

ZONING BOARD OF APPEALS MINUTES OF MARCH 10, 2009

Meeting called to order by Chairman Markwardt at 4:45 p.m. in the 1st Floor Conference Room, Suite 108, City Hall Plaza.

PRESENT: Ed Gerl, Dean Markwardt, Wallace Reek, Don Schnitzler, 1st Alternate Todd Zieglmeier and 2nd Alternate Richard Kenyon

EXCUSED: Karl Zimmermann

ALSO PRESENT: Planner/Zoning Administrator Curtiss, Deputy Clerk Panzer, Russ Schuster, Arlan Castner and David Butler

ZB09-01 Motion by Kenyon, second by Gerl to approve the minutes of November 11, 2008 as submitted. All Ayes (**See motion ZB09-03.**)

Motion carried

Deputy Clerk read the variance request from Russ Schuster for a proposed two-family dwelling on Lot 26 of Eastside Estates (PID# 3307127), at the southeast corner of South Peach Avenue/East 21st Street & zoned "R-4" Residential (Low Density Single & Two-Family). Section 18-04 (6) of the Municipal Code requires a 50-ft major street setback from Peach Avenue Right-of-Way. Applicant requested a 10-ft major street setback variance.

Background

Woodstock Construction has an offer to purchase the lot for construction of a proposed two-family residence. Their proposed house plan, however, would encroach into the required 50' major street setback on Peach Avenue.

A building permit could not administratively be approved for this plan, based on non-compliance with Section 18-04 (6) of the Municipal Code. The applicant requested a 10-ft variance to the 50-ft major street setback, in order to be able to build 40-ft from Peach Avenue right-of-way.

Planner/Zoning Administrator Curtiss summarized her statement of facts regarding the variance request:

1. The property is zoned "R-4" Residential (Low Density Single & Two-Family).
2. The property is platted as Lot 26 of Eastside Estates.
3. The Lot is 18,222-sq. ft. in size, with 135-ft of lot frontage on S. Peach Avenue & E. 21st Street.
4. The Lot is a conforming lot in the R-4 District. Lot standards for Two-Family Residences are 10,800-sq. ft. minimum lot size and 80-ft. minimum lot width.
5. Lot 26 of Eastside Estates is a corner lot with a 25-ft minimum front setback from E. 21st Street, a 50-ft major street setback from Peach Avenue, a 25-ft minimum rear setback and a minimum 7.5-ft side yard setback. These minimum setbacks are depicted on the site plan and define the building envelope of the lot. The building envelope or "buildable area" of the lot is 77.5-ft wide x 85-ft deep.
6. Twenty of the 28-Lots of Eastside Estates Subdivision front on Peach Avenue and are also subject to a special 50-ft major street setback. Nine of the 20 lots are developed with residences with 50-ft front setbacks from Peach Avenue.
7. The residential blocks south of E. 25th Street were developed predating the major street setback requirement with 30-ft front setbacks. Residential blocks north of E. 14th Street were also developed predating the major street setback requirement; setbacks averaging 15-ft to 20-ft.
8. The layout of the house footprint is influenced by the access restrictions on Peach Avenue. Driveway access for this lot is required from E. 21st Street. The dwelling unit w/attached front-loaded garages are orientated to 21st Street. This orientation of a ranch style house plan results in a longer elevation trying to fit within the narrower part of the building envelope.

9. The proposed layout of the dwelling extends 10-feet into the required 50-ft setback from Peach Avenue. The applicant proposes a 10-ft side yard setback to the east; a minimum of 7.5 is all that's required. Shifting the footprint to the east to the minimum 7.5-ft side setback would minimize the variance request.
10. There are alternatives to reduce a building footprint to fit within the building envelope or reduce the variance request to a 7.5-ft variance to the 50-ft setback by shifting the footprint east 2.5-ft to the minimum 7.5-ft side yard setback.
11. The variance request does not appear it will negatively impact the public interest related to safety, aesthetics or environment. The structure would not be located in the vision clearance triangle of the street intersection. The variance request should not impair the general purpose of front setbacks for aesthetic purposes of open space and neighborhood patterns.
12. The variance request is minimal and granting the request should not impair the general purpose of the major street setback requirement. The general purpose of a major street setback is to preserve additional obstruction-free area along major streets to permit future widening of streets in order to safely accommodate vehicular/pedestrian traffic. Peach Avenue was improved in 1999 to a 70-ft wide right-of-way. The City Engineer has reviewed this request and has no objections to granting this variance request.
13. There is questionable compliance; however, with all 6 conditions necessary to obtain a variance as specified in Section 18-35(2) of the Municipal Code.

Planner/Zoning Administrator Curtiss referred to item #12 of her Statement of Facts and explained this portion of Peach Avenue was improved in 1999 to a 70-ft wide right-of-way. That 70-ft width was provided in the subdivision plat that was created. There is a provision in the subdivision code that requires when property is subdivided in a road that is identified on the Street Plan that the developer dedicates additional right-of-way. The requirement in the subdivision code for a collector width is 70-ft wide, so that is why we have so many inconsistencies. This is the only 70-ft wide portion of Peach Avenue. Other portions of Peach Avenue all the way down from 29th Street and as far north as McMillan Street are 60-ft wide.

Chairperson Markwardt asked where the 70-ft width right-of-way exists on Peach Avenue.

Planner/Zoning Administrator Curtiss said it is only between 21st Street and 25th Street and not anywhere else on Peach Avenue.

Planner/Zoning Administrator Curtiss said that she discussed this variance request with the City Engineer and asked him if any more acquisition of set right-of-way would be required if there were some development in the area where more traffic was generated on that street and if there was a need to design a turn lane within the existing right-of-way and his answer was no. A turn lane could easily be designed. Becker Road and Peach Avenue is an example of where a turn lane was designed in a 60-ft right-of-way. Another example of where additional right-of-way might be needed would be if the road were upgraded to a major arterial, an 80-ft right-of-way width would be required and then we would get into looking at the additional major street buffer area and use of that area for that purpose.

Gerl referred to item #8 of the Planner/Zoning Administrator's Statement of Facts and asked what kind of restrictions would require access off of East 21st Street instead of Peach Avenue.

Planner/Zoning Administrator Curtiss explained that there is another provision within the subdivision code. On major streets, the City can minimize the number of access points on a major street to basically minimize the number of potential conflicts.

Russ Schuster explained that if it is a corner lot the access is off the other street. If there is an option to that lot than the access gets placed out in front.

Planner/Zoning Administrator Curtiss said there are shared driveways on several of those lots. That was a requirement that the City placed on this subdivision in an attempt to minimize the number of access points, because of its function and because of the number of trips that were current and anticipated in that area.

Russ Schuster said the reason he asked for 10' versus 7.5' is to balance this out, so it is not crowding the next parcel quite so much. He explained if you take a house that is facing Peach Avenue, and your driveway is on Peach Avenue and you have vehicles parked in your driveway than you have another 20' protruding into the site line where if you have the side of the house on Peach Avenue, you won't have that, because you generally don't park vehicles on the side of a house.

Kenyon asked if Mr. Schuster had any plans for landscaping.

Russ Schuster said it would be nice to place trees along the west side to screen the property, but he didn't think it would be a very good idea. Whether you are 50' or 40' it doesn't restrict where you can plant trees.

David Butler, property owner of lot 27, which is to the east of this parcel asked if this home would be a one story or two story home.

Russ Schuster said it would be a split level with a story portion on the backside.

Reek asked if all the houses between 21st Street and 25th Street along Peach Avenue are going to have to be back 50-ft also.

Planner/Zoning Administrator Curtiss said yes. She mentioned that some of the lots between 21st Street and 25th Street aren't as comparable with the building envelope. The majority of them have a deeper building envelope and a larger building envelope, but a couple of them are comparable. There is a lot at the northeast corner of East 25th Street and Peach Avenue that is a comparable size corner lot that is subject to these same requirements and that lot is 143'. They did build within the building envelope. This lot is smaller. This is one of the smallest building envelopes in a corner lot fashion subject to the same setback requirements.

Planner/Zoning Administrator Curtiss said it is going to be difficult to fit something on the lots on the north side of Eastside Circle; lots 23, 24 and 25. They haven't been developed yet and they are going to be pretty tight.

Russ Schuster pointed out that this is the only two block stretch of Peach Avenue that has the 50' setback requirement. North of the fairgrounds is 25' on average and south of there is 30'. If you want to develop Peach Avenue as a major corridor than you are going to have to get the rest of Peach Avenue to warrant that, which is pretty much unlikely. To hold up to that, you would have to buy up 90% of the homes on Peach Avenue to make that what that 50' setback was put in there for.

Planner/Zoning Administrator Curtiss said that there are averaging provisions for homes that are torn down and rebuilt in the older neighborhoods.

Kenyon asked Mr. Butler what his thoughts were.

David Butler said that he would like to have as much space as he can. He referred to lots 24 and 25 and said by granting this variance and being able to move this house closer to Peach Avenue it would help those other two lots maybe to be developed some day.

Planner/Zoning Administrator Curtiss said that granting one variance doesn't set up precedence for other properties. She reminded the Zoning Board of Appeals members that each individual property should be looked at for its own uniqueness and what hardships are there that are not generally shared by a lot of others in the community.

Turning the layout of the home was discussed.

Russ Schuster said turning the layout wouldn't be feasible. It would add \$10,000 just for the driveway.

Planner/Zoning Administrator Curtiss said this is one of the two smallest corner lots in this section that are subject to this 50' setback without an averaging provision. There are other corner lots in the corridor, but they have flexibility. They can average down. This lot is the smallest with a building envelope depth or width.

Gerl pointed out another option, which would be to face the building diagonal and have the driveway come out on 21st Street.

Chairperson Markwardt said per the Administrator's Statement of Facts, this variance request does not negatively impact the public interest related to safety, aesthetics or environment and as he understands it, 21st Street is not going to be put through, so there shouldn't be a problem with approving this variance request

Schnitzler referred to the last sentence in the letter from the City Engineer, which says that he has no objection to the granting of this variance request.

Motion by Kenyon, second by Zieglmeier to approve the variance request from Russ Schuster as submitted for a 10-ft major street setback variance.

Deputy Clerk Panzer pointed out that Mr. Kenyon is the 2nd Alternate and shouldn't be making motions or voting, because there are five other Zoning Board of Appeals members present.

Motion and second were withdrawn.

ZB09-02 Motion by Zieglmeier, second by Schnitzler to grant the variance request from Russ Schuster as submitted for a 10-ft major street setback variance, because of the exceptional circumstances of the lot size.

Kenyon pointed out that he made a motion earlier to approve the minutes from the November meeting, so that motion isn't legal either.

Planner/Zoning Administrator Curtiss told the Zoning Board of Appeals members that she could tally up the recurring variance requests in the last five years and report back with that number and if they feel that

it is appropriate they can recommend the Plan Commission look at this particular requirement within the code, study it, amend it based on several recurring variances over the years.

Vote on motion **ZB09-02**; Gerl voted Naye, rest Aye.

Motion carried

Gerl voted naye, because he felt Mr. Schuster could have made the footprint of the home fit the lot.

ZB09-03 Motion by Gerl, second by Schnitzler to approve the minutes of November 11, 2008 as submitted. All Ayes

Motion carried

ZB09-04 Motion by Reek, second by Gerl to change the meeting time for the Zoning Board of Appeals meetings from 4:45 p.m. to 5:00 p.m. All Ayes

Motion carried

Motion by Reek, second by Gerl to adjourn at 5:31 p.m.

Motion carried

Lori A. Panzer
Deputy City Clerk