

Appeal Summarization

Appeal of Director's decision for Certification of Zoning Compliance – Residential

Case/Job ID: 18-63179-CERT – Driveway

Date Appeal Filed: June 12, 2018

I. Executive Summary

This appeal is being filed in regards to the Director of Land Use and Long Range Planning's (or their assignee's) decision to posthumously grant an exception to the 3' residential driveway setback requirement provided for in §153.210(B)(2) of the City of Dublin Zoning Code (the "Zoning Code"). The Zoning Code, specifically §153.210(D), states that such decisions of the Director (or their assignee) may be appealed to the Board of Zoning Appeals (the "BZA") in accordance with §153.231(F) of the Zoning Code.

II. Background

- One of my next-door neighbors, the Custers, expanded their driveway in the fall of 2017 without applying for a building permit from the City of Dublin and/or a non-use (area) variance from the BZA. As completed, the Custer's driveway encroaches the 3' residential driveway setback requirement provided for in §153.210(B)(2) of the Zoning Code.
- During construction of the Custer's new driveway, Mr. Custer went so far as to move one of my sprinkler system's sprinkler heads (without my permission) in order to accommodate his expanded driveway. Said sprinkler system and sprinkler head have been in situ since 1997. At or near this time, Mr. Custer provided me with a copy of a property survey of his lot and proceeded to tell me my landscaping was on his property. Not wanting to be the bad neighbor, I decided to get a property survey of my property to determine where the property lines were located so I could alter my landscaping (as you can see, our properties at the back of the cul-de-sac are very tight and at very odd angles) **(SEE EXHIBITS B & C – pages 18 through 27)**.
- Once the survey was completed, I sent the results to the City of Dublin because it appeared that the Custer's new, expanded driveway was indeed on my land. They said they would talk to my neighbors and that I should not address it with them (which I adhered to).
- The City of Dublin met with the Custers on May 18th and together they drew up a posthumous building permit for a driveway that had already been constructed for more than half a year. In addition to approving a posthumous building permit application, the City of Dublin's Director of Land Use and Long Range Planning then then made a posthumous exception to the 3' residential driveway setback requirement provided for in the Zoning Code **(SEE EXHIBIT D – pages 29 through 31 for what was submitted to the City of Dublin; also EXHIBIT B – pages 18 through 25)**. The application for a Certificate of Zoning Plan Approval ("CZPA") that was prepared for the City is not professional, and modifications of the driveway were not drawn accurately to reflect the direction of the driveway nor the size. Even the setback variance comment leads you to believe it is only one particular point that does not meet the 3' residential driveway setback requirement, when, in reality, approximately 6' of the Custer's driveway violates the 3' residential driveway setback requirement. Additionally, at the bottom of the survey provided by the Custers in their application for a CZPA **(page 31)**, it specifically says "This plan is prepared for mortgage loan and title purposes only and is not to be construed as having been prepared for the owner or for the use of the

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owner for any purpose including the construction of any improvements, including fences”.

- I sent numerous emails to try to find out the status of this violation (see attached) and did not get clear and/or concise answers to my emails (**SEE EXHIBIT A – pages 2 through 17**).
- My son, who is an Attorney and a Civil Engineer, reviewed the Zoning Code and realized that an appeal could be filed for the “administrative” decision made by City of Dublin under Section 153.210(D). The City of Dublin never informed me that they had already resolved this matter by posthumously approving an exception to the 3’ residential driveway setback requirement until I asked if this would go to the BZA and stated that I would like to have representation (**SEE EXHIBIT A – page 3, page 5, page 7*, page 8, page 9 in particular**).
- Due to the unique shapes and sizes of the lots and the location of the Custer’s driveway on his lot, even minor expansions and directional changes of existing driveways are incredibly impactful to my property, in terms of property value and the negative effect it creates for governmental services. I do not have any place to put my trash, recycle, and yard waste except in my driveway, which is very narrow because my driveway adheres to the 3’ residential driveway setback requirement. Rumpke has left me notes to leave the debris at the curb; however, the post office says I can’t block the mailboxes. Hard to accomplish this with 2 driveways and 2 mailboxes now in front of a very narrow property lot.
- I have had 2 people within the last 3 years hit the Custer’s mailbox while backing out of my driveway. My driveway angles in to accommodate the 3’ residential driveway setback requirement established by the Zoning Code. Because of this extreme narrowing, people follow the direction of my driveway and have hit the Custer’s mailbox, causing damage to their cars and to the mailbox. I have already paid The Muirfield Village Civil Association to replace the mailbox once (**SEE EXHIBIT F**).
- The driveway position is not for necessity, but because the Custer’s wanted a much larger driveway and at an angle that was perpendicular to the garage, which makes it easier to back out onto the street. However, due to the small frontage on both of our lots (45’ for both of us) and the odd angles of the lots, our driveways were designed to fit the lots, which made our driveways narrower and going in a direction that might not be perpendicular from our garages to the street, which is very common in Muirfield.
- If the Custer’s had submitted a plan to the City of Dublin prior to construction of their driveway, their driveway expansion would likely have been declined due to the 3’ residential driveway setback requirement, and the Custers would have been forced to either keep their driveway width and direction to accommodate the property lines or change the driveway direction to swing into their own front yard if they wanted to keep the 20’ maximum width driveway (**SEE EXHIBIT E for previous case ruling by BZA, CASE 15-092V - pages 32 through 39**). **Due to the granting of the exception to the variance setback of 3’ required by the City of Dublin Building Code, you are facilitating the Custers with the opportunity to change the directional flow completely so their driveway now ends up on the city owned land directly in front of my very narrow property.**

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III. Standard of Review

In deciding an administrative appeal, §153.231(F)(4) of the Zoning Code dictates that the BZA shall determine whether or not the decision that was made was done so using the proper requirements and standards in the Zoning Code.

The City of Dublin insists that the "proper requirements and standards" referred to in §153.231(F)(4) are "whether or not the exception was granted by the Director" (see Exhibits A-1 and A-2). However, if such an interpretation of §153.231(F)(4) were accurate, the above appeal rights granted by §153.210(D) would mean absolutely nothing. Every exception granted by the Director using the authority granted to him under §153.210(D) would essentially be final because, under the City's proposed interpretation of §153.231(F)(4), the standard of review upon appeal to the BZA would be "whether or not the exception to the 3' driveway setback requirement was granted by the Director." As the answer to that question would always be "yes", the appeal right granted by §153.210(D) would be entirely illusory. If the drafters of the Zoning Code had intended for exceptions granted by the Director to be final, they would not have bothered to include an appeal right in §153.210(D) in the first place. Further, such a standard (and I'm not sure you can even call it that) would result in arbitrary enforcement of the Zoning Code (the Director would have an unchecked ability to grant exceptions at will) which, in addition to being subjective and unfair to homeowners, could be considered unenforceable if challenged in court.

Because the drafters of the Zoning Code did not intend for a Director's decision to grant an exception to the 3' residential driveway setback requirement to be above reproach (they explicitly provided a right to appeal such decisions), the more appropriate interpretation of the "proper requirements and standards" reference included in §153.231(F)(4) is that it is referring to the non-use (area) variance requirements also conveniently included in §153.231 (note that, unlike anything in §153.210(D), §153.231(H)(2) actually includes items that could be considered requirements and/or standards). As such, in deciding an administrative appeal of a Director's decision to grant an exception to the 3' residential driveway setback requirement of §153.210(B), the BZA shall determine whether or not the Director's decision was made done so using the non-use (area) variance requirements found in the Zoning Code.

IV. Standards and Requirements for Approval of Non-Use (Area) Variances

Section 153.231(H)(2) states that BZA shall only approve a non-use variance where there is evidence of practical difficulty present on the property AND that the findings required in §§153.231(H)(2)(a) and (b) (provided below) have been satisfied with respect to the following standards of review:

(a) That all of the following findings are made:

1. That special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district whereby the literal enforcement of the requirements of this chapter would involve practical difficulties **(Standard Not Met)**. Special conditions or circumstances may include:

A. Exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter or amendment; **(does not apply)**

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B. By reason of exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; **(does not apply)**

C. By reason of the use or development of the property immediately adjoining the property in question. **(does not apply)**

2. That the variance is not necessitated because of any action or inaction of the applicant. **(Standard Not Met – the variance is entirely necessitated because of the action of the Custers, as they decided to widen their existing driveway without first submitting applications to the City of Dublin for a building permit and/or the BZA for a non-use variance)**

3. Granting the variance will not cause a substantial adverse effect to property or improvements in the vicinity or will not materially impair the intent and purposes of the requirement being varied or of this chapter. **(Standard Not Met – granting the Custers a posthumous variance to the 3' residential driveway setback requirement will both adversely affect my property and impair the intent and purpose of the driveway setback requirements)**

(b) That at least two of the following findings are made:

1. That a literal interpretation of the provisions of the Zoning Code would not confer on the applicant any special privilege or deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter. **(Standard Not Met – §153.210(B) of the Zoning Code is applicable to all residential lots in the City of Dublin. Allowing the driveway to encroach into the required setback would grant Mr. Custer a driveway not permitted by other properties in the same zoning district or neighborhood. The other side of the Custer's driveway provides adequate space for driveway expansion, therefore granting the variance would provide the Custers special privilege not granted to others)**

2. The variance request is not one where the specific conditions pertaining to the property are so general or recurrent in nature as to make the formulation of a general regulation for those conditions reasonably practicable. **(Standard Met – Many residential lots have a similar shape when located on cul-de-sacs; therefore, the conditions have potential to be recurrent in nature)**

3. The variance would not adversely affect the delivery of governmental services (e.g., water, sewer, garbage). **(Standard Not Met – garbage collection, yard waste collection, and postal delivery services are adversely affected because I do not have any yard frontage to place my trash/yard waste bins, aside from in front of a driveway or mailbox, which I've been informed I cannot do)**

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4. The practical difficulty could be eliminated by some other method, even if the solution is less convenient or most costly to achieve. **(Standard Not Met – Other options are available which would meet all applicable requirements)**

V. Conclusion

Administrative decisions cannot be made arbitrarily (and shouldn't be made posthumously, either); doing so undermines the intent of the Zoning Code and could lead to the City of Dublin being unable to enforce the 3' residential driveway setback requirement on any homeowner. After all, if someone can construct a driveway without filing a permit, violate a requirement of the Zoning Code with respect to such driveway (said requirement being there to protect the private property of surrounding homeowners), and then arbitrarily be granted a posthumous building permit and 'exception' to the 3' residential driveway setback requirement, what's the purpose of having or enforcing the Zoning Code at all? If the City of Dublin and the Custers would have followed proper procedure – the Custers should have filed a building application **prior to** construction and, noting the Custer's proposed plans would violate the 3' residential driveway setback requirement, the City of Dublin should have asked the Custers to file an application for a non-use (area) variance with the BZA (which is what seems to have happened in the attached Planning Report from the BZA wherein the BZA analyzed a request for a non-use variance to a residential driveway that did not meet the 3' residential driveway setback requirement – **Exhibit E**) - then, in all likelihood, none of us would be in this mess.

Gail A Morrissey

Trustee of the Gail A Morrissey Trust, dtd 9/11/88 – owner of the property at 8750 St Albans Place