge the area of a non-conforming detached garage by adding a second story with a 3' side yard setback vs. 5' side yard setback required (Section 1153.15(e) and 1153.15(b)(1); and a Variance to construct a detached garage with 773 sq. ft. of gross floor area vs. a maximum of 600 sq. ft. of gross floor area permitted (Section 1153.15(c)). Mr. William Miller, Homeowner, came forward with Mr. Joe Presot, Architect.

Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus.

Mr. Presot Architect, introduced himself and the project and discussed the changes that have been made to the original submission including removing the exterior stairs to the second floor area above the garage. The Board thanked Mr. Presot for the changes and agree that the gable with the single front dormer is more in line with the revisions discussed at the previous meeting. Chairman Pempus asked Mr. Miller if there will be any use to the second floor area other than storage, to which Mr. Miller responded that the second floor space will only be used for storage.

Mr. Christ moved to close the public hearing. Mr. Wright seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test to these variance requests aloud, and the other Board members agreed with his interpretation.

Mr. Christ moved to grant a variance to Diane Miller, 20062 Bonnie Bank Blvd., to construct a second story to a detached garage with a height of 17' 3" vs. 15' maximum height permitted for a detached garage per 1153.09(b) Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

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Mr. Christ moved to grant a variance to Diane Miller, 20062 Bonnie Bank Blvd., to enlarge the area of a non-conforming detached garage by adding a second story with a 3' side yard setback vs. 5' side yard setback required Section 1153.15(e) and 1153.15(b)(1). Mr. Farrell seconded.

5 Ayes - 0 Nays
GRANTED

Mr. Christ moved to grant a variance to Diane Miller, 20062 Bonnie Bank Blvd., to construct a detached garage with 773 sq. ft. of gross floor area vs. a maximum of 600 square feet of gross floor area permitted. Mr. Farrell seconded.

5 Ayes – 0 Nays
GRANTED

4. ERIC AND ANGELA BARTUNEK – 1067 Wagar Rd. – PUBLIC HEARING – Variance to construct a third floor addition with a height of 29' – 9" vs. 25' maximum height permitted (Section 1153.09). Mr. John Faile, Architect and Dan Bennett of Bennett Builders, came forward to present the variance request.

Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. The floorplan of the third floor addition was described as consisting of a master bedroom with bath, a large walk-in closet and a laundry room, as well as a utility area to house the a new furnace and relocated air conditioner condenser. The height calculation was discussed as Mr. Faile felt that Building Commissioner Reich did not use the mean of the correct roof, which results in a larger variance request. Discussion was had relating to modification of the plan to relieve the roof height and reduce the dormer configuration. A suggestion was made to have the Design Board review this to perhaps provide design ideas that would relieve the issues the Board sees with this.

Mr. Christ moved to table this item for up to 75 days. Mr. Wright seconded.

5 Ayes – 0 Nays
TABLED

5. DAVID TAFT – 2345 Wooster Rd. – PUBLIC HEARING – Variance to appeal the Decision of the Zoning Administrator (Section 1133.01) and Retain a Covered Garden vs. the Regulations Regarding Temporary Structures in Residential Districts (Section 1181.17). Mr. Taft, Homeowner, came forward to discuss the appeal and variance. Also present is Michael DeMarco, adjacent rear yard neighbor on Colahan Dr.

Secretary Christ read the meeting notice, which also names the parties who received it. The parties were sworn in by Chairman Pempus. Mr. Taft offered a brief explanation of his appeal and asked what the board wanted him to do to allow him to keep his greenhouse. The original

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notice sent by the Building Department to the applicant referred to the structure as a temporary storage structure. Building Commissioner Reich addressed the board and asked that they look in their provided packet and find the photos of an unpermitted structure that has been constructed in Mr. Taft's backyard at 2345 Wooster Rd. This was brought to the Building Department's attention via a complaint on August 11th. Codified Ordinance 1181.17 allows a temporary structure to be used for 15 days for storage on a solid surface or for construction purposes during a project which neither use applies here. He said that we are here per Section 1133.01 as an appeal of his decision to have the applicant remove the tent. He added that the letter in the Board's packet to Mr. Taft, dated October 7th, was written and discussed with the assistance of Law Director Bemer and gives a good overview of the situation. Law Director Bemer further reinforced this, stating that structures such as what is in the applicant's back yard are not considered permanent and are taken down after a certain amount of time. After some discussion, the Board members agreed that this is indeed a structure. However, the applicant denied that, calling it a "covered garden," which he said does not apply to any regulations under the Code. Mr. Taft said he has a number of letters of support from neighbors, including adjacent neighbors, and some of them also abut his property.

Mr. DeMarco read a portion of a prepared letter which was sent to the Building Department earlier in the day. The letter offers an interpretation of the Development Code. His determination is that this should be called an "Accessory Structure" under Section 1123.02 (b) (168) defined as "anything constructed on or under the ground or attached to or connected to the ground, including, but not limited to: buildings...poles...sheds...." He further stated that this type of structure, specifically a "greenhouse," is not explicitly defined or permitted under uses in R-1/R-2 Single Family and Two-Family Residential District regulations. The closest thing listed would be a storage shed, which is expressly noted and permitted as an accessory use, and which is typically comprised of solid walls, a floor, and a roof.

Mr. DeMarco cited section 1153.15(c) of the Development Code, stating that "the maximum gross floor area of all accessory buildings on a zoning lot, including detached garages, shall not exceed 600 sq. ft." Mr. Taft's existing garage is already approximately 480 sq. ft., which leaves only 120 sq. ft. for an additional accessory structure, and the existing greenhouse exceeds this. Mr. DeMarco said he interprets this to be a non-compliant accessory structure that does not discreetly fit anything defined in the Code and he requests that the City enforce its removal. He requests that any new accessory structure that is constructed in its place be sized appropriately to fit within the remaining area allowed for accessory structures.

Mr. Brandt voiced his approval of the intent of the greenhouse, stating that he supports the desire to have a garden and sustainably grow food on one's lot. However, he said that Mr. Taft needs to come back with a better looking structure, which is more permanent in nature. He said that if the applicant wants or needs a variance for area or height then they can deal with it at a later time. Mr. Farrell agreed with Mr. Brandt about the intent of such a structure but made it clear that just because he supports the use doesn't mean it will allow the existing structure to remain as is. He also supports a new, better-looking building or structure.

Mr. Christ asked Law Director Bemer how the board should put forward a motion and whether it should be to not recommend the appeal or whether the motion should be to grant the appeal and the members can deny it if they so choose. Mr. Bemer said the latter would be correct.

Mr. Christ applied the practical difficulties test to this variance request aloud, and the other Board members agreed with his interpretation.

Mr. Christ moved to grant the appeal and variance to David Taft, 2345 Wooster Rd. to appeal the Decision of the Zoning Administrator and Retain a Covered Garden vs. the Regulations Regarding Temporary Structures in Residential Districts. Mr. Brandt seconded.

0 Ayes – 5 Nays
DENIED

6. MICHAEL DeMARCO – 19161 Colahan Dr. – PUBLIC HEARING – Variance to construct a 6' board-on-board fence in the rear yard vs. any portion of the fence over 5' in height must be comprised of material that is 50% transparent when viewed perpendicular to the fence (Section 1153.15(j)(3)). Mr. and Mrs. Mike and Kate DeMarco, Homeowners, came forward to present the variance request.

Mr. DeMarco presented his application, stating that the variance being sought is for a reduction in the open area of a 6' tall fence above 5' from 50% to 25% and that they basically want a 6' tall solid fence instead of the lattice type top that is implied. He said that there are two primary reasons for this, including the existing greenhouse structure that was previously reviewed and discussed that is in his view from his side yard. Also, the former owners of the property to his south had maintained a very nice garden and well-established plantings in the rear of the property. Earlier this year the property was sold to a new owner with the intent of lightly renovating it and turning it into a rental property. As part of that renovation, the new owner ripped out all of the existing landscaping in the back, opening up an unobstructed view into the house as well as through the yard to the neighboring street and the highway barrier. Mr. DeMarco stated it is difficult for him to show how densely it was grown in, as he didn't think he would need to take photos of it for this reason. For these two reasons, the applicant is asking for a variance to allow a 6' tall solid fence along the rear and west side lot lines, to replace a chain link fence that will be removed. The east side lot line will have a new 4' high fence that will be shared by Mr. DeMarco and his neighbors.

Mr. Pempus stated that he has a fence with the lattice over the top, some of which is even grown over with ivy, and stated that even with the open top, he feels there is enough privacy. Mr. Christ agreed with this, stating that there were a lot of variance requests for 6' tall solid fences and that the Board and City agreed that what is written in the code is the appropriate fence for the city. He stated that when he visited the site he felt that the view from the back yard was not terrible, and did not feel that it was adverse and not as bad as it would be if you were right on the highway wall. He felt that the standard fence would be sufficient.

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Mr. Brandt agreed with Mr. Pempus and Mr. Christ, adding that he feels that since there is a good chance there will be a better looking greenhouse on the adjacent property based on the previous agenda item, he would be more in favor of a balanced fence design, having the 5' tall fence on the rear lot line and two 4' tall fences along the side.

Mr DeMarco thanked the Board for their input and comments but mentioned that since his property is zoned R-1 and the adjacent property with the greenhouse is zoned R-2, the code does permit him to have a 6' solid fence between zoning districts and that he will just do that. The Board asked the Building Commissioner and Law Director to confirm that this is correct and permitted. Mr. Reich confirmed that Mr. DeMarco is correct and is allowed to construct the 6' tall solid fence between districts. Mr. Christ said if that is the case, then what exactly is Mr. DeMarco looking for in terms of this application. Mr. DeMarco stated that their desire is still for the variance as submitted on the application. The fence that they are proposing is a board-on-board shadowbox-style fence. The 6' tall fence permitted between zoning districts is meant to be solid, and he would compromise and concede the 100% solid nature of that fence in favor of the board-on-board to be consistent with the rest of the fence. Additionally, he said that they also compromising on the east property line in that they are only proposing a 4' tall fence in lieu of a 5' or 6' tall one that is permitted. Mr. Wright asked if the existing chain link fence is being removed. Mr. DeMarco confirmed this. Mr. Christ also asked what the white fence is on the neighbor's property. Mr. DeMarco stated that it is a white vinyl fence in line with what is permitted in the code, with a 50% open lattice piece on top. Mr. Wright asked if Mr. DeMarco considered matching that style instead of the wood board-on-board. Mr. DeMarco stated that really the white vinyl is an anomaly on the street. Even his neighbor two down and three doors down have the board-on-board style fences, as well as a number of neighbors across the street. He further mentioned that his neighbor with the white fence is considering removing it when the new fence is installed to better match the surrounding fences. Mr. DeMarco stated that they really want to be consistent with the neighborhood and around his yard. He feels that this will be a benefit to the street as well as to the privacy of his yard, as they have never had a fence like this since they have owned the house.

Mr. Christ moved to close the public hearing. Mr. Wright seconded.

5 Ayes – 0 Nays
Passed

Mr. Christ applied the practical difficulties test to this variance request aloud, and the other Board members agreed with his interpretation.

Mr. Christ moved to grant a variance to Michael DeMarco, 19161 Colahan Dr., to construct a 6' board-on-board fence in the rear yard vs. any portion of the fence over 5' in height must be comprised of material that is 50% transparent when viewed perpendicular to the fence. Mr. Wright seconded.

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5 Ayes – 0 Nays
GRANTED

The meeting adjourned at 8:45 p.m.

Eric Pempus, Chairman

Patrick Farrell, Vice Chairman

Date: _____