



PLANNING DEPARTMENT

27700 Hilliard Blvd.
Westlake, OH 44145

Phone 440.871.3300
Fax 440.617.4324

**BOARD OF ZONING APPEALS
MINUTES OF THE PROCEEDINGS OF THE PUBLIC HEARING
JANUARY 29, 2019**

The hearing was called to order at 7:30 P.M. by Chairman Jones

PRESENT: Board Members Matthew Jones, Robert Swisher, Brad Lamb, Karen Alfred
ABSENT: Bryan Baesel
ALSO PRESENT: Clerk of Commissions Nicolette Sackman and Assistant Law Director Greg Sponseller

SELECTED CORRESPONDENCE

Docket 2018-36 Koeth

- Letter received 11/27/18 from Gary Johnson, 1250 Rue St. Georges, re: deed restrictions prohibiting sheds in the development without approval of a majority of the development
- 1/29/19 Revised shed plan

DOCKETS

Docket 2018-36

Applicant: Raymond Koeth

Premises: 1325 Timber Lea Ct., PP#214-04-105, Ward 1

Request was revised 1/29/19 Requesting to construct a ~~198~~ 160 sf utility building, ~~14'~~ 11' tall, at variance with 1211.04(k) which states a utility building shall be permitted in a rear yard provided that the maximum building size on lots less than 20,000 sf is 120 sf in area with a maximum height of 11'; ***a 78 40 sf area variance and a 3' height variance.***

Chairman Jones stated that the board and the law department received Mr. Johnson's correspondence at the last meeting with a copy of the deed noting there are restrictions. Mr. Sponseller explained that upon inspection there are existing sheds in the subdivision and they were not granted variances. He advised that the board does have jurisdiction over this matter as the deed restrictions are a private agreement with the homeowners association and the property owner, and the city is not part of that agreement and does not enforce private homeowner association restrictions and it is incumbent for the homeowner's association to seek to enforce private homeowner association agreements or take any action it deems appropriate. The zoning code applies to all parcels in the city and in single family zoning a shed is permitted, with zoning code restrictions pertaining to the size of the shed based on the lot area. The matter before the BZA is whether to grant a variance or not, and the restrictions are still a matter that exist between

the applicant and the homeowners association and it is not up to the city to enforce those agreements.

Mr. Koeth, sworn in by Mr. Sponseller, advised that he revised the size of the shed to be 10' x 16', reduced in height to 11', and the exterior remaining the same as well as the proposed location. The board reviewed his lot size which Mr. Koeth stated was around 19,000 sf, which the board felt is close to being able to be allowed the next size up for a shed (150 sf). Mr. Koeth also noted that the majority of his yard area is in the rear yard as his lot is a pie shape on a cul-du-sac.

After a careful review of the evidence and testimony, the Board made the following findings of fact:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – yes
2. Whether the variance is substantial – no
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 – no
4. Whether the variance would adversely affect the delivery of governmental services – no
5. Whether the property owner purchase the property with the knowledge of the zoning restriction – no
6. Whether the property owner's predicament feasibly can be obviated through some other method other than a variance – yes
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – yes

Motion: Based upon the findings of fact, testimony and evidence presented, Mr. Swisher moved, seconded by Ms. Alfred to grant a 40 sf area variance for the shed presented.

ROLL CALL:

Yeas: Swisher, Lamb, Jones, Alfred

Nays: None, motion carried

The applicant as well as all applicants were advised: The Board shall notify the Building Department within forty-eight hours of the granting of any appeal or application with any special conditions thereon and there is also a 30-day appeals period for any decisions made by the Board.

Docket 2019-01

Applicant: Dan Malloy

Premises: 25910 Center Ridge Rd., PP#213-23-025, Ward 2

Requesting to construct a single family dwelling at variance with 1211.08(e) which states the width of two adjoining side yards on adjoining lots shall be not less than the total width set forth in §1211.09 (30'). Requesting to install this dwelling 23' 3" off the adjacent dwelling to the east.

This will require a variance of 6'9" for the sum total of adjacent side yards between dwellings.

Additionally, requesting to construct this dwelling at variance with 1211.09 which states the

minimum front yard dimension for a single family dwelling is 50'. Requesting to install this dwelling with a front yard setback of 28'. **This will require a front yard setback variance of 22'.**

Mr. Malloy, sworn in by Mr. Sponseller, explained prior to purchasing the property he researched the zoning codes and was aware of the 15' side yard setbacks but was not aware of the requirement for the setback between dwellings to be 30'. His lot is not rectangular and has a steep slope. The neighbor's garage to the east was constructed on the property line and some of the asphalt driveway is on his property, which the neighbor will remove (the asphalt). The west side of the property does not have any setback issues between dwellings. He reviewed photos showing that the neighbor's house to the east has a front yard setback of 22.74', a house two doors down to the west has a front yard setback of 15.16' and the house next door to him on the west has a front yard setback of 50'. He proposes to place his house 16.4' off the east property line, 15' off the west property line, with a 28' front yard setback. Mr. Malloy explained the slope on the property is steep and noted the west neighbor's driveway slopes 2' down from the sidewalk and has had water damage to his garage due to water flowing toward the structure and has had to install a retaining wall on his property. If he placed his house further back on the property there would be a 60" drop in grade and water drainage would be an issue, so that is why he is seeking a variance to place the house closer, so there is only a 24" drop in grade and the house will be in line with other properties. He stated without the variances he cannot build his house and he can't control that the house to the east of him was built where it was in 1946.

Members of the board discussed that they did not have an issue with the variance between dwellings as Mr. Malloy is providing a 16.4' setback, which exceeds what is required and the adjacent house was built before current code requirements. However, they did have concerns with the proposed front yard variance being so close to the street, even though there are other houses that are non-conforming due to when they were built and different code requirements at that time. Mr. Malloy stated he felt it was best to build his house where the grade was level rather than having a 50' front yard setback. He stated he was told placing the house further back on the lot was a bad plan due to water flow. His neighbor has had issues with water run-off damaging his garage and his retention wall was destroyed over time due to water. Chairman Jones, who advised he is a civil engineer, told the applicant the house could be placed 50' back and fill can be brought in to elevate the land so a house can be built on that. It may not be the ideal solution or costly, but it is possible. The garage can also be constructed so it is raised above the grade. Discussion ensued regarding the grading and ways to maintain the front yard setback because a 28' front yard setback seems close to the street but there are other houses with close setbacks so it would not be out of character for the neighborhood. Mr. Malloy explained the house will be a ranch home as he would like to downsize and when he retires.

Mr. John Lardomita, 25970 Center Ridge Road, sworn in by Mr. Sponseller, explained he lives in the house to the west of Mr. Malloy and is the neighbor that had a lot of water damage to his garage due to water flow. He understands the setback requirement but the yards can be a swamp. His retaining wall collapsed and he felt a house that was moved forward was better for a new home.

Chairman Jones stated as an engineer he felt this was the best placement for the house.

After a careful review of the evidence and testimony, the Board made the following findings of fact for the sum total of adjacent side yards between dwellings:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – yes
2. Whether the variance is substantial – no
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 – no
4. Whether the variance would adversely affect the delivery of governmental services – no
5. Whether the property owner purchase the property with the knowledge of the zoning restriction – no
6. Whether the property owner’s predicament feasibly can be obviated through some other method other than a variance – no
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – yes

Motion: Based upon the findings of fact, testimony and evidence presented, Mr. Swisher moved, seconded by Ms. Alfred to grant a 6’9” variance for the sum total of adjacent side yards between dwellings.

ROLL CALL:

Yeas: Swisher, Lamb, Jones, Alfred

Nays: None, motion carried

After a careful review of the evidence and testimony, the Board made the following findings of fact for the front yard setback:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – yes
2. Whether the variance is substantial – yes
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 – no
4. Whether the variance would adversely affect the delivery of governmental services – no
5. Whether the property owner purchase the property with the knowledge of the zoning restriction – no
6. Whether the property owner’s predicament feasibly can be obviated through some other method other than a variance – yes as there is a possible way to deal with it but they may be impractical
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – yes

Motion: Based upon the findings of fact, testimony and evidence presented, Ms. Alfred moved, seconded by Mr. Swisher to grant a 22’ front yard setback variance.

ROLL CALL:

Yeas: Jones, Alfred

Nays: Swisher, Lamb, motion failed

Docket 2019-02 – withdrawn

Docket 2019-03

Applicant: Peter Norris

Premises: 27715 Bassett Rd., PP#212-31-006, Ward 4

Requesting to construct a garage addition at variance with 1211.09 which states the minimum yard dimension of a front yard is 50'. Requesting to install this addition with a 47' 8" setback which will require **a 2'4" variance for the required 50' front yard setback.**

Mr. Peter Norris, sworn in by Mr. Sponseller, explained he would like to install a third bay on his two car garage that 11' x 22' which will require a 2'4" front yard variance. He needs additional room for storage of yard equipment and a boat. His house does not have a basement and the only way to access the attic is via a step ladder. He has a 100 sf shed but it is not very accessible and sits above grade making it difficult to use. The new garage bay will match the existing garage. His lot is a corner lot on the corner of Glenmore and Bassett Roads. The garage faces Glenmore and the addition will be on the Bassett Road side of the garage.

Discussion ensued that the setbacks on Bassett vary. The amount requested is not substantial. It was questioned where the second concrete drive goes and if there were a second garage at one time. Mr. Norris did not know as it was there when he bought the house. He was asked if he considered placing a garage bay in this location, but a variance would still be necessary for two garages. Mr. Norris was advised to check with the city engineer regarding driveway placement for the new driveway pad to this garage bay. Mr. Norris advised permits will be obtained and the end of the driveway will be two cars wide.

After a careful review of the evidence and testimony, the Board made the following findings of fact:

1. Whether the property in question yield a reasonable return or whether there can be any beneficial use of the property without a variance – yes
2. Whether the variance is substantial – no
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 – no
4. Whether the variance would adversely affect the delivery of governmental services – no
5. Whether the property owner purchase the property with the knowledge of the zoning restriction – n/a
6. Whether the property owner's predicament feasibly can be obviated through some other method other than a variance – no, as another variance would be necessary
7. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance – yes

Motion: Based upon the findings of fact, testimony and evidence presented, Mr. Swisher moved, seconded by Ms. Alfred to grant a 2'4" variance for the required 50' front yard setback.

ROLL CALL:

Yeas: Swisher, Lamb, Jones, Alfred
Nays: None, motion carried

MISCELLANEOUS - None

APPROVAL OF MINUTES

Motion: Mr. Lamb moved, seconded by Mr. Swisher to approve the minutes of November 27, 2018

ROLL CALL:

Yeas: Swisher, Jones, Lamb, Alfred
Nays: None, motion carried

ADJOURNMENT

Chairman Jones adjourned the meeting at 8:20 P.M.

Matt Jones
Matt Jones, Chairman

Nicolette Sackman
Nicolette Sackman, Clerk of Commissions

Approved: February 26, 2019