



## MEETING MINUTES

# Board of Zoning Appeals

Thursday, July 27, 2017

### AGENDA

- 1. Yoder Residence – Side & Front Yard Setbacks** **5927 Rings Road**  
**17-076V** **Non-Use (Area) Variance (Approved 3 - 0)**

The Chair, Rion Myers, called the meeting to order at 6:31 p.m. Other Board members present were: Sarah Herbert and Martha Cooper. Satya Goyal and Jamie Zitesman were absent. City representatives were: Tammy Noble, Logan Stang, Lori Burchett, and Flora Rogers.

### Administrative Business

#### Motion and Vote

Ms. Herbert moved, Ms. Cooper seconded, to accept the documents into the record. The vote was as follows: Mr. Myers, yes; Ms. Cooper, yes; and Ms. Herbert, yes. (Approved 3 – 0)

#### Communications

Tammy Noble apologized for not having meeting minutes from the last meeting to approve but stated they will be included in the next packet.

The Chair swore in anyone planning to address the Board during this meeting.

- 1. Yoder Residence – Side & Front Yard Setbacks** **5927 Rings Road**  
**17-076V** **Non-Use (Area) Variance**

The Chair, Rion Myers, said the following application is a request to reduce the required front yard setback from  $\pm 125$  feet to 60 feet and to reduce the required side yard setback from 8 feet to 5 feet. He said the site is on the south side of Rings Road, approximately 400 feet west of the intersection with Wilcox Road. He stated this is a request for a review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H).

Lori Burchett presented an aerial view of the site, which is  $\pm 4.7$  acres, east of the intersection of Avery Road and contains an existing historic single-family residence as well as multiple outbuildings that have been used in association with the existing home. She added Cramer's Creek bisects the property and the property is currently zoned R-1B under Washington Township zoning regulations. She said the property was designated R-1B, Limited Suburban Residential District, at the time of annexation into the City. She presented a zoning map and highlighted that zoning district for context.



Ms. Burchett presented the proposed site plan. She noted that future development of the property would go before the Architectural Review Board (ARB), since it is a historically registered site. A future addition to the existing structure is expected to be proposed, she said; however, those details have not been presented to the Architectural Review Board. She explained the applicant is requesting the Variance prior to them finalizing the addition proposal.

Ms. Burchett presented the proposed Variances; first, the reduction of the front yard setback from 125 feet from the center of the right-of-way to 63 feet from the center of the right-of-way and second, the reduction of the side yard setback from 8 feet from the east property line to 5 feet from the east property line.

Ms. Burchett reported that for this request for a front and side yard setback Variance, Washington Township zoning requires a minimum front yard setback of 20% of the depth of the lot. Under this, she stated the setback would be 125 feet from the center of the right-of-way of Rings Road. She explained there are several elements of the site that restrict its development; the most prominent being that there is an existing structure on site that does not conform to this setback regulation. Secondly, in the middle of the property there is stream that contains floodplain requirements, which further limits development. She added there is a 100-year flood plain designation as well as a floodway. She stated the applicant is also requesting a side yard setback that is required to be 8 feet under Washington Township Zoning. She concluded the applicant is requesting a Variance for a front yard setback of 63 feet and a side yard setback of 5 feet from the east property line.

Ms. Burchett presented the Non-Use (area) Variance Review Standards and said the Board must find that all of the following are met: Special Conditions, Applicant Action/Inaction, and Impair the Intent & Purpose of the Requirement. She reported that Staff reviewed this application against the Review Standards for the front and side yard setbacks and found that the front yard variance meets all three standards as outlined in the Code. She stated the side yard variance meets the standard regarding Applicant Action/Inaction but does not meet the Special Conditions nor Impair the Intent & Purpose of the Requirement standards as outlined in the Code.

Ms. Burchett presented the additional Non-Use (area) Variance Review Standards and said the Board must find at least two of the following are met: Special Privileges, Recurrent Nature, Delivery of Governmental Services, and Other Method Available. She stated that the front yard variance meets all four standards outlined in the Code while the side yard variance meets two of the four: Recurrent Nature and Delivery of Governmental Services.

In closing, Ms. Burchett said Staff is recommending the following: approval with no conditions for a Variance from Washington Township Zoning Code Section 306.044 to reduce the required front yard setback from 125 feet to 63 feet; and disapproval for a Variance from Washington Township Zoning Code Section 306.043 to reduce the required side yard setback from 8 feet to 5 feet.

Sarah Herbert inquired about the Special Conditions and how the side yard has not met the requirement. Ms. Burchett referred to the proposed site plan to aid her with the explanation that the side yard setback could be met without a Variance. Ms. Noble clarified the applicant can meet the standard without encroaching in the floodplain as that is the natural feature that Staff is saying is the Special Condition.

Rion Myers asked if there was a clearer representation on a map, which Ms. Burchett provided. She pointed out the 100-year flood hazard area as well as the floodway, which is a higher risk area. She clarified that on the side the applicant could meet the side yard setback without encroaching into a flood hazard area.

Ms. Herbert said, even if the Variances are granted, she asked if the applicant would encroach into the hazard area. Ms. Burchett confirmed the applicant would not encroach into that area.

Ms. Herbert inquired about the Intent and Purpose requirement. She asked how three feet would have an adverse effect on the neighbor. Ms. Burchett answered it may not create an adverse effect today, but it is not known what will happen in the future with that property. She indicated that if the neighboring property wants to build, it will further restrict where that neighboring property owner can build based on the Washington Township requirement of 40-foot separation between structures. She said Staff's assessment was based on the fact that Washington Township has an 8-foot minimum side yard setback and there is 40 feet from an existing structure. She said if the applicant was permitted the additional three feet closer, while it may not impact the property today, there is potential if that neighbor would want to add an accessory structure for example then it would have an adverse effect. Ms. Burchett agreed that the neighbor is already restricted in a significant way due to the flood hazard area on their property.

Mr. Myers said there are other ways the applicant can do an addition without it needing to be three feet further. Ms. Burchett agreed and reported that was Staff's conclusion.

Ms. Herbert asked if the Architectural Review Board (ARB) review standards were studied. Ms. Burchett said there is some consideration of the location on the site and making it subordinate to the existing historic structures to keep the integrity of the historic structure. She said this did not play into Staff's assessment because the applicant has not been before the ARB for the addition proposal.

Ms. Herbert asked if the neighboring property owners have said anything about this and Ms. Burchett said she has not heard from the neighbors regarding this Variance request.

Martha Cooper summarized what she thought Staff is saying, which is of the three standards that must be met for the side yard, Staff has stated the Special Conditions are not met because the applicant could build and still comply with the eight-foot setback. She said also, Staff is concluding that the third standard, which is encroachment, would adversely affect the neighboring property. Therefore, two of the three that must be met in order for the Variance to be granted are currently not met with this proposal. She surmised that is the basis why the recommendation that the BZA not grant the Variance requested for the side yard. Ms. Burchett confirmed Ms. Cooper's comments.

The Chair invited the public to comment on this application.

Nelson Yoder, 5927 Rings Road, said he is the applicant and both he and his wife are registered architects and another architect has been hired to help them. He said there are a lot of eyes on this to try and make it work on a complicated site. He noted the historic structure is wedged against the creek on one side and the property line on the other and the front yard zoning regulations that did not exist when the house was built in 1855. He indicated they tried to avoid a side yard setback and make the design work and between the three of them, they concluded what they put forth required asking for a Variance because it was not practical for them from a planning perspective to design an addition that worked both architecturally as well as functionally.

Mr. Yoder added they reached out to the neighbors to see what their thoughts were. He said the neighbor to the west, Matt Garrido, has already written back with a letter of recommendation stating he loves it and outlined what the Board can do to help the applicant. The neighbor closest to the setback has not yet responded but he reported he presented them with a set of prints along with the explanation of what they are doing and why.

Mr. Yoder said there is an unusually high evergreen screen that exists on the property with the opacity of 100%. He indicated that when he represents clients as an architect, he always looks for unusual conditions that make something unique. He restated that when he asked for a Variance in this case, it is the fact that they have this floodway they are against. He explained they cannot move or demolish the

existing structure to create a new structure in its place; they are stuck dealing with the existing circulation with the existing way that the house is set up.

Mr. Yoder presented pictures taken from the second floor of the structure, looking out as well as from the ground and nothing can be seen past that screen of a triple row of pine trees that are 25 – 30 feet tall. He presented a picture of this property from the park across Rings Road. He stated they are well outside the drip line of those trees and would not impact them through construction.

Gary Bruck, Sullivan Bruck Architects, 8 S. Grant Avenue, Columbus, Ohio 43215, said as the applicant noted the tree line earlier, they would like to create an addition that speaks to the language of the original house. He indicated they would replace the front porch with an appropriate detailed porch and try to gain a balance between the gables on both sides but if it were to be pulled back to stay within the setback, one gable would be much smaller, which impacts the master bedroom. He emphasized the applicant was really talking 2 feet, 7 inches, not three feet so the applicant did not feel that was a big encroachment.

Ms. Herbert inquired about the distance to the neighbor's accessory structure. Mr. Yoder said the distance between the accessory structure (shed) and the proposed addition is more than 40 feet.

Mr. Myers confirmed that the applicant was looking for a symmetrical design from the street by having the equal distance from the center of the house. Mr. Yoder confirmed they were trying to balance out the geometry. Mr. Bruck added "as best as possible."

Tammy Noble asked to caveat all of this. While they are talking about architectural style, she said the task of this Board is to determine whether the criterion is met so she is hesitant to get into the architectural design. She added since this application has not gone to the Architectural Review Board, it is not known how all of this is going to resolve itself.

Ms. Herbert said she understood and is sticking with their requirements but she is struggling with the request and it is nice to have a visual.

The Chair called for further public comment [hearing none] he closed the public portion of the meeting.

Ms. Herbert continued saying she understands this is a difficult piece of property and restricted on what can be developed based on the floodplain, the creek, and other structures. She said what is unique about this property and on this road is, it is the only historic building in that vicinity as most of the properties were probably built between the 1970s – 1990s, based on aesthetics she saw. She restated she does not agree with the special condition on the side yard; that has been met. She indicated she struggles with adverse effects to the neighbor. She said both the setbacks should be approved.

Ms. Cooper noted the trees that are creating the current screening are not on the applicant's property; those trees are on the adjacent property.

Mr. Myers said he drove by the site today and there is an actual flag next to where the right-of-way pin is for that property. Clearly, he stated, the trees are on the adjoining property but that does not have a big effect on whether this Variance meets the criteria or not. He said the part he is struggling to understand is if this discussion is setting a standard of granting a Variance for less than eight feet and it seems like from the Staff's perspective there are other options available. He said he has not seen a Variance request come before the Board in this manner where it is going to be that close. He indicated the architectural features of it, are a big point of that discussion. He said it would be nice to have comments from the ARB about the addition for the BZA to review.

Mr. Myers asked if any surveyors have assessed the property and the flood plain to see if the applicant could get a Letter of Map Amendment from FEMA. He said he knows how this can be done and indicated the flood plain might not come that far back.

Ms. Herbert clarified that has nothing to do with the side yard. Mr. Myers said it was part of the discussion of how the applicant will design the structure. He said he certainly does not want to build it in the flood plain.

Ms. Cooper restated the Variances are for a historic structure; the applicant cannot move it backward and they would have to comply with the flood plain/flood areas. She indicated the Board is all in agreement, on the front setback, without taking a vote yet. The problem she is having with the side yard, she said, is that it is not unique and the argument is there is no other way to address the gables or the matching side structures on the addition. She said the applicant could in fact be held to the additional 2.7 feet. She said when we are strictly deferring from our zoning, we have to be very mindful of those three factors that all have to be met so her inclination in this particular case, and being appreciative of the unique circumstances, is that the applicant has not met all three criteria for the side yard Variance. She said the other two out of four, yes, she can see two out of four of those criteria being met. She said the first question the Board has to address is having satisfied the requirements of the three that are required and she is not seeing that on this application.

Ms. Noble said, procedurally, this is the correct way to have this discussion. She said Staff makes an analysis but that does not mean that that is something the Board will agree on. She asked the Board to take a moment of training; the Board is handling this the right way. The Board is saying which criteria is not being met and why they believe that to be true. She concluded it then becomes the matter of the vote.

Mr. Myers said he is getting the same feeling and thinks there are other options available. His stance, he said, is that there is quite a bit of space on the side to work with but he does not have an architectural mind so he cannot judge on the aesthetics. He indicated he is just looking at what is before the Board and the standards they have to adhere to for these requests. He restated he is not seeing the requirements being met, either.

Ms. Noble said if the Board so chooses, because this has not gone to the ARB, the Board could allow this Board to vote on the front yard setback and table the side yard setback, which would enable the applicant to go to the ARB and if they find there is some reason the ARB finds this to be a key component to constructing this successfully, then that could be the special condition that could be argued when returning to the BZA. Vice Versa, if the applicant gets a vote tonight on the side yard setback, she noted the applicant is not permitted to reapply for a year or unless something else occurs.

Ms. Cooper said she cannot represent what the BZA's vote would be just because the architectural plans are approved by the ARB. She said the Variance request would still come back to this Board not necessarily being definitive about what the BZA would do.

Ms. Herbert said it would be helpful to have that feedback from the ARB, like Mr. Myers said, but she thinks it is met anyway.

The Chair said he would leave it up to the applicant for how to proceed.

Mr. Yoder indicated that per a straw poll, it is 2 to 1 against the side yard setback. He asked if he was reading that correctly. If that is the case, he said then the side yard Variance can be tabled so they could return at a future meeting if they need it.

Mr. Yoder said, from a design standpoint with the ARB, it is a 'chicken and the egg' scenario. He said they may end up with two different options then to be presented to the ARB: one that requires a setback variance and one that does not.

Mr. Myers said that is part of his feeling that more discussion needs to happen on the applicant's end. He said the applicant can go before another board (ARB), which would not affect the BZA's decision but might come into play as to how the applicant needs to redesign the structures and site.

Mr. Yoder said, if there is a compelling architectural case, to Ms. Cooper's point, it is not necessarily going to guarantee a vote. He said he understands that. He asked if the ARB was supportive of the applicant's side yard Variance in order to achieve an architectural element that they see is required to make the design work. He asked if that is something this Board would seriously consider as a way of meeting the side yard setback requirements. He said they do not want to spin their wheels or waste time going through that process with the ARB essentially opening up two different options and coming back to the BZA and finding out that the option the ARB was supportive of did not meet the BZA's approval. He said he wanted to make sure this Board (BZA) was open to an approval.

Mr. Myers asked, if the applicant went before the ARB, and had a difference of opinion on the side yard setback, would that affect Staff's side on this issue. Ms. Noble answered, at this point, it is all speculation and cannot honestly answer that question. She emphasized the ARB would not be voting on a side yard Variance; what would be pertinent for their decision would be if the sides were symmetrical and equal on both sides of the proposed house design. She said, if there is something about the 3 feet that is going to accomplish that, the applicant could then come back to the BZA to say that is a Special Circumstance. Again, she said we are not sure we are even there yet but in her mind, it could be a possibility so it is worth reserving the applicant's right.

Mr. Yoder said he understood.

Ms. Cooper added that only three of the five members are present this evening. If the applicant were to return, it is not known what the other two members would decide.

Ms. Noble indicated that could also work to the applicant's benefit.

Mr. Nelson asked to table the side yard Variance but to vote on the front yard Variance.

#### **Motion and Vote**

Ms. Cooper moved, Ms. Herbert seconded, to approve this Non-Use (area) Variance to reduce the required front yard setback from ±125 feet to 63 feet, because the request does meet the applicable review criteria for a Non-Use (area) Variance. The vote was as follows: Mr. Myers, yes; Ms. Herbert, yes; and Ms. Cooper, yes. (Approved 3 – 0)

#### **Motion and Vote**

Ms. Herbert moved, Ms. Cooper seconded, to table this second request for a Non-use (area) Variance, which is for the side yard setback. The vote was as follows: Mr. Myers, yes; Ms. Cooper, yes; and Ms. Herbert, yes. (Approved 3 – 0)

The Chair stated the next scheduled BZA meeting is August 31, 2017. He adjourned the meeting at 7:15 pm.

As approved by the Board of Zoning Appeals on October 26, 2017.