

ZONING BOARD OF APPEALS MINUTES OF JULY 11, 2006

Meeting called to order by Vice-Chairman Duerr at 4:47 p.m. in the Executive Conference Room, City Hall Plaza.

PRESENT: Marvin Duerr, Dean Markwardt, Wallace Reek, Don Wink and 2nd Alternate Donald Schnitzler

EXCUSED: Karl Zimmermann

ABSENT: None

ALSO PRESENT: Planner/Zoning Administrator Curtiss, Robert Lehnherr, Theresa Bannach, Paul Weister, Ann Huntoon, David Hastings, Michael Zimmerman, Carl Scott, Lori Bents, Devere & Diana Thornton

ZB06-016 Motion by Wink, second by Markwardt to approve the minutes of June 13, 2006 as submitted. All Ayes.

Motion carried

Planner/Zoning Administrator Curtiss presented an update on the Konopa issue. Property owners are still trying to decide whether or not a survey is needed. She will clarify how issue needs to be resolved and if an action is needed on it. They are no longer requesting a variance so it is a dead issue.

Planner/Zoning Administrator read the variance request from Robert J. Lehnherr to construct a concrete driveway extension/parking pad on the south side of the lot at 706 N. Anton Avenue, zoned "R-4" Single and Two-Family Residential. Section 18-04 (10) (a) of the Municipal Code requires a 3-ft maintenance setback for driveways and parking lots from all property lines. Applicant requests a 2-ft setback variance in order to construct the driveway/parking pad 1-ft from the south property line.

Background: Mr. Lehnherr was issued a permit on 5/31/06 to widen the existing concrete drive by 9-ft to provide a 56-ft long parking space on the south side of the attached garage. After laying out the space and parking the travel trailer in the spot, he found the space not wide enough due to the overhang of the house and the height of the trailer. Subsequently, Mr. Lehnherr modified the site plan for an 11-ft wide x 56' long driveway extension/parking pad and requested a revised building permit. The request has been denied due to non-compliance with side setbacks for driveways and parking lots.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

1. The property is in the R-4 District with a lot size of approximately 12,350-S.F. and lot width of approximately 95-feet.
2. The minimum lot size in the R-4 District is 8,700-S.F. and the minimum lot width is 60-feet.
3. Section 18-04 (10)(a) of the Zoning Ordinance requires a minimum 3-ft maintenance setback for driveways and parking lots, except where driveways are shared by two or more property owners, or where the lot is 50-feet or less in width.
4. Driveway standards were updated as part of the 1992 zoning code revisions. A 3-ft setback requirement was added to the code in order to provide adequate space on property to accommodate any impacts due to maintenance of driveways (repair, snow plowing, drainage, etc).
5. Access and parking is currently provided on the property by a concrete driveway, approximately 18'W x 30'L. The existing driveway is setback 12-ft from the south property line.
6. The applicant is requesting a variance to widen the existing driveway to the south to create a concrete parking apron, 11-ft wide by 56-ft long, alongside the garage.

7. The proposed driveway and parking area would be located 1-ft from the south lot line.
8. The property is fairly level in the south side yard and slopes down slightly in the rear yard.
9. The variance request is substantial, over two-thirds of the requirement.

Mr. Lehnherr is requesting this variance to build a parking pad for his new camper. It is possible to park the camper on the 9 foot pad specified by the obtained building permit, but very difficult. He would be more comfortable with a pad which is 2 feet wider. The neighbors have no problem with the change and it would not create any drainage problems.

ZB06-017 Motion by Markwardt, second by Reek to grant the variance request from Robert J. Lehnherr. All Ayes.

Motion carried

Planner/Zoning Administrator read the appeal/variance request from Theresa Bannach for a concrete driveway recently constructed on the north side of the lot at 306 N. Vine Avenue, zoned "R-5" Medium Low Density Single and Two-Family Residential. Section 18-04 (10) (a) of the Municipal Code requires a 3-ft maintenance setback for driveways and parking lots from all property lines. Applicant requests a 2-ft setback variance in order to allow the driveway/parking pad to remain as installed, 1-ft from the north property line.

Background: A permit was issued on 5/31/06 for installation of a 22 1/2' L x 28 1/2' W concrete driveway on the property. The site plan indicated compliance with the 3' driveway setback; however, the contractor installed the driveway only 1' from the lot line. The owner called to report the error and Planner/Zoning Administrator Curtiss inspected the property to confirm the as-built location. An inspection report and order were issued to remove the non-compliant portions of the driveway. The owner has appealed this decision and is requesting a variance to the driveway setback requirement.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

1. The property is in the R-5 District with a lot size of approximately 10,048-S.F. and lot width of approximately 64-feet.
2. The minimum lot size in the R-5 District is 6,000-S.F. and the minimum lot width is 40-feet.
3. Section 18-04(10)(a) of the Zoning Ordinance requires a minimum 3-ft maintenance setback for driveways and parking lots, except where driveways are shared by two or more property owners, or where the lot is 50-ft or less in width.
4. Driveway standards were updated as part of the 1992 zoning code revisions. A 3-ft setback requirement was added in order to provide adequate space on property to accommodate any impacts due to maintenance of driveways (repair, snow plowing, drainage, etc).
5. A permit was issued for a new concrete driveway, BP# 06-722. The permit application included a site plan compliant with hard-surfacing and setback requirements for driveways.
6. The driveway was not installed per the plan and is located 1' from the north lot line.
7. The property is fairly level to the north, but was excavated and regraded during the construction. Owner plans to landscape this area.
8. The variance request is substantial, over two-thirds the required setback.

Dean Markwardt pointed out that the impact of this mistake on the neighborhood and property is minimal. Markwardt was concerned how the error happened and that the contractor was willing to correct the error. Bannach explained that the contractor used an incorrect reference to the property line. Ms. Bannach said

that she believed that it would actually help to pull away water from both her property and her neighbor's and help with drainage problems that they experience in the spring. It was decided that the smartest thing to do would be to grant the variance seeing that it really isn't a big deal. The approved site plan and permit will need to be changed to reflect this variance.

ZB06-018 Motion by Duerr, second by Schnitzler to grant the variance request from Theresa Bannach. All Ayes.

Motion carried

Planner/Zoning Administrator read the variance request from Paul Weister to remove an existing garage and construct a new 28' x 26' detached garage at 312 N. Juno Avenue, zoned "R-3" Standard Single-Family Residential. Section 18-04(2) (a) of the Municipal Code requires that in residential districts the total of all accessory structures shall not exceed the ground floor area of the residence. Applicant requests a 76-square foot size variance to allow 868-square feet of total accessory structures on the lot, exceeding the 792-square foot ground floor area of the home.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

1. The property is in the R-3 District with a lot size of approximately 10,032-S.F. and lot width of approximately 76-feet.
2. The minimum lot size in the R-3 District is 10,000-S.F. and the minimum lot width is 60-feet.
3. The property is developed with a 1-story, 792-square foot, single-family residence, built in 1946, and two (2) detached accessories structures. The 416-S.F. garage, built in 1946, is proposed to be removed. The 140-S.F. storage shed, built in 2001, will remain on the lot.
4. The applicant proposes to replace the older garage with a new 28' x 26' detached garage.
5. The addition of the larger garage will exceed the total size of accessory structures allowed in residential districts.
6. Section 18-04 (2)(a) limits the size of accessory structures to the ground floor area of the residential dwelling.
7. The measurement of accessory structure size includes the total of all detached or attached accessory buildings on the site.
8. The total of all accessory buildings on the site will equal 868-square feet. The first floor of the home is only 792-square feet.
9. Zoning limitations on accessory structure size are intended to ensure that accessory structures are subordinate to the principal structure, and to prevent large structures from imposing too much on neighboring properties.
10. The proposed garage has the same 28' x 26' footprint as the dwelling.
11. The first-floor levels of homes in the neighborhood range from 364 to 1,300-square feet in size.
12. The adjoining lot to the south is developed with an approximate 1,000-S.F. residence and 576-S.F. detached garage. The property to the north is an undeveloped, residential lot.
13. The size variance request is minimal, considering the smaller footprint of the house limits the size of the accessory structures. The R-3 District allows accessory structures sizes up to 1,200-S.F., if the structures do not exceed the footprint of the residential dwelling.

Wallace Reek pointed out that an extra shed is what makes this variance needed and that if need be the shed could be removed to solve the problem. Bonnie said that she received no phone calls or correspondence from the neighbors on the issue. The empty lot located to the north creates some excess room making the impact of this structure minimal.

ZB06-19 Motion by Reek, second by Markwardt to grant the variance request of Paul Weister. All Ayes.

Motion carried

Planner/Zoning Administrator read the variance request from Ann Huntoon & David Hastings to demolish the existing detached garage and construct a new detached garage in the same location at 713 S. Oak Avenue, zoned "R-5" Medium Low Density Single and Two-Family Residential. Section 18-04 (2) (d) of the Municipal Code requires a minimum 3-ft setback for detached accessory structures from all interior lot lines. Applicants request a 2'-10" side yard variance from the north lot line in order to locate the new structure in same exact location as the current garage, located 2 inches from the lot line.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

1. The property is located in the R-5 District with a lot size of approximately 10,032-S.F. and lot width of approximately 75.7-feet.
2. The minimum lot size in the R-5 District is 6,000-S.F. and the minimum lot width is 40-feet.
3. The property is developed with a single-family residence and detached garage, both built in 1940.
4. The property shares a driveway with the neighboring lot to the north, 709 S. Oak Avenue.
5. Two detached garages are located at the end of the shared driveway.
6. There is less than 2-ft of separation between the two detached garages.
7. The site plan attached to this variance request indicates the subject garage at 713 S. Oak Avenue is 2-inches from the side lot line.
8. Built in 1940, the structure is considered "non-conforming." Non-conforming structures can remain "as-is" without enlargement or alteration.
9. The Property Assessor's records indicate the existing structure is 440-square feet in size.
10. The site plan indicates the existing garage is larger, approximately 573-square feet in size.
11. Section 18-33 (3)(c) of the Zoning Ordinance requires that if a non-conforming structure is destructed, including self-demolition, it shall not be reconstructed except in conformity with zoning requirements.
12. A minimum 3-ft setback is required for detached accessory structures.
13. The lot is wide enough to provide a 3-ft setback.
14. The variance request is substantial, almost the entire setback.
15. If the variance is approved, the garage will be required to meet fire-rated construction building code.

Ms. Huntoon explained that the new structure would be built with the same footprint as the existing structure and footings are already in place. To move the structure in more on the lot would require a large pine tree to be cut down and the drive way to be changed as well. Planner/ Zoning Administrator Curtiss asked whether or not the owners have looked into transitioning the driveway two feet; they have. The structure provides a natural barrier to the lot to the east and the owners do not want to destroy this barrier because it is aesthetically preferable as is. The owners also explained that they would not be replacing this structure if they didn't have to due to structural reasons. It needs to be replaced because it currently leans to the east.

ZB06-020 Motion by Wink, second by Markwardt to grant the variance request from Ann Huntoon and David Hastings. Wink, Markwardt, Duerr and Schnitzler voted aye; Reek voted no.

Motion carried

Planner/Zoning Administrator read the variance request from Zeeman Enterprises LLC to develop a proposed 2,300-sq. ft. office building on Lot 2 of Wood County CSM # 8482, at the southeast corner of S. Peach Avenue and E. Third Street, zoned “B-4” General Commercial District. Section 18-04 (6) requires a 50’ major street setback from Peach Avenue. Section 18-63 (5) (f) requires a minimum 20’ rear yard setback. Applicant requests a 2’-2” major street setback variance from Peach Avenue and a 10-ft rear yard setback variance from the east lot line.

Planner/Zoning Administrator Curtiss presented a statement of facts regarding the variance request.

1. The property is located in the B-4 District with a lot size of 9,591-square feet and lot width of 90-feet.
2. The minimum lot size in the B-4 District is 12,000-square feet and the minimum lot width is 80-feet.
3. The lot is a non-conforming lot for “lot size.” General provisions of the zoning code require that *every building or use of land shall have a lot area and width of not less than that required by the district.* By direction of the Zoning Administrator, the property owners have submitted a rezoning petition to Plan Commission to rezone the property to a B-1 Neighborhood Business District, with lot size standards of 6,000-square feet and lot width of 40-feet. In addition to bringing the lot into conformity, the B-1 District is also more appropriate for the proposed office use and a more compatible commercial district on the edge of the residential neighborhood.
4. The current layout of the office building based on CSM #8482, Lot 2, proposes the front yard on Peach Avenue, side street side yard on 3rd Street, rear yard to the east and interior side yard to the south.
5. The front setback on Peach Avenue is 50-feet based on its “major street” classification.
6. The site plan indicates that the closest section of the building would be setback 47’-10” from Peach Avenue. The applicant indicates that all parts of the building, other than this 38-ft section, are setback the required 50-ft from Peach Avenue.
7. “Averaging provisions” do not apply to this property because the only developed property in the block is to the south and setback greater than 50-ft from Peach.
8. The site plan indicates a 10’ rear setback to the east.
9. Both the B-4 and B-1 districts require a 20-ft minimum rear yard setback.
10. In commercial districts, the rear setback requirement is usually to allow adequate space for “servicing” and accessibility around the building for such purpose. The proposed office building will have no service function from the rear of the building. The applicant indicates the building will resemble a ranch-style residential dwelling. The applicant also indicates that the professional office use as a “chiropractic service” would not require a dumpster or outside trash receptacle.
11. The site plan indicates a 25-ft side street setback from 3rd street. This plan is laid out recognizing the 25-ft front corner yard setback of the B-1 Commercial District, due to the pending zoning change.
12. The interior side yard setback is shown on the site plan to be 10-ft from the south residential property. The code requires that the side yard requirement of a lot adjoining a residential district along its side lot line shall be a minimum of 3-ft plus the least side yard width required of the adjoining residential use, which would be a 10.5-ft setback.
13. The applicant currently has an offer to purchase 30-ft of the lot to the south.
14. The major street setback variance request is minimal. It is very unlikely that Peach Avenue r-o-w would be widened due to the proximity and design of the r-o-w at the Peach Avenue underpass.

15. The layout of the building does not encroach into the vision clearance triangle at Peach/Third.
16. The rear setback variance request is substantial, over half the required setback. The rear yard does not provide any servicing function to the proposed commercial use. If the Board grants the variance, landscape screening will be required at the rear of the property. The Zoning Administrator shall approve the landscaping plan.

Mr. and Mrs. Thornton are the owners of the neighboring property and explained that they have no problem with building on the property but they don't like the idea of the building being so close to their property. They explained that they have a contract with Zeeman Enterprises LLC and that buffering/landscaping is included in this contract. Since the property owners have also asked to downzone the property some zoning issues were discussed, but they are separate issues from setbacks and a change in zoning would not affect the setback requirements. It was clarified that the back yard will be just that and will not have a driveway or service entrance. In regards to the front 50' setback off of Peach Avenue it was discussed that Peach Avenue will remain an arterial road but expansion is unlikely.

ZB06-021 Motion by Reek, second by Schnitzler to grant the variance request from Zeeman Enterprises LLC. All Ayes.

Motion carried

Duerr asked that the property owners work something out with the neighbors.

Planner/ Zoning Administrator Curtiss added that permit applications, procedures and rules were looked over and will be continued in next month's meeting.

Motion by Schnitzler, second by Wink to adjourn at 5:59 p.m.

Motion carried

Bonnie Curtiss
Planner/Zoning Administrator