

**WRITTEN SUMMARY
BOARD OF ZONING APPEALS
MEETING MINUTES
Thursday, June 2, 2016
1:30 p.m.**

The Board of Zoning Appeals meeting was called to order by Madam Chair Underwood-Kramer.

Members Present:

Ms. Nancy Bushman, Mr. Desmond Maaytah, and Madam Chair Karen Underwood-Kramer.

Members Absent:

Mr. George Jonson and Mr. Michael Samoviski

City Staff Present:

Mr. John Creech, Mrs. Heather Hodges, Ms. Meredith Murphy, Ms. Kim Kirsch, and Ms. Kathy Dudley.

Madam Chair Underwood-Kramer explained that since there are only three members of a five member Board present, the vote of the members has to be unanimous for a request to pass. The Applicant can ask that the item be tabled until the next meeting, or it can be heard today. The Applicants that were present still wanted to proceed. Madam Chair Underwood-Kramer then gave an overview of the procedural process of the meeting.

Swearing in of Those Providing Testimony to the BZA:

Ms. Dudley swore in members in the audience who were going to testify, and verified that they have all signed in.

Old Business:

None

New Business:

Agenda Item #1 – 2016-11: Variance Request for 309 North Second Street

STAFF: Meredith Murphy

A Request by Mr. Mike Dingeldein of Community Design Alliance on behalf of the owners Mr. and Ms. Mackenzie-Thurley for a side yard and a rear yard setback variance in order to construct an accessory structure (garage), on property zoned BPD Business Planned Development District, located at 309 North Second Street. (Mr. Dingeldein of Community Design Alliance/Mr. and Ms. Mackenzie-Thurley, Applicant/Owner).

Ms. Murphy gave the specifics of the current agenda item and showed the aerial view of the property in question (outlined in red), and the Zoning map of the adjacent properties.

She states that the proposed property is in a historic district, and it has received approval for the design and character from the ADRB.

Introduction

An application has been submitted regarding two (2) Zoning Variances to construct an accessory structure (garage), located at 309 North Second Street. This property is approximately 5,600 square feet in size and is located in a BPD Business Planned Development District (Zoning map shown to the Board) and is regulated by Section 1115.00 and Section 1122.00 of the Hamilton Zoning Ordinance (HZO).

Mr. Dingeldein is seeking a variance to the requirements of the zoning ordinance in order to construct a new accessory building (garage) on the property to be located to the south west (rear) of the existing house. The proposed garage will be a total of twenty four (24) feet eight (8) inches by twenty four (24) feet two (2) inches totaling five hundred and ninety six (596) square feet. The following are the two (2) sections to which the applicants are requesting relief; Section 1115.43.1 regulates side yard and rear yard setbacks for Accessory structures on residential properties.

Section 1115.43.1 states that "Minimum setbacks for accessory buildings in all zoning districts shall be 5-ft. from rear and side property lines. Detached garages larger than 200-sq.ft. will be setback a minimum of 10-ft from the edge of any alley in order to allow vehicles the space to enter and exit the building without encroaching onto someone else's property." Mr. Dingeldein is proposing to build an accessory building on this property with a two foot three inches (2' 3") side yard setback where a five feet (5') side yard setback is required and a three foot (3') rear yard setback where a ten foot (10') rear yard setback is required. The applicant provided plans and supporting material for the requested variances, which is attached as Exhibit C for the Board's review – Variance Application & Supporting Material as well as excerpts listed below.

Ms. Murphy then went over the four exceptional facts/conditions that exist: (1) Exceptional Circumstances (2) Preservation of Property Rights (3) Absence of Detriment and (4) Not of a General Nature. She showed the applicant's rationale for the requested variances, and information/commentary for the BZA to consider.

Zoning Variance Review

In order to grant a zoning variance, the Hamilton Zoning Ordinance "Section 1170.63 Variances-Findings of the Board" requires that the BZA must find all four of the following facts and conditions below exist beyond a reasonable doubt. The applicant included the following written rationale (*in bold italics*) for the two (2) requested zoning variances. Information/commentary for the BZA to consider is underlined.

1. **1170.63.1 Exceptional Circumstances:** That there are exceptional or extraordinary circumstances or conditions applying only to the property in question that do not apply generally to other properties in the same Zoning District.

The applicant stated that ***"The request to place the newly built garage along the property line in the back alley is an exceptional circumstance due to the fact it is replacing an existing garage in that location. There has been a garage in that location along the property line for years prior and did not impede upon traffic through the alley."*** After reviewing the application, there appears to be Exceptional Circumstances (Section 1170.63.1) associated with this request. The lot is approximately 5,600 square feet and the proposed accessory structure would be five hundred and ninety six (596) square feet. Aside from the two requested variances, the applicant meets all other zoning regulations. The request also previously received Architectural Design Review Board approval for the design of the structure.

2. **1170.63.2 Preservation of Property Rights:** That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same Zoning District and the in same vicinity.

The applicant stated that ***"This is replacing an existing building that did not previously encroach upon neighbors or their property rights. Neighbors will still have access to the right of way in the alley. The new garage is an improvement, not only functionally but also visually to the alley."*** After reviewing the application it appears that the request is a Preservation of Property rights (Section 1170.63.2). As the application states, the requested structure is replacing an previous garage at this location and is an investment in the Restoration of the property.

3. **1170.63.3 Absence of Detriment:** That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of this Ordinance of the public interest.

The applicant stated that ***"This is replacing an existing garage. The existing location does not affect traffic flow through the alley or limit/impede neighbors from using the public right of way. A new garage is an improvement from the existing structure. The colors will coordinate with the house, as opposed to the old white siding garage. A newly built structure will improve the area."*** After reviewing the application, it appears that the request has an Absence of Detriment (Section 1170.63.3). As the application stated, the proposed structure would not create any new conditions that were not previously in place with the old garage. This is the last house served by the dead end alley.

4. **1170.63.4 Not of a General Nature:** No grant of a variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property for which the variance is sought is not of general

or recurrent nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

The applicant stated that ***"This property is one that is exceptional in that it had an existing detached structure. Replacing of an existing structure will not set a precedent for construction of new garages on the property line. It is merely improving upon what is existing."*** After reviewing the application, it appears that the request is Not of a General Nature (Section 1170.63.4). As previously stated, the requested variance would be replacing an previous garage located on the property and would match the existing character of the surrounding properties.

Ms. Murphy also showed the site plans, including the garage and the elevations.

Notification

Ms. Murphy stated that Public Hearing Notices were mailed to the owners of six (6) properties within 100 feet of the property in question. At the time of the BZA Meeting, there were no objections expressed to the proposed zoning variances.

Ms. Murphy then went over the recommendations by the Department of Community Development.

Recommendation

Based on a review of the information submitted, there is reason to consider approving the two (2) requested variances with the following conditions:

If the BZA approves the request for a Variance, the Department of Community Development requests that the BZA consider the following conditions of approval:

- 1) The construction drawings for the proposed improvements and work be revised subject to any future review requirements of the City of Hamilton Interdepartmental Review (IDR) Committee.
- 2) All improvements and work indicated on construction plans approved by the IDR be installed and maintained in good repair and replaced as necessary to remain in compliance with the approved Variance.

Findings for Granting of Variance:

1. Exceptional Circumstances: There are exceptional or extraordinary circumstances or conditions applying to the subject property that do not apply generally to other properties in the same Zoning District.
2. Preservation of Property Rights: Such a variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same Zoning District and in the same vicinity.

3. Absence of Detriment: By authorizing this variance there will not be substantial detriment to adjacent property, and the variance will not materially impair the purposes of this Ordinance of the public interest.
4. Not of General Nature: By the granting of this variance there is no condition or situation of the specific piece of property for which the variance is sought that is so general or recurrent in nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

Ms. Bushman had several questions, including whether or not the alley was supposed to be a dead-end, and how cars were supposed to turn around, and Ms. Murphy answered those. Ms. Bushman also asked the size of the previous garage, and Ms. Murphy indicated that she believed that question would be best answered by the Applicant.

With no further questions by the Board, the Public Hearing was opened for comments.

First to speak was Mr. Steven Gebhart of CDA. He said that he was at the meeting in place of Mr. Dingeldein. He reiterated some of the information that Ms. Murphy had already given with regard to the previous garage, the specifics of the proposed extensions to the garage, the reason that they feel that it is an “exceptional circumstance”, that they don’t believe that it infringes on the neighbor’s rights, and he expounded on those a each item.

With no one else wishing to speak on the item, Mr. Maaytah made a Motion to close the Public Hearing. With a 2nd by Ms. Bushman and all “ayes” to a roll call vote, the Public Hearing was closed.

Ms. Bushman made a Motion to approve the request with Conditions as recommended. With a 2nd by Mr. Maaytah and all “ayes” to a roll call vote, the Motion is passed by a vote of 3-0.

Mr. Creech verified that the request was approved with conditions given, that the decisions of the Board become effective 5 days after the meeting, and that he would be sending the Applicant and agent a letter indicating the Board’s approval.

Agenda Item #2 – 2016-10: Variance Request for 1001 New London Road

STAFF: Meredith Murphy

A Request by Mr. Jesse McKeehen on behalf of the owner Mr. Stephen Jones for four (4) zoning variances in order to construct an accessory structure on the subject property, zoned R-1 Single Family Residence District, located at 1001 New London Road. (Mr. Jesse McKeehen/Mr. Stephen Jones, Applicant/Owner).

Ms. Murphy gave the specifics of the current agenda item, and gave a brief summary of the four variances sought, including the requirements for each. She then showed the

aerial view of the property in question (outlined in red), and the Zoning map of the adjacent properties (currently zoned R-1).

Introduction

An application has been submitted regarding four (4) Zoning Variances to construct a new accessory building at 1001 New London Road. This property is approximately one acre in size, is located in an R-1 Single Family Residence District (see attached Zoning map – Exhibit B) and is regulated by Section 1115.00 and Section 1110.00 of the Hamilton Zoning Ordinance (HZO). Mr. McKeehen is seeking a variance to the requirements of the zoning ordinance in order to construct a new accessory building.

The following are the four (4) sections to which the applicants are requesting relief:

Section 1110.26 regulates the exterior finish of an accessory structure, Section 1110.31 regulates the roofing material of an accessory structure and Section 1115.43.1 regulates the maximum number of accessory structures and the maximum first floor area.

Mr. Jones is seeking a variance to the requirements of the zoning ordinance in order to construct a new accessory building to be located to the south west of his existing house. The proposed accessory building will be a total of twenty eight (28) feet by thirty two (32) feet with a six (6) feet by sixteen (16) porch totaling nine hundred and ninety two (992) square feet.

Section 1110.26 states that “Accessory buildings over 200-sq. ft. in area must have the same exterior finish material on a minimum of fifty (50) % of all sides as the primary exterior material and approximate color as the front of the existing primary building.” Mr. Jones is proposing steel siding on the proposed structure. Mr. Jones home is brick and vinyl, therefore a zoning variance is needed.

Section 1110.31 states that “Roof pitch and compatible style shall be consistent on all roof surfaces of the primary building and on any accessory building over 200-sq. ft. in area.” Mr. Jones is proposing a steel roof on the proposed structure. Mr. Jones’ home has a shingled roof; therefore a zoning variance is needed.

Section 1115.43.1 states that “Only one accessory building is permitted for each dwelling unit on the same lot. Accessory buildings shall have a maximum first floor area of eight hundred (800) square feet.” Mr. Jones is proposing to build a second accessory building on his property, where only one is permitted, with a nine hundred and ninety two (992 sq. ft) floor area, which is one hundred and ninety two (192) feet over the eight hundred (800) square foot maximum size.

Mr. Jones provided the following description of his request:

“This letter is in reference of the property at 1001 New London road for a variance request, explanation of hardship, and interpretation of conformity to

the surrounding community of a proposed detached garage. My property currently has two older sheds that sit at the west side of the property. One shed being a 10'x12', and the other is a 12'x16' shed. The smaller shed is fairly old and deteriorating, so my plans are to remove the smaller shed. My request is to keep the larger 192 sq.ft. shed for my lawn equipment, and propose to build a new 28'x32' garage with a small 6'x16' porch area (992 sq.ft.) for my boat and trailer to be brought out of public view helping maintain the beauty of the property and neighboring homes. In this request, it would require a variance of multiple aspects to build the garage due to the square footage regulations, number of maximum accessory structures requirement, and exterior requirements.”

The full letter is included for the Board’s review as Exhibit C – Variance Application & Supporting Material as well as excerpts listed below.

Ms. Murphy then stated that in order to grant a zoning variance, the Hamilton Zoning Ordinance “Section 1170.63 Variances-Findings of the Board” requires that the BZA must find all four of the following facts and conditions below exist beyond a reasonable doubt, and she went over those.

Zoning Variance Review

The applicant included the following written rationale (*in bold italics*) for the four (4) requested zoning variances. Information/commentary for the BZA to consider is underlined.

1. **1170.63.1- Exceptional Circumstances:** That there are exceptional or extraordinary circumstances or conditions applying only to the property in question that do not apply generally to other properties in the same Zoning District.

*The applicant stated that “**My home’s exterior is that of brick and vinyl. My proposal would be for to have a garage built with steel sides and roofing. With the high cost of such materials, the garage would then be unaffordable to build with brick and vinyl. The steel used in today's industry is longer lasting than that of vinyl or shingles, and would provide a long lasting exterior paneling that would have great longevity and remain its original look longer as well as impacting the property and community in a positive way. The steel color combination would be that to match the home (white and red), and the style and design would be contiguous with the surrounding areas detached buildings.**”*

After reviewing the application, there appears to be Exceptional Circumstances (Section 1170.63.1) associated with this request. The lot is approximately one (1) acre in size, larger than a typical R-1 zoned property, and the proposed accessory structure would be seventy six (76) feet off the northern property line along Ross- Hanover Road and ninety two feet off the

south eastern property line along New London Road. It is also setback six (6) feet from the neighboring property line, where five (5) feet is required.

2. **1170.63.2 - Preservation of Property Rights:** That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same Zoning District and the in same vicinity.

The applicant stated that ***“With having over an acre of property in the sub-urban to rural area, the existing and proposed buildings would be conforming to all other zoning code for accessory structures: as well as remain appropriately sized for the property that it sits on.”***

After reviewing the application, it appears that the request is a Preservation of Property rights (Section 1170.63.2). As the applicant states, his property is an acre, which is larger than a typical R-1 zoned lot in the City and he is not able to construct this accessory structure without the four (4) requested variances.

3. **1170.63.3 - Absence of Detriment:** That the authorizing of such variance will not be of substantial detriment to adjacent property, and will not materially impair the purposes of this Ordinance of the public interest.

The applicant stated that ***“My request is to keep the larger 192 sq.ft. shed for my lawn equipment, and propose to build a new 28'x32' garage with a small 6'x16' porch area (992 sq.ft.) for my boat and trailer to be brought out of public view helping maintain the beauty of the property and neighboring homes.”***

After reviewing the application, it appears that the request has an Absence of Detriment (Section 1170.63.3). As the applicant stated, the proposed accessory structure would enable him to store excess equipment in order to remove them from the view of neighbors and the two public roads that run along side of the property.

4. **1170.63.4 - Not of a General Nature:** No grant of a variance shall be authorized unless the Board specifically finds that the condition or situation of the specific piece of property for which the variance is sought is not of general or recurrent nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.

The applicant stated that ***“My request as stated above would be to keep the small 192 square foot shed for gardening tools and lawn equipment, and also be able to have the newly proposed 992 square foot garage for my vehicles, boats, and trailers. With having over an acre of property in the sub-urban to rural area, the existing and proposed buildings would***

be conforming to all other zoning code for accessory structures: as well as remain appropriately sized for the property that it sits on.”

After reviewing the application, it appears that the request is Not of a General Nature (Section 1170.63.4). As previously stated, the property is 1 acre (43,560 feet) and is not typical of the R-1 single family lots in the City of Hamilton, which are typically 10,00 – 12,000 square feet.

Ms. Murphy then showed a floor plan and a lot plan that was submitted by the Applicant, (including site elevation), and an example of different buildings that are being proposed.

Notification

Ms. Murphy stated that Public Hearing Notices were mailed to the owners of eleven (11) properties within 100 feet of the property in question. At the time of the meeting, there were no objections expressed to the proposed zoning variances.

Ms. Murphy concluded her presentation, and asked for any questions by the Board. There being none, Madam Chair Underwood-Kramer called for any audience members wishing to speak on behalf of the appeal.

Mr. John Palmer, 1363 Ross-Hanover Road, spoke first. He gave the location of the proposed structure with relation to his house and the neighbor's house, and said that he is in support of what the Applicant is proposing.

Mr. Jesse McKeehan, 10271 Morrow-Cozedale Road, spoke second. He said that the Staff report was pretty thorough. He would like to reiterate that his client's house is predominately brick and vinyl. The vinyl doesn't have great durability, and the steel will be more cost effective and last longer. He said that it is also contiguous with the surrounding area and neighborhood, and gave other reasons why he believes that it's a good idea.

Ms. Judy Jones, 1001 New London Road (property owner), spoke last. She brought pictures of where their boats and trailers are sitting out in the yard now, and said that she doesn't like how they look sitting out in the yard.

She talked about what they use the two small sheds for that she has, along with what she wants to do with the proposed new structure. She said that they picked out colorings to match their house.

Madam Chair Underwood-Kramer asked Ms. Jones why they didn't just build a larger building to keep everything in, and Ms. Jones gave her reasons for that choice (smaller ones for lawn mowers/lawn equipment and the big one for the boat and boat accessories).

With no one else wishing to speak, Ms. Bushman made a Motion to close the Public Hearing. With a 2nd by Mr. Maaytah and all “ayes” to a roll call vote, the Public Hearing was closed.

Mr. Maaytah made a Motion to approve the request with conditions as recommended (in the Staff report) and gave his reasons for said approval. With a 2nd by Ms. Bushman and all “ayes”, the Motion passes and the request is approved (3-0).

Mr. Creech verified that the request was approved, that the decisions of the Board become effective 5 days after the meeting, and that he would be sending the Applicant a letter indicating the Board’s approval.

Minutes

Approval of Meeting Minutes - Written Summary and Audio Recording for the following dates:

February 4, 2016; March 3, 2016; and May 5, 2016.

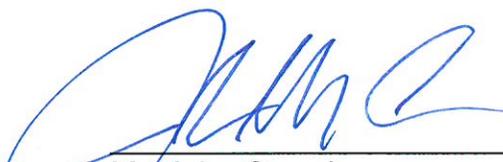
Ms. Bushman made a Motion to accept all sets of minutes as presented. With a 2nd by Mr. Maaytah and all “ayes”, the Motion passes and the minutes are approved.

Adjourned

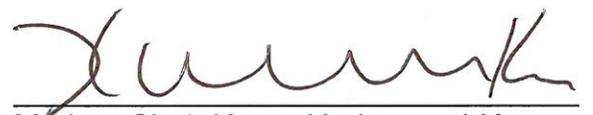
With nothing further, Mr. Maaytah made a Motion to adjourn. With “ayes”, the Motion passes and the meeting is adjourned.

Respectfully submitted,

Ms. Kim Kirsch
Administrative Assistant



Mr. John Creech
Secretary



Madam Chair Karen Underwood-Kramer

**BOARD OF ZONING APPEALS (BZA)
City of Hamilton
Council Chambers**

MEETING DATE: 6/2/16

MEETING TIME: 1:30 PM

Please sign in and provide requested information. Thank you for your participation.

Name	Agency	Address	Phone	Email
Steven Gebhart	Community Design Alliance	CDA Concerning 236 High Street 309 N 2nd	513-275-1750	Steven@cdalliance.net
STEPHEN JUDY JONES		1001 NEW LONDON RD. HAMILTON, OH 45013	513-737-8382	
Jesse McKeethan	Timberline Buildings	10711 Morrow Cozadale Cochran, OH 45122	513-348-5531	Jmckeethan@cinci.rr.com
John Palmer		1263 Ross KATONIA RD HAM. OH 45013	513 868 2512	palmer71@fuse.net