



MEETING MINUTES

Board of Zoning Appeals

Thursday, November 16, 2017

AGENDA

- 1. Yoder Residence – Accessory Structure Height 17-113V** **5927 Rings Road**
Non-Use (Area) Variance (Approved 3 - 1)

The Chair, Rion Myers, called the meeting to order at 6:30 p.m. Other Board members present were: Sarah Herbert, Martha Cooper, and Jamie Zitesman. Satya Goyal was absent. City representatives were: Tammy Noble, Claudia Husak, Lori Burchett, and Flora Rogers.

Administrative Business

Motion and Vote

Mr. Zitesman moved, Ms. Cooper seconded, to accept the documents into the record. The vote was as follows: Mr. Myers, yes; Ms. Herbert, yes; Ms. Cooper, yes; and Mr. Zitesman, yes. (Approved 4 – 0)

Motion and Vote

Mr. Zitesman moved, Ms. Herbert seconded, to approve the October 26, 2017, meeting minutes. The vote was as follows: Ms. Cooper, yes; Mr. Myers, yes; Ms. Herbert, yes; and Mr. Zitesman, yes. (Approved 4 – 0)

Communications

Claudia Husak asked if the Board has logged onto OneDrive to access information. She offered to help the Board with any challenges. She indicated there will not be a meeting in December and there will not be another to test OneDrive out before it goes live starting in January 2018 when the Drop Box will no longer be used. She affirmed that the password for the City's email account is the same for this application.

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

- 1. Yoder Residence – Accessory Structure Height 17-113V** **5927 Rings Road**
Non-Use (Area) Variance

The Chair, Rion Myers, said the following application is a proposal to increase the maximum permitted height of an accessory structure from 12 feet to 21 feet for an existing residential property. He said the site is zoned R-1B, Limited Suburban Residential District (Washington Township). He added the site is south 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, as well as the proposed site plan. She highlighted the detached accessory building that is under consideration this evening, located to the side and rear of the principal residence that is proposed at two-stories in height.

Ms. Burchett reported the addition to the single-family residence, and the site layout and improvements as proposed have been reviewed and approved by the Architectural Review Board. During the approval, the Board understood that as proposed, the detached accessory structure would require approval by the Board of Zoning Appeals to allow for the height to exceed the maximum height permitted.

Ms. Burchett clarified the application is proposing to increase the maximum permitted height of an accessory structure from 12 feet to 21 feet for an existing residential property. The proposed structure is shown as 20-feet, 5-inches in height, she said but for purposes of this request, staff has rounded this number to 21 feet.

In order to meet the requirements for an approval, Ms. Burchett explained that the Board must find that all of the following criteria is met. She reported staff reviewed the project against the criteria and finds that two have not been met. First, that the applicant would be able to meet the height requirement without extenuating circumstances. Second, that the site could accommodate a single-story structure that meets the requirements and that this would be an action of the applicant. Staff finds that for the third criteria has been met because there is no substantial adverse effect in the existing structures and are at a similar or greater height on the site.

Ms. Burchett stated the Board must also find that at least two of the following criteria are met:

1. Special Privileges
2. Recurrent in Nature
3. Delivery of Governmental Services
4. Other Method Available

Ms. Burchett reported that staff finds the criteria related to special privileges has not been met in that other properties are not afforded the same opportunity. She said staff finds that the recurrent in nature criteria has been met in that height requests are not common in the City of Dublin and that there will not be an impact to the delivery of governmental services with this request. Lastly, she said, staff further finds that the applicant would have options to meet the required 12-foot height limit; therefore, that criteria has not been met.

Due to the request not meeting the minimum criteria, Ms. Burchett said staff recommends disapproval of the request.

Sarah Herbert confirmed we are applying the Washington Township Zoning of R1 and applying the Washington Township Zoning Resolution 5-12 with regard to accessory structures. She asked why then they are we not applying the Washington Township Variance approval criteria.

Ms. Burchett reported per the discussion with the City's legal staff, as they explained when the City accepted this property into the city limits of Dublin, they accepted that zoning requirement. Under our authority, she said we have the Board of Zoning Appeals that is specific to Dublin, therefore, our criteria is what the decision should be based upon.

Jamie Zitesman indicated the criteria format is reflective of case law.

Ms. Herbert requested clarification on the special conditions. Ms. Burchett explained the applicant could meet the requirement of 12 feet as the grade change was not significant enough to be a factor; there are other options for the applicant. Ms. Herbert also asked for clarification as to what is being demolished. Ms. Burchett indicated which buildings were being removed.

Mr. Zitesman asked why the accessory structure is proposed to be 21 feet in height. Ms. Burchett answered the applicant should answer that question to provide specifics.

The Chair called for public comment or the applicant to speak.

Nelson Yoder, 5927 Rings Road, presented an aerial view of the site and highlighted the five acres he owns that is part of the variance request this evening. He provided a quick summary of the goals of this project, overall. He explained the property is surrounded by other large lots and his accessory structure is set back 107 feet from Rings Road, 134 from the neighboring property line to the east and 187 from the west, and 463 feet from the back property line. He pointed out the area the new structure would sit between two structures close to the road, about 40 feet back from the addition of the house and about 50 feet back from the barn. He said they are requesting a ±six-foot Variance.

Mr. Yoder referred to the Planning Report; whereas, it stated the applicant did not meet special conditions or action/inaction criteria and he believes that is not the case. He explained there is only one residential property in the entire City that is still under a Washington Township Zoning District. He stated that it is also subject to the *Historic Dublin Design Guidelines*. He noted the St. John's Church is under Washington Township Zoning (not a residential property). He indicated the criteria they are subject to, is the same that would apply in Historic Dublin when most of those houses are on .1 acres, even though they are three miles away. He reported they went through a lot of challenges getting through the design process and getting this to work as a result. He indicated that if they were not under Washington Township Zoning and under the Dublin Zoning Code, any one of the four or five residential zoning districts does not have this specific height restriction for accessory structures; it is left to the Planning and Zoning Commission. Claudia Husak corrected Mr. Yoder's statement and noted that the Dublin Zoning Code has a height restriction for accessory structures is 18 feet in those districts.

Mr. Yoder said they went through the Architectural Review Board (ARB) for a review and the historic requirements apply and as a result, they had a third party consultant brought in to review their drawings. He said they were pushed into this variance after going through the ARB process and noted what the original application entailed. He said the result was to request a detached accessory structure, which requires a height greater than 12 feet that he noted is a special condition and not due to action/inaction that is causing the variance request. He added the accessory structure setbacks exceeds the required setback and is 40 or 50 feet back from the road. Mr. Yoder said the Planning Report stated the structure could be expanded to the west but he said that is not the case.

Mr. Yoder presented the applicant's plans and how they were changed to accommodate the third-party reviewer's recommendations. He said then they made further changes in response to the ARB's requests, which the City's consultant was supportive of, and presented the Final ARB approved plan.

Mr. Yoder presented the special conditions:

- The Washington Township Zoning Code allows for lots that are 125 feet wide. The accessory structure is located more than 125 feet from all the neighbors.

- The Washington Township Zoning Code allows 12-foot-tall accessory structures (or even 35 feet tall primary structures) within eight feet of the neighboring lot line.
- The proposed accessory structure is:
 - 134 feet from the neighboring property to the east;
 - 187 feet from the property to the west; and
 - 463 feet from the property to the south
- A provided setback of 17 to 18 times the distance required by Code requirement and therefore, a special consideration.
- The proposed accessory structure is situated between an existing home and a barn that are both much taller:
 - +40 feet behind the house
 - +50 feet behind the barn
 - 107 feet from the centerline of Rings Road
- The structure's location and screening is worthy of special consideration and will be screened by more landscaping than either structure, which makes it completely screened from the road.

Staff suggests that the proposed building could be "moved further west" he said, and meet the overall height limit, which he interpreted as a request for a one-story structure instead of a two-story structure and expand it to the west.

Mr. Yoder said moving the structure to the west is not feasible due to the existing site constraints. He presented the landscape plan where the existing traffic bridge/Cramer Creek bridge was immediately to the west and the applicant has already pushed the two-story accessory structure as far west as possible. He presented a graphic showing the existing floodway to demonstrate further constraints on the site.

Mr. Yoder presented the proposed landscape plan to demonstrate all the screening that he is proposing to do to screen this proposed accessory structure. He presented a rendering of the revised front elevations to demonstrate this is appropriate in height to the existing structure with the addition. He then presented the back view, which shows the screened-in porch on the ground floor, next to the pool.

Mr. Yoder presented a video animation driving west-bound showing the garage and the carriage house, which will be screened with 100% opacity. He presented a graphic of the floor plan for the detached structure with an unfinished space above, with a garage and storage below, as well as the screened in porch previously mentioned. Additional graphics were presented to demonstrate how the proposed accessory structure is in keeping with the surrounding architecture on this property. This concluded his presentation.

Mr. Myers asked what the difference is from the front to the back. Mr. Yoder answered there is a 1.5-foot difference for the way the mean height is measured and there is a two or three-foot-grade change between the two. Mr. Myers clarified he wanted to know from the front of the built structure, if that was 21 feet or if it was the backside. Mr. Yoder confirmed the backside is 21 feet in height and 18 feet is in the front, measured as the average between the eave line and the ridge line.

Ms. Husak clarified the 18 feet that she quoted for the maximum height is for a lot that is an acre in size and the applicant has a lot that is greater than an acre so according to the current Zoning Code, 22 feet

is the maximum height for an accessory structure for a lot that is up to five acres in size. However, she said, there is a limitation to the number of accessory structures as well as the accumulative size of accessory structures. She also added that the applicant has had a chance to zone their site to the City of Dublin Zoning Code and apply those rules and has chosen not to in the past.

Mr. Myers inquired about the time of that rezoning. Tammy Noble said it was approximately 10 years ago and in fairness, she believes Mr. Yoder's father represented the property at that point. Mr. Yoder said he did not own the property until after that (2013), four years after that annexation occurred. Ms. Noble explained that process to the Board.

Ms. Noble asked how many outbuildings are on this property. Mr. Yoder answered two outbuildings were being demolished and three outbuildings will remain. He explained two of the structures are barns/agricultural structures, that do not apply to zoning but they are fairly large at $\pm 3,200$ square feet and ± 400 square feet. Ms. Herbert asked if the barns are considered historical structures to which Mr. Yoder answered that no.

Mr. Zitesman inquired about the second story of the proposed structure. He asked if there was any dedicated use of that space at this time. Mr. Yoder said it is anticipated as unfinished storage space but at a future time they may convert it to a living space.

Mr. Zitesman asked the applicant what happens if the Board does not grant the variance and he would have to build a structure to the height of 12 feet. He said they would be building a very expensive detached garage, which would not fit their program and they would have to go back to the ARB for a third time, which would further delay their project because the plans the ARB approved and recommended for approval includes a second floor as it is presented today.

Ms. Husak said the ARB did not approve the height of the structure; it was noted at that meeting that it would require further approvals at that height. Mr. Yoder said it was dimensioned and they specifically asked the ARB if they would speak to the height variance so this Board could make an informed decision. Ms. Husak said the ARB has no jurisdiction over variances. Mr. Yoder said he just asked for the ARB's input and they said they would support this.

Mr. Zitesman referred to Mr. Yoder's comment about being forced to design this structure to be 18 – 21 feet. Mr. Yoder said if the City would allow them to go back to the original plan they submitted and set aside the last four or five months of design work today, they would love to do that.

Mr. Zitesman stated that in reference to Criteria #2, the applicant is saying that it is the City's actions that have created the current issue having township zoning. Mr. Yoder confirmed the statement. He explained that if the City had not required him to change the addition to the house we would not be having this conversation.

Mr. Yoder said they have gone through four or five months of revisions to come up with a structure that everyone can agree is satisfactory and meets their requirements. He stated that there are big compromises between the ideal solution and a solution that can satisfy as many of the criteria as possible. He said they tried to get a plan that meets every criteria but that was not possible due to the special conditions. He said they are applying common sense and he thinks they created a carriage house, which fits this location versus a structure that meets the Code requirements. He stated that if the carriage house met Code requirements, it would most likely be a flat roof structure on a historic site that would not meet the *Historic Dublin Design Guidelines* for the pitch of roofs required and the type of geometrical forms desired. He said they are in a difficult position with the grade change, not being able

to move the structure west, and being under Washington Township Zoning Code, as well as the *Historic Dublin Design Guidelines* and asked the Board to appreciate their situation and try and find a common sense solution to this. He added they hired the best consultants in the city to do this project and hopes the Board sees this from the applicant's perspective.

Ms. Herbert asked, in terms of making it a single-story structure, if that would be something the ARB would have to weigh in on due to the roof pitches. Ms. Burchett answered that is correct because that is enough of a substantial change to require their review.

Ms. Herbert inquired about the existing traffic bridge discussion. Ms. Burchett referenced the Planning Report and said it was a general reference that there may be other opportunities on site for the applicant to have a one-story structure; staff was not trying to relocate the structure for the applicant, just trying to suggest it could be a possible to meet criteria. She said the question should be whether a two-story structure is appropriate where everyone else in the district would be required to stay within the 12-foot height limit.

Mr. Yoder said, if the accessory structure was attached, it could be 35 feet tall and because it is detached, it is now forced to be 12 feet tall.

Ms. Herbert asked if the applicant was grandfathered due to the historic nature of the property. Ms. Husak said they would be grandfathered in terms of the structures the applicant has but since this is a new structure, they would be making themselves, less compliant, so that is not a rule that would apply here.

Elizabeth Yoder, 5927 Rings Road, said she had a question regarding accessory structures. She noted two buildings are considered agricultural structures versus accessory structures and there is only one accessory structure that exists, which is a two-car garage. She said she would not necessarily say they exceeded or not exceeded the Code without knowing the actual square footage requirement for total accessory structures. Mr. Zitesman said the reality is the applicant not under the regulations of the Dublin Zoning Code. Ms. Noble said the issue is how regulations differ from the jurisdiction of a township versus a municipality. She stated that townships exempt accessory structure that are located on more than five acres and that those buildings can not be regulated for either zoning or building standards. She stated that municipalities have "Home Rule" authority and can regulated all accessory structures regardless of the size of the property. Mr. Zitesman agreed and added everything else is hypothetical; if the applicant wanted the property to be zoned differently, the applicant could have pursued that.

Mr. Myers said he asked the question based on the fact that the applicant could choose to rezone the property.

Mr. Yoder said that is not something they would be interested in doing, due to the timeline of the project. He added the point of the BZA is to review individual departures from the Zoning Code based on their merits. He said that is why we are here with a case where we have a unique situation.

Mr. Zitesman said he understands that and would like the applicant to focus on the two criteria that are a problem. He suggested the applicant's efforts would be best served if the applicant can address those two, which frankly, he does not know how to get over the applicant action/inaction but the applicant said he was forced into this by the City. He suggested the applicant go through the special conditions criteria and explain to the Board as to why that is incorrect analysis. Mr. Zitesman said the Board is trying to evaluate the subjective criteria against the request of the project and they have to deny the application if it does not meet the criteria.

Mr. Yoder referred back to his slides. He noted that in parentheses the special conditions that exist on this site as well as action/inaction. He indicated he did not spend as much time on this presentation as perhaps they would have knowing that the Board would specifically dig into the detail for site constraints or design issues. He said they were more than happy with the original design, which he presented. He stated the actions of the ARB, staff, and the third-party consultant forced them to go to a much more costly solution to the problem, which also impacted the amount of space they have to work with in a very constrained rear yard. He indicated that was a sacrifice they had to make to satisfy the ARB, the third-party consultant, and staff that pushed the structure back so the main house looked like it had more breathing room and everything was being hidden behind it, which included this structure. He said he disagrees with the Board that the applicant's actions caused this when they really did not want this to start with.

Mr. Zitesman restated the applicant could have a one-story building and have a garage there, which is the primary purpose, and that would meet the criteria of 12 feet for height. Mr. Nelson responded not with the program they have required and not within this area. Mr. Zitesman said it is not like the applicant cannot do a single-story building but the applicant chooses not to and does not want to. He said he understands that the two-story structure fits into the applicant's future plans that may allow for the space to be converted but it does require approval of the variance for height.

Ms. Herbert said she is struggling with staff that 'it is feasible to do a one-story structure'. She reiterated this is a unique piece of property given it is one of the few, if only, historic properties on Rings Road and also has flood plain issues. She asked if it is even possible to build a one-story building that will meet both the *Historic Dublin Design Guidelines* and the Code. Ms. Burchett answered, from a review perspective, it would be up to the ARB to weigh in on the design and architecture and how it functions with the overall historic character.

Ms. Herbert noted that staff said there was another way and she is asking if that is really feasible given the restraints on this property. Ms. Burchett said it could be done but ultimately requires approval of ARB.

Gary Bruck, Sullivan, Bruck Architects, 8 S. Grant Ave., Columbus, OH, said he would like to address the issue of a structure meeting the 12 foot height restriction. He stated that a structure of this size may be acceptable for a small structure but not a large structure. He said garage door would need a minimum height of 8 feet tall and will need 18 – 24 inches above that before getting to the rafter bearing so one would be starting at 10 feet; to get to 12 feet that allows 4 feet of total height because one is going to the median point of roof that can be exposed. He asked the Board to envision that and try to spread that out over a two-car garage and it would be a very poor quality. He clarified it would be a roof height of 4 feet on a 10 foot wall and that would have nothing to do with the architecture of the home or the *Guidelines* that Dublin is trying to enforce.

Mr. Myers asked what the pitch is on existing roof lines. Mr. Bruck answered 10 – 12 feet and a 3:12 could not be done on the proposed building. As a reference, Mr. Bruck said the eave line on this garage is 13 feet, 6 inches so just the eave line exceeds what the Board is asking for. He said, as proposed, this structure fits well with the whole project.

Ms. Herbert asked if the ARB made the applicant change that design from a three-car attached, etc. Ms. Burchett said the concerns with the ARB was that it specifically reflects in the *Historic Dublin Design Guidelines* whereas, additions should be subordinate to the primary structure.

The Chair closed the public portion of the discussion and put this up to the Board for discussion.

Mr. Zitesman asked if there was a two-car garage on the house as approved by ARB. Ms. Burchett answered yes.

Ms. Herbert stated the special condition criteria is met due to the unique site and the distinct zoning classification. She stated that she drove by the property numerous times and studied these site plans, as well. She indicated she is newer to the Board so she does not know how the ruling has been applied in the past but this property is unique. She stated that she is still analyzing the second criteria to determine if it has been met.

Ms. Cooper said she agrees with Ms. Herbert on the special condition as well and she is struggling with the fact that she thinks applicant's action/inaction criteria may also be met given the fact that this is a very unique property and the only property that is subject to this Washington Township Zoning. This is a difficult site.

Mr. Myers stated he agreed. He said there are not that many properties in the city that would have this type of circumstance.

Ms. Cooper pointed out there has already reviewed a variance for the property, specifically the side yard setback, that the applicant has withdrawn. She said she is appreciated of the fact that the property owner has returned and obviously spent a significant amount of time and effort to come up with a new design.

Mr. Myers said the roofline of this accessory structure we appears to be similar as the house. Mr. Bruck responded that the rooflines were very similar. Ms. Cooper commented that she believed the roofline was slightly lower than the roofline of the main structure.

Mr. Zitesman said there have been various cases where the design of the house created the need for a variance. He said the Board has consistently found that they do not meet Criteria 2 if the applicant is the builder of the house and therefore influenced the design. Historically, he said the Board has looked at the person who designed and built the home as the one making the action and the one who acquired it after the fact and walked into the situation, as being an applicant of inaction.

Ms. Herbert said, in response to what Mr. Zitesman said, it seems like there is a third issue here as this is not like a new build; this is a historic property with all the historic requirements.

Mr. Zitesman said this structure would be a new build to which Ms. Herbert agreed. She clarified this is a new building on a property that is reviewed by the ARB. She said this may be creating various input in which the applicant needs to respond. She said when Mr. Zitesman was not here the last time, the Board discussed the ARB quite a bit and what their input would be because architectural features of the property had to be considered. Mr. Myers restated this is a unique property.

Ms. Noble reminded the Board that any decision related to architectural design is the authority of the ARB.

Mr. Myers said he was still struggling with Criteria #2.

Ms. Herbert said she thinks it is met because of the unique conditions of the site. She reiterated that the property is regulated by a Washington Township Zoning Code, is subjected to review of the Historic Guidelines, and would not have any adverse effects.

Mr. Myers questioned whether a 12 foot accessory structure would be approved by ARB.

Ms. Noble said we do not know that because it has never been brought before the ARB.

Mr. Zitesman said it is not the Board's position to base a decision upon what they might or might not do. He stated he wants to be consistent and wants to be fair.

Ms. Herbert agreed about applying the rules consistently but this is not a situation that is going to be consistent with anything the Board will see again. She said the project is so unique and she does not have to be on the ARB to think that a 12-foot structure for a three-car garage would work.

Mr. Myers said he cannot think of any existing homes that have a height requirement for a garage built today at 12 feet in height.

Ms. Herbert said where she comes down on it is this is a historic property; it has a lot of requirements unique to it.

Mr. Myers asked about the existing barn. He said it is obvious it is greater than 12 feet in height. Ms. Noble answered that is based on the Zoning Code in place for this property. She said there a number of reasons that the structures exceed 12 feet in height and are most likely non-conforming structure.

Mr. Nelson said what makes this unique is not that it is the only residential property under Washington Township Zoning as his neighbors are also, but the neighbors are not under the *Historic Dublin Design Guidelines* as well, so a review by the ARB would not have been necessary and they would be permitted to move forward with their 'attached three-car garage' without any issues. He said in his case, he had to go through a whole other process that none of these other property owners would have to go through. He indicated it sounds like the Board takes exception to someone that buys a house, moves in, decides they want to build a patio but the previous owner built the house on the lot where a patio would not work and therefore, they are making compromises and they come with "I did not cause this problem, can you help me out?" He said in his case, they acquired an 1855 house and then after 170 years, are trying to add 'patio' that happens to be in this case, a 'garage' to it. He said they cannot add it the way they want to, the way that they planned to, and they are forced into doing something else that is very similar situation to the poor homeowner that comes in and states the problems were not caused by them.

The Chair called for a motion.

Motion and Vote

Ms. Cooper moved, Ms. Herbert seconded, to approve the Non-Use (Area) Variance to increase the maximum permitted height of a detached accessory building from 12 feet to 21 feet, because the proposal meets the review criteria. The vote was as follows: Mr. Myers, yes; Mr. Zitesman, no; Ms. Herbert, yes; and Ms. Cooper, yes. (Approved 3 – 1)

The Chair asked if there were any further comments. [Hearing none.] He said the next BZA meeting is scheduled for December but with the renovations in City Hall, that might not be possible. He adjourned the meeting at 7:51 pm.

As approved by the Board of Zoning Appeals on March 22, 2018.