

City of Howell Board of Zoning Appeals
June 25, 2019
Council Chambers
611 E. Grand River
Howell, MI 48843

The meeting of the Board of Zoning Appeals was called to order by Chairman Munsey at 7:00 p.m.

BOARD MEMBERS PRESENT Sean Munsey, Ken Keith, Victoria Hertrich, David Holmes, Jacob Schlittler and Randall Mattson.

ABSENT: Erin Britten.

ALSO PRESENT: City Attorney Dennis Perkins and Community Development Director Timothy Schmitt.

GUESTS: Russ Springborn, Matt Vetter, Patrick Cleary, Rose Fodor, Thomas Halm, Stephen Estey and Joe Schroeder.

APPROVAL OF MINUTES OF APRIL 3, 2019

MOTION by Hertrich, SUPPORT by Mattson, “To approve the minutes of the April 3, 2019 meeting.” MOTION CARRIED (6-0).

#19-14 – 606 KIMBALL (PID #4717-26-201-058) – SIDE YARD BUILDING SETBACK VARIANCE

Chairman Munsey introduced the request and opened the public hearing at 7:01 p.m.

Joe Schroeder of Mayberry Homes spoke on the matter, noting that the request was the result of an unforeseen construction error due to a survey or foundation wall issue. The building met fire code requirements.

Chairman Munsey closed the public hearing at 7:03 p.m.

Member Mattson asked if the house was already completed and Mr. Schmitt confirmed that the house was occupied. Mr. Mattson continued that a subcontractor made the mistake, but the application did not appear to meet any of the standards of the requirements for a variance. Community Development Director Schmitt explained the situation and that it was uncatchable until the end.

Chairman Munsey asked about the potential conditions of approval. Mr. Schmitt reviewed them with the Board and explained that the cost of construction would go up due to the surveyor being required on site.

Member Holmes asked about overall setback requirements in the subdivision. Mr. Schmitt explained the Planned Unit Development (PUD) setback requirements, the overall setback

requirements in the neighborhood between Mayberry and the previous builder, and setbacks in the City broadly.

MOTION by Mattson , SUPPORT by Hertrich, “To approve the requested variance for the side yard setback in the eastern yard, where the house was constructed 3.5 feet from the property line, instead of the four feet required under the Planned Unit Development agreement for Town Commons, subject to the following conditions:

- 1. Town Commons Holdings LLC, and all successors, shall have a surveyor staking and pinning the foundation prior to any forms being placed or walls being poured.**
- 2. Town Commons Holdings LLC, and all successors, shall provide City Staff with location certification of all future homes, prior to vertical work commencing on any structure, and grade certification prior to occupancy.**

And based on the findings of fact below:

- A. That the restrictions of this Zoning Ordinance unreasonably prevent the owner from using the property for a permitted purpose of would render conformity unnecessarily burdensome;**
- B. That the variance would do substantial justice to the applicant as well as to other property owners in the district and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be consistent with the justice to other property owners;**
- C. That the plight of the landowner is due to the unique circumstances of the property.**
- D. That the alleged hardship has not been created by any person presently having an interest in the property.”**

Member Schlittler asked Mayberry Homes about the houses that had been built and the costs going forward. Mr. Schroeder explained that the cost would be passed along to future homeowners.

MOTION CARRIED (6-0).

#19-15 – 1363 LAKESIDE (PID #4717-25-403-019) – MULTIPLE VARIANCES TO SPLIT EXISTING LOT INTO TWO LOTS

Chairman Munsey introduced the request and opened the public hearing at 7:12 p.m.

Thomas Halm, attorney for Rose Fodor spoke on the matter. He outlined the overall history of the platted subdivision in the area and explained that this parcel and setbacks were larger than most others in the area. Mr. Halm explained the timeline for when Ms. Fodor acquired the lot and the loss of the ten feet from the property between the time when the offer was made and closing occurred. Mr. Halm further discussed the specifics of the split and the desire to build a new home on the vacant lot that would be created by the proposed split. Mr. Halm discussed the exhibits he submitted with the variance request, specifically that the lots in the area were all smaller than the proposed lots that his clients wanted to create. New construction in the area was discussed as well. Mr. Halm further discussed the other variances that were previously approved for lot splits less than the necessary width. Based on the layout of the subdivision, the proposal was not out of character.

Member Mattson asked whether or not the owner was aware of the issues with splitting it prior to the purchase. Ms. Fodor stated that she was not and that the realtor stated that she would still be

able to split the lot after the 10 feet was removed. Member Holmes asked about the previous title issues. Mr. Halm explained that the previous applicant was not the titled owner of the property and did not have the legal right to sell the property out of the estate. Further discussion on the title ensued and Mr. Halm confirmed that his client had a clear title on the property.

There was further discussion on when Ms. Fodor found out about the 10 feet issue and the other lots in the neighborhood and their size.

Chairman Munsey closed the public hearing at 7:26 p.m.

Member Mattson stated that Ms. Fodor had enough information at the time of purchase to make an informed decision.

Member Holmes further discussed the title issue and the concerns from the previous request. City Attorney Perkins explained the issues at the time and the chain of title issues. Ms. Fodor explained that she discussed the request with the neighbor for a ten foot wide easement to allow this to move forward. Mr. Halm stated that they believed this would be trying to circumvent the City requirements. Member Mattson asked Ms. Fodor if she ever considered reversing the transaction for the 10 feet with the neighbor. Ms. Fodor stated that she had not pursued this yet as she was trying to be a good neighbor. Member Mattson continued to state that he believed there was an alternative to the variance that had not been pursued. Chairman Munsey stated that he believed there were grounds.

Member Keith discussed the Planning Commission denial and the overall size of the lot being requested, which was smaller than permitted. Attorney Perkins asked Mr. Halm about the denial and Mr. Halm explained that the Planning Commission denied the request for multiple reasons, nothing specific.

Member Holmes asked about the options for motions. Member Mattson reminded that specific reasons for approval or denial are required. Attorney Perkins explained that a motion was required, one way or another, and the BZA was bound to discuss the request and make a decision on the matter. Attorney Perkins discussed the variances that were necessary; how to structure a motion to further discuss the matter; and that the chairperson cannot make the motion.

MOTION by Schlittler, SUPPORT by Hertrich, “To approve the requested variance to allow a lot split at 1363 Lakeside and appeal the denial from the Planning Commission of said lot split:

- **Section 4.07 Schedule of Area, Height, Width, and Setback Regulations to allow the existing lot to be split into two separate lots, both of which would be 65 feet, where 70 feet is required, a variance of five feet for each lot.**
- **Section 4.07 Schedule of Area, Height, Width, and Setback Regulations to allow the existing lot to be split into two separate lots, one of which would only be 8,278 square feet in size, where 8,400 square feet is required, a variance of 122 square feet.**

And, based on the findings of fact below:

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- A. That the restrictions of this Zoning Ordinance unreasonably prevent the owner from using the property for a permitted purpose of would render conformity unnecessarily burdensome;**
 - B. That the variance would do substantial justice to the applicant as well as to other property owners in the district and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be consistent with the justice to other property owners;**
 - C. That the plight of the landowner is due to the unique circumstances of the property.**
 - D. That the alleged hardship has not been created by any person presently having an interest in the property.”**

MOTION CARRIED (4-2). Members Holmes and Mattson opposed.

Facts: Other lots in the area are smaller than what is being proposed and the 122 sq. ft. in size is a very small amount along the lakeshore (adopting the four other findings of fact as well)

#19-16 – 1026 EAST GRAND RIVER (PID 4717-36-400-041) – MULTIPLE VARIANCES TO ALLOW COMPLETE RECONSTRUCTION OF CARWASH

Chairman Munsey introduced the request and opened the public hearing at 7:39 p.m.

Community Development Director Schmitt explained the Planning Commission’s review of the matter and the change in front yard setback minimum under the zoning ordinance. This reduced the front yard setback requirement from 88 feet to 34 feet.

Stephen Etsey, the applicant’s attorney, discussed the history of the request and approvals. He explained a construction issue that led to the removal of the interior walls on the site. He further discussed the process that they went through to bring the project back into compliance with the previous approvals. He explained that everything was going back to the exact way that it was previously approved and that the variances were being requested to build the building exactly in that way. Mr. Etsey further discussed Section 11.04 of the Zoning Ordinance and that there is an interpretation available to the Board to override Staff and allow the building to be reconstructed with the existing build to line. The ultimate goal was simply to get the project back under construction.

Member Mattson asked if it was possible to rotate the building and meet the requirements of the code. Patrick Cleary explained the shape of the lot and the lack of ability to meet the requirements of the code, due to the angle of Grand River Avenue. He further discussed the easement and connection to the north and the additional property that has been added to the property. City Attorney Perkins asked about the previous approval and Mr. Cleary explained how they met that requirement. Mr. Cleary further discussed the emergency access to the north through the Glebe property that has been added. Mr. Etsey and Attorney Perkins discussed the access easement on the Glebe property.

Member Holmes asked about the previous approvals. Member Mattson asked about the issues with Abe’s Auto Glass that were discussed previously. Mr. Etsey discussed that Abe’s did not want the traffic and therefore they decided to close the access point off. Member Mattson asked about New

China King and landscaping on their property. Mr. Cleary explained that it was not an option and New China King did not want any changes.

Chairman Munsey closed the public hearing at 7:56 p.m.

Chairman Munsey discussed a potential conflict of interest with the subcontractor that did the demo work on the building. Discussion occurred regarding the potential conflict and Attorney Perkins stated that unless it was a personal benefit to Munsey, rather than a corporate one, that he did not need to recuse himself.

MOTION by Mattson, SUPPORT by Keith, “To approve the two requested variances to allow demolition and expanded reconstruction of the Soapy Bucket carwash:

- 1. Side yard parking setback of 2.5 feet in the eastern yard, where three feet is required, for the 50 feet adjacent to the closest point of the building (Section 10.02(c) General Provisions, Required Greenbelts and Setbacks)**
- 2. Front yard building setback of 26.5 feet, where approximately 34 feet is required (Section 4.07 Schedule of Area, Height, Width, and Setback Regulations)**

And, based on the findings of fact below:

- A. That the restrictions of this Zoning Ordinance unreasonably prevent the owner from using the property for a permitted purpose of would render conformity unnecessarily burdensome;**
- B. That the variance would do substantial justice to the applicant as well as to other property owners in the district and a lesser relaxation than that requested would not give substantial relief to the owner of the property or be consistent with the justice to other property owners;**
- C. That the plight of the landowner is due to the unique circumstances of the property.**
- D. That the alleged hardship has not been created by any person presently having an interest in the property.”**

MOTION CARRIED ~~(6-0)~~ (5-1) Holmes opposed.

ADJOURN

MOTION by Mattson, SUPPORT by Hertrich, “To adjourn the meeting at 8:03 p.m.”

MOTION CARRIED (6-0).

Timothy Schmitt, Community Development Director