

BOARD OF ZONING APPEALS - Minutes of June 26, 2018

7:00 pm ★ Municipal Complex (687 Decatur) *Courtroom* ★ Vermilion, Ohio

Roll Call: Kevin Sorrell, Bob Voltz, Guy LeBlanc, Jerry Schrenk. Absent: Dan Phillips

Attendees: Bill DiFucci, Building Inspector; Barb Brady, Council Representative

NOTE: OFFICIAL ACTION REQUIRES 3 AFFIRMATIVE VOTES, See COV 1264.02(b); Therefore, *Motions will be stated in the positive (eg., To Grant... / To Waive... / To Determine...); and a member=s >Yes= vote means Agree and a >No= vote means Disagree.

Approval of Minutes:

J. Schrenk MOVED; G. LeBlanc seconded to approve the minutes from the meeting held on May 22, 2018. Roll Call Vote 4 YEAS. **MOTION CARRIED.**

An ***Oath*** of truthfulness was administered to those in attendance who planned to speak during these proceedings. *Kevin Sorrell* described how meetings are conducted, explained the avenue of recourse available when a variance request or appeal might be denied, and gave a reminder that it takes 3 affirmative votes for an action (motion*) to pass.

New Business:

[R-6] 3939 Woodland Drive – Gary B. Howell – (Waive requirement of hard surfaced driveway)

Applicable City code section(s) cited:

1270.08(1) (3) (E)/1276.03(C) (6) Driveways shall be hard surfaced – proposed = stone

Gary Howell of 3939 Woodland Drive explained his father grew up at this property and his grandmother owned the property for 63 years. They tore down the house and built a duplex home two years ago on the property. At this time it would be a strenuous financial hardship for them to put in a driveway. They contacted a few contractors and with the elevation and length of the driveway they are looking around \$60,000 to put in a driveway. He simply doesn't have the money to do it at this time. In addition, he has provisions to put up two buildings on his property as they own almost five acres. His dad has spoken with the person who owns the property to the east of their home (lots that run to Essex Road) and eventually they would like to put in a building out back and they are in a dilemma to do this and then tear up the driveway to bring in equipment to do that, or once the yard is done do they bring equipment across the yard and tear up a \$20,000 yard. He plans to keep it manicured with stone every year and asked the board for their blessing on this.

K. Sorrell asked if the current construction is completely done. G. Howell said they have completion permits; just the provisions of putting buildings up in the back of the property. There is only one egress. K. Sorrell asked if the original variance was granted with the construction of the duplex. G. Howell said the houses are complete and he is going to finish clearing some of the property and will eventually be putting a storage building up in the back of the property.

G. LeBlanc said there is an allowance in the code for hardships, but without getting too much into it; the houses were built according to code and he asked if something has changed employment wise since the original plans were made. G. Howell said he was not aware of the sidewalks or the hard surfaced driveway being a requirement when they first started building. He didn't know this

until later on through the construction. He never had an intention of putting in a hard-surfaced driveway because he didn't know it was required. It was never budgeted for or thought about. When they put in the catch basins out front it was brought to his attention that sidewalks were needed. Then they filed for a variance and got it for the sidewalks at that time, and then he got a two year extension for a variance for the driveway, which he thought would buy him some time, but it's just not possible at this time. K. Sorrell asked when the two year extension was given and G. Howell thought August was his two year mark. G. Howell said he doesn't have \$60,000 in his bank account to do the driveway.

B. Voltz said G. Howell stated this is a hardship, yet he also stated plans to do other construction and purchase additional property. G. Howell said that's not him purchasing the property and the additional construction is later on; once he gets the money to do so. G. LeBlanc asked if somebody was buying property. G. Howell said his dad has talked to the guy about purchasing the property to the east of them and if that guy was to sell the property to his dad then they wouldn't have this issue because they could put the building on that property and clear it from the road, but unfortunately they can't come to an agreement so this is where they are. G. LeBlanc asked as far as the hardship on the driveway; is his father out of the picture as far as paying for this driveway? G. Howell said this would be on him because it was the agreement when they built the place. His father gave him the property upfront for them to build on. His father bought his aunts and uncles out of that because this is where he grew up; he had his portion. G. Howell said he built and funds the houses and his mom and dad live the rest of their lives comfortably. G. LeBlanc asked if the driveway responsibility falls on him and G. Howell said yes all construction, but he did not know a hard-surfaced driveway was required until part way through the construction of the buildings. G. LeBlanc said legally his father would be responsible per the code for the driveway just as much as G. Howell is and G. Howell concurred. B. DiFucci said the two years from the date of occupancy falls in September, so this is why he is before the Zoning Board tonight.

Don Nieding of 715 Foxwood Drive said it would be an asset to the community if he put a driveway in. He had to put a driveway in when he built his house, as well as sidewalks. This was part of his plan. Somebody is not planning correctly when they say \$60,000; it should have been considered when they built the house. He said that G. Howell stated he didn't realize he needed this; well the first thing you do is go to the Zoning Board of the City of Vermilion and the Building Inspector will tell you what you're responsible for. He said they are a city and not a po-dunk town anymore. We are a city and we can't let this stuff go on because they will all suffer; we're suffering now and we will suffer in the future if we let this go on. Values; that's what we're talking about; property values. We just hope that when we invest in our homes that we can make some money on it! We can't be making money when we allow this to happen. He stated he is against granting a variance.

K. Sorrell asked if the sidewalk variance was separate. B. DiFucci said he would have to go back through his records because the driveway had a two year contingency and the sidewalk variance was approved. K. Sorrell said when they approve a sidewalk variance it's until somebody meets them with their sidewalk, and then at that time they would have to put them in. G. Howell said he understood the sidewalk variance was granted until anybody adjacent to him developed property. K. Sorrell asked if they can ask for a permanent variance for a driveway. B. DiFucci said the applicant is asking the board to waive the hard-surfaced driveway and keep it a stone driveway.

Jim Kingsley of 695 Foxwood said he feels for G. Howell because it's a lot of bread for a driveway and understands he doesn't have to put sidewalks in until adjacent property puts them in. He said facing his property to the left is Ken Cassell's property and if some day he sells it and

the property gets developed and sidewalks go in, then everybody will have sidewalks and driveways, and then there would be this stone thing which doesn't seem fair. He said it's a lot of money and maybe the city should let him have more time, but in the end he needs a hard-surfaced driveway to match everything else.

K. Sorrell said they could possibly modify the variance request to tie it to the sidewalk somehow. G. Howell said he is willing to compromise with the driveway at the time sidewalks or driveways go in adjacent to him. He is willing to put in an apron and coming up the driveway 30' from the road and then stone the remainder of the driveway. He's not against doing anything. However, going 300' to his garage and the turnaround is \$49,000 to \$56,000. He noted he has four kids and works daily, but it's a lot to bite off and swallow. G. LeBlanc said the turnarounds are above and beyond what is required. B. DiFucci said per the code driveways shall be hard surfaced with a minimum width of 10' extending from the garage entrance to the street.

The members proposed various compromises of granting this variance attaching stages and time periods. It was suggested to G. Howell to put the apron in first and when he has to put his sidewalks in then he will have to put his driveway in. However, he probably will not want to put his sidewalks and driveway in at the same time due to the expense. Plus, if he wants to put buildings in he will want them in before the sidewalks come. If he puts in an apron he would assume they would create a construction drive for their buildings. In his opinion, if G. Howell agrees to put in the driveway apron followed by sidewalks, followed by driveway (once required) he thought this would be reasonable. B. DiFucci clarified that no sidewalks are required until sidewalks are required adjacent to his property. K. Sorrell said yes as they are still living off that same sidewalk variance. B. DiFucci clarified the rest of the driveway will be stone until he is forced to put in a sidewalk. K. Sorrell suggested that after the time the sidewalks go in, they could give him some period of time to get the driveway in. Is two years too long? G. Howell said he could have the driveway apron in by the end of August.

B. Voltz MOVED that the applicant is required to put in a driveway apron totaling 30' from the roadway within 6 months; then sidewalks to be installed when the adjacent properties are completed, and to put in the remainder of the driveway within two years from the time the adjacent property is developed. Discussion: B. DiFucci said the property owner is required to fill the right of way whether it's 30' or 25'. The apron has to extend through the right of way. Therefore, they can use the right of way line. B. Voltz amended his motion by using the right of way line. G. Howell understands the code says hard surface, but does the chip and tar qualify as that. B. DiFucci said chip and tar is a repair on top of a blacktop driveway. B. Voltz said asphalt would be an alternative versus concrete. B. DiFucci said hard surface qualifies as concrete, pavers, and asphalt.

G. LeBlanc said his thoughts is that they have the potential of seeing other construction going on during this time period, and funds spent not to meet the code and there is another resource that isn't being accounted for; namely his father. D. Nieding asked G. Howell if the property is deeded to him. G. Howell said the house is in his and his wife's name; the property is in his name and his father's name.

K. Sorrell said the motion to accept the variance should be revised to read: Apron to be installed within six months of June 26, 2018, and for the apron length to meet code which is through the right of way, and then the driveway is to be continued within two years of the time that his sidewalk variance expires.

G. LeBlanc had another thought to this motion as the sidewalk variance should stand on its own as it's already in place, and that they merely give him another extension on the driveway of six months to a year. He said he didn't see the hardship because there is another resource and he is already talking about buying property and putting up a building. K. Sorrell asked G. Howell if he agreed to the extension of his driveway variance to a year. G. Fisher clarified they are taking the sidewalk equation out of the motion completely due to the fact that it's a standalone variance. K. Sorrell confirmed as there is no reason to talk about it. G. Howell asked if he needs to come before Zoning in a year. G. LeBlanc said hopefully he would have the driveway in as he would have a year to meet the code. G. Howell said he hasn't had the money in two years so what makes them think he will do it in a year. G. LeBlanc said he is hearing there is another resource. G. Howell clarified that his father is on a fixed income and he put the property up as collateral to build the houses. He built the houses and put his mom and dad next to him to help take care of them. If his dad had the money to do this he would drop it right now. The property he is talking about purchasing next door is around \$3,000-\$4,000. They aren't talking about thousands. He said the building is something he wants to do in the future. It's not like they both are sitting on a pile of money. He respects the board's position, but he doesn't know what a year is going to do for him when he hasn't been able to do this in two years. G. LeBlanc said he wasn't hearing the hardship and this is a little different story that he is being told now. He first heard it was him, but legally it's him and his father who wasn't being represented, and then he talked about buying property and building other things. He was just hearing they couldn't meet the code, but money was being spent on other things; this is where he was coming from when the applicant was coming in as a hardship case.

K. Sorrell asked G. Howell what option he would like to pursue, as the first option would be an apron through the right of way, and the driveway to be completed two years after his sidewalk variance expires, or a one year extension on the current driveway variance. G. Howell said he would like the first option. G. Howell said he doesn't plan to just put the driveway apron in with a plan to never expand. He is okay with doing the driveway in sections which may take him 5-10 years, but he is willing to work with the city. A time restriction is tough and the money is a lot to come up with at one time. B. Voltz said this should allow him to get his driveway done in stages without setting specific time period goals.

B. Voltz MOVED; G. LeBlanc seconded to alter the above motion to require the installation of the apron through the right of way within six months of June 26, 2018, and to require that the continuation of the driveway shall be installed within two years upon expiration of the current sidewalk variance. Vote 3 YEAS; 1 NAY (LeBlanc). **MOTION CARRIED**.

[R-3] 600 Sunnyside Road – NUCO Construction Co. – (Waive sidewalk requirement)

Applicable City code section(s) cited:

1024.10 – Sidewalks Required – Variance requested = no sidewalks

Ken Cassell of 5425 Liberty Avenue said he is back to where he first built on Sunnyside Road 51 years ago. He said they purchased the land from Roanoke Drive to Liberty Avenue and they are dividing it into five or six lots. There are no sidewalks currently in the area and the Post Office has it stated as rural area. He talked with neighbors across the street and they do not want sidewalks. Once you start putting in sidewalks will it be required for others to put in sidewalks. He has no problem with putting in sidewalks when it's required in the entire area. He did this once before when they built the house on Sunnyside as they had a septic tank and they agreed at that time that they would install the sanitary connection whenever the sanitary came down Sunnyside

Road. He would rather try to comply with what the neighbors have and make a contract agreement that when they sell the house, sidewalks will be installed whenever it's required for the entire area. G. LeBlanc said the new owner would have to come before the board because variances don't transfer to the new owner. B. DiFucci clarified that the variance stays intact until the sidewalks are required to be put in by the adjacent properties.

B. Voltz said around the corner on Roanoke there are sidewalks and across the street on Liberty in front of Carter Lumber and the Storage Facility there are sidewalks, and further down on the south side there are a number of properties that do have sidewalks; although they are all dead-end sidewalks currently. He said that K. Cassell stated there will be 5-6 properties all in line from Roanoke to Liberty, so if they were all developed with sidewalks then they would only have one corner lot that didn't have a sidewalk and much of the area would be provided with sidewalks. K. Cassell said there is a piece of property on the corner of Liberty Avenue that is an unbuildable lot that he doesn't own. The corner property on Roanoke doesn't have sidewalks on Sunnyside, but they do have sidewalks west of their property on Roanoke. J. Schrenk asked if the corner house will be required to extend their sidewalks on Sunnyside once the properties Ken Cassell is building puts in sidewalks. B. DiFucci said he would need to get confirmation of this from the city law director. K. Cassell asked where the sidewalks will need to be placed according to the code if he is required to put them in. The board advised him to get with the Building Inspector on the requirements. K. Cassell said if they are talking about sidewalks needing to be installed at the corner of Roanoke then what about sidewalks at the corner at Liberty Avenue. G. LeBlanc said if there is a sidewalk that abutted the corner lot then they would be contacted. The city could put the sidewalk in and would assess the property owner. K. Cassell said he built one of the first houses on Sunnyside Road and the same code that is in effect now was in effect then, so it needs to be consistent. B. Voltz said each request is on its own merit.

B. DiFucci said according to the code, Chapter 1024.05 states: If the sidewalks are not constructed within thirty days or repaired within thirty days from service of notice, Council may have it done at the expense of the owner, and all such expenses shall be assessed on all the property bounding or abutting thereon, as provided by Ohio R.C. 729.01 and 729.04.

Don Nieding of 715 Foxwood Drive asked the names of the property owners who are not in favor of sidewalks on Sunnyside Road. K. Cassell said he talked with Bob Bainard (*? spelling*) who lives across the street and Bob's son in law who lives next door to him. D. Nieding said they have city codes and when he built a new house he had to put a sidewalk and a concrete driveway in. He said they talk about economic development and they need sidewalks. They have the farm market around the corner from Sunnyside and it would be an ideal place to put sidewalks. He said they are talking about six homes and they need to follow the code.

Jim Kingsley of 695 Foxwood Drive said if he were to buy an acreage lot and build a nice home, he would want a driveway and a sidewalk.

J. Schrenk MOVED; K. Sorrell seconded to waive the sidewalk variance with the stipulation that the variance would be null and void once the property is met by an adjacent sidewalk. Roll Call Vote 2 YEAS (Sorrell, LeBlanc); 2 NAYS (Voltz, Schrenk). **MOTION FAILED.** (*Note: Sidewalk must be installed.*)

[A-1] 2495 Vermilion Road – Brian Hawes – (Side yard setback and height)

Applicable City code section(s) cited:

1270.01 (e) (3) (c) – Side yard setback to be not less than 25’ (via 1272.12(c)) – proposed = 6’ – variance requested – 9’

1272.12(a) – maximum height 12’ – proposed = 13’6” – variance requested – 1’6”

Brian Hawes of 2495 Vermilion Road presented a revision to his variance request to 9’ from the previously submitted request. He said in speaking with Ohio Edison he wanted to keep his barn as close to the Ohio Edison pole as possible, but they told him that if he was going to use electricity from that pole and put in a meter he would be spending about \$500 a year before he even turned one light switch on, so he is moving the barn 60’ away from the property line. He noted there is a 16.89’ easement between the first neighbor and the barn, so basically he is 32.89’ from his closest neighbor. This is a private easement for a driveway. K. Sorrell asked the reasoning for the extended height. B. Hawes said he is 6’2” and he didn’t want a storage barn where he would have to store things at the top of the barn and bang his head or hunch over. It’s an 18’ variance from the original. He received written approval from both of his neighbors.

G. LeBlanc MOVED; J. Schrenk seconded to approve the side yard setback variance request of 9’. Roll Call Vote 4 YEAS. **MOTION CARRIED.**

G. LeBlanc MOVED; B. Voltz seconded to approve the height variance request of 1’6”. Roll Call Vote 4 YEAS. **MOTION CARRIED.**

Adjournment:

Chairman K. Sorrell adjourned the meeting after no further business was entertained.

2018 MEETINGS:

4th Tuesday monthly (except December) - Next: **July 24, 2018 @ 7:00pm**
Municipal Complex Courtroom, 687 Decatur, Vermilion

Transcribed:
Gwen Fisher, Certified Municipal Clerk