



## MEETING MINUTES

# Board of Zoning Appeals

Thursday, July 23, 2020

### CALL TO ORDER

Ms. Cooper called the meeting to order at 6:30 p.m. and made the following comments:

“Good evening and welcome to the July 23 virtual meeting of the City Board of Zoning Appeals. The Ohio Legislature passed several emergency laws to address the pandemic, including the ability for public entities to have virtual meetings. We appreciate this ability to maintain our continuity of government. For the present time, we are holding our meetings online and live streaming those meetings on YouTube. You can access the livestream on the City’s website. To submit any questions or comments during the meeting, please use the form under the streaming video on the City’s website. These questions and comments will be relayed to the Board by the meeting moderator. We want to accommodate public participation to the greatest extent possible and welcome your comments on cases. Please use a valid name and address when submitting your comments and refrain from making any inappropriate comments. This is not a perfect system, but we will do our best in these difficult times. We appreciate your patience.”

### ROLL CALL

Board Members present: Mr. Deschler, Ms. Herbert, Ms. Cooper, Mr. Nigh

Staff present: Ms. Husak and Mr. Hounshell.

### ACCEPTANCE OF DOCUMENTS

Mr. Deschler moved, Ms. Herbert seconded to accept the documents into the record.

Vote on the motion: Ms. Herbert, yes; Mr. Nigh, yes; Mr. Deschler, yes; Ms. Cooper, yes.

(Motion carried 4 – 0)

### APPROVAL OF MINUTES

Ms. Herbert moved, Mr. Deschler seconded to approve the June 25, 2020 meeting minutes as submitted.

Vote on the motion: Ms. Cooper, yes; Mr. Deschler, yes; Mr. Nigh, yes; Ms. Herbert, yes.

(Motion carried 4 – 0)

The Chair briefly explained the rules and procedures of the Board of Zoning Appeals and swore in staff and any member of the public who planned to address the Board during the meeting.

### CASE:

#### 1. Whalen Residence, 5559 Old Finglas Court, 20-120V, Non-Use (Area) Variance

Ms. Bryan stated that this is a request for approval of a Non-Use (Area) Variance to allow a variance to the front yard tree requirement for a newly constructed single-family dwelling. The site is located in Earlington Village, South of Old Finglas Court, approximately 225 feet east of the intersection with Wings Livery Road.

### **Staff Presentation**

Mr. Hounshell stated that this is a request for review and approval of a Non-Use (Area) Variance under the provisions of Zoning Code Section 153.231(H) to allow a variance to the front yard tree requirement for a newly constructed single-family dwelling. The site is located at 5559 Old Finglas Court, approximately 225 feet east of the intersection with Wings Livery Road and is zoned PUD, Planned Unit Development – Earlington Brandon. The site remained vacant until 2019, when the applicant built a single-family home on the site. This application is to assist in obtaining an occupancy permit. [Photographs of the newly constructed home and existing site conditions shown.] On the east side of the lot, existing power lines cross a large portion of the lot. The applicant is requesting a variance from Code Section 153.133(D)(2)(b), which is the minimum amount requirement for yard trees. That requirement was passed in 2007 in conjunction with the Residential Appearance Code. Per this section, the lot width and front building setback determines the number of trees and tree sizes required on a lot. Based on the dimensions of this lot, the applicant is required to provide one large tree (minimum of 50 feet) and one medium tree (30-50 feet) in the front yard. The applicant has requested the variance based on the practical difficulties of the lot. Because the electrical easement takes up a large portion of the eastern portion of the lot, it would be difficult to provide a large or medium tree on the lot. There are also underground drainage lines, as indicated by the red arrows on the site plan. Planting a large or medium tree near the drain lines would result in issues with the drain lines. The applicant has noted that because this requirement was not adopted until 2007, none of the other homes in this area have been required to do the same; they would be the first in this neighborhood. Staff has reviewed this application against the applicable criteria and believes the requirement can be met, and, therefore, recommends disapproval of the variance.

Ms. Herbert requested clarification of the locations in which staff believes the trees could be placed. Mr. Hounshell responded that City landscape architects believe the medium tree could be placed between the drain line and the driveway, and the large tree could be placed in the northeast portion of the site. Mr. Herbert inquired the distance between the two trees and the length of the frontage on the property. Mr. Hounshell responded that he is unsure of the distance between the trees. The frontage is 70-80 feet.

Ms. Cooper stated that the driveway appears to be at 16 feet, and the easement extends to the drain line, which is 24 feet. Those two numbers would total 40 feet for the easement and driveway, leaving only 25 feet of frontage, at most, that does not include the side setback.

Mr. Nigh inquired what is the width and the depth of that area between the drain line and the west property line. Mr. Hounshell responded that the drawing of the drain line locations was provided by the applicant. He does not have more specific locations.

Ms. Cooper stated that the drain line has an L-bend extension to the west property line. The area between the drain line and the side property line could not be more than 20 feet.

Ms. Husak clarified that the entire curved frontage of the lot is 80 feet. A distance of 25 feet is required between the front of the lot and the build line, east to west. The house cannot be constructed in front of that line. It is not the distance from the east side of the driveway.

Mr. Nigh inquired if the homeowner installed the drain lines. Mr. Hounshell responded that the property owner's builder installed the drainage lines for the house. The extension west of the driveway is the sump pump drain line.

Mr. Deschler inquired if a tree of a different height could be placed within the easement.

Mr. Hounshell responded that the recommendation of staff is to plant trees outside of overhead easements.

Ms. Cooper stated that not only would trees of that height constitute an issue for the overhead easement, their root systems would be extensive, as well.

Mr. Nigh inquired if, in prior situations, a driveway installed by the homeowner has been subtracted from the lot width for the purpose of calculating tree requirements.

Mr. Hounshell responded that the tree requirement is based on the width of the frontage, not the driveway. It is based on the dimensions of the lot, regardless of the structures.

[Discussion continued regarding the frontage and easement measurements and the impact on the tree calculations.]

### **Public Comments**

Ms. Husak noted the following public comments were received:

Mike Berry, 5570 Old Finglas Ct., Dublin, OH:

"This email is a follow-up to our phone conversation. Regarding the new house on our cul de sac, Mr. Whalen would like a variance on the requirement to plant two trees on his newly developed property. We are in favor of granting the variance, as the other homes on our street were built 20 years ago. The existing trees are approaching maturity, so allowing the variance will not affect the aesthetics of our street."

Graham family, 5545 Old Finglas Ct., Dublin, OH:

"We live next door to the Whalen residence. We, along with other neighbors, support the Whalen's request for a variance. The applicable Code does not make sense in this situation, and in fact, will do more harm than good. The Whalen family has done a good job making sure that their new home blends in with the rest of the homes on the court. Enforcing the requirement that they plant these trees is misguided and harmful. This Code section was undoubtedly adopted to ensure uniformity for the continuing expansion of new neighborhoods and community development. That is not the situation for the Whalen family, as this neighborhood has been around since the early 1990s. Please make the correct decision and grant the Whalen family their request for a variance."

### **Applicant Presentation**

Matthew Whalen, 5559 Old Finglas Ct., Dublin, OH stated that they love this neighborhood. They have been in the neighborhood for six years, previously living on a street around the corner, Wings Livery. When they saw the opportunity to build a new house in this mature neighborhood, they jumped at the opportunity. They appreciate all the trees and mature landscaping in the neighborhood and understand the purpose of the Code requirement, which is to ensure new developments establish a mature look over time. As the Grahams' stated in their comments, however, it would seem that this requirement is for new developments, not for a mature neighborhood like Earlington Village. He would like to make the following points. There is already a mature, medium height tree in front of the house in the easement between the sidewalk and the street. If they are required to plant a medium and a large tree on the west side of the front yard, there will be too many trees within that area. He is concerned that the root systems of the trees would cause issues with the underground water lines. On Wings Livery, they experienced issues from the root systems of larger trees piercing their underground drains, resulting in water backup in their basement. He wants to avoid that issue. In addition, he has talked to his landscaper, Jerry Buck, Buck & Sons, who expressed concerns with planting the required trees due to the overhead power line and the

mature tree that is within the right-of-way easement. Four homes within the neighborhood share the power line easement. None of the other homes has more than one tree. Two of the homes have one tree in the right-of-way easement; the other house has no tree in the easement but has a small tree in their front yard. He believes that planting two additional trees in his front yard would not be aesthetically appealing. If the Board is unwilling to approve his request for no trees, would it consider either one or two small trees within the west side of the front yard? This was the suggestion of his landscaper. It would permit some space between the new trees and the existing mature tree in the right-of-way easement; it also would avoid potential issues with underground drain lines.

### **Board Questions**

Mr. Nigh stated that he does not believe it is fair to presume that City Council was not aware of its existing mature neighborhoods when they adopted the legislation. However, he does not disagree with his other points. In regard to the criterion that "the variance is not necessitated because of any action or inaction of the applicant," how would he respond to that question? The electrical easement existed here at the time he purchased the property, but Mr. Whalen installed the drainage lines.

Mr. Whalen responded that he relied upon the expertise of the builder's engineer to identify the appropriate drainage system for the house. At that time, he was unaware of the City's tree planting requirements, so could not have pointed them out to his builder to consider.

Mr. Nigh requested clarification of his earlier comment that other homes in the neighborhood share the electrical easement and they do have trees planted in that easement.

Mr. Whalen responded that they have trees planted in the right-of-way easement.

Mr. Nigh inquired if there is a tree within that easement for his property, as well.

Mr. Whalen responded that there is a mature tree of a medium height. The house directly across from his property has a similar tree in the easement and no additional trees in their front yard. Two other properties to the east share the power line easement. One has a tree in the easement between the sidewalk and the street; the other has no tree in that easement but has a small tree in their front yard.

Ms. Herbert inquired if he is referring to the right-of-way easement, which is between the sidewalk and the street.

Mr. Whalen responded affirmatively.

Mr. Nigh stated that according to the Google map, there appear to be other homes to the rear and south of his property that have small trees within the electrical easement.

Mr. Whalen responded that there are some trees that are near the power line.

Mr. Nigh inquired if any of those trees would be 30-50 feet in height.

Mr. Whalen responded that he does not believe so.

Ms. Herbert stated that according to that Google map, the power easement to the south is completely clear.

Mr. Nigh noted that some small, 10-20-foot trees appear to exist.

Ms. Herbert agreed that there is some small-scale vegetation within the power easement.

Mr. Whalen stated that, anecdotally, he has been told that, previously, there were some trees under the power line, but AEP removed them.

Ms. Herbert noted that AEP would have the right to do so within their easement. She inquired if the street tree is located on the west side of the driveway.

Mr. Whalen responded that it is located west of his driveway and drainage line.

Ms. Herbert noted that if there already is a medium height tree within that area, it would be difficult to space additional medium and large trees appropriately.

Mr. Hounshell clarified that the street tree is required and is not included in the medium and large tree calculation.

Mr. Whalen noted that his landscaper expressed concern about planting a medium and large tree near an existing medium height tree.

Mr. Nigh stated that staff has indicated that the variance criteria for a Special Condition has not been met, although there was an existing electrical easement. Have there been previous cases in which a variance to the tree-planting requirement has been granted based on a utility easement through a property?

Ms. Husak responded since the adoption of this Code requirement in 2007, there has not been a variance granted to the tree-planting requirement.

### **Board Discussion**

Mr. Nigh stated that two of the variance criteria have been met. He has some concerns about the criteria for Special Conditions. Staff has indicated that since the passage of this requirement, no variances for tree planting have been granted. Because easements run through all properties, this condition is not unique for this property. Rather than granting a variance authorizing no trees to be planted, perhaps, due to the electrical easement, applying the height standard for lot widths up to 59.9 feet would be appropriate, which would permit planting trees of a lesser height.

Ms. Husak responded that Planning staff reviewed the request in various ways, but eventually based its recommendation upon the landscape staff's determination that the trees required by Code could be planted.

Ms. Cooper stated that, in her view, the placement of the drainage lines should not be considered a condition caused by the applicant. The lines are running parallel to the driveway, so they have limited the interference of the drain lines to the greatest extent possible. Stormwater drain lines are required, and must discharge either to the street or the rear of the property.

Mr. Nigh agreed. Even if the builder was aware of the tree requirement, he does not believe they could have improved upon the drain line placement.

Ms. Cooper stated that the builder has minimized the interference of the drain lines on the available planting area to the extent possible. From personal experience, she understands the concern about the root systems of mature trees interfering with underground drainage.

Mr. Deschler stated that the answer seems straightforward. The applicant has already indicated a willingness to plant smaller trees. No trees can be planted within the power easement, and planting a large tree within the west side of the front yard would seem untenable. He agrees with the suggestion to use the standard for a lot width of up to 59.9 feet, which would permit smaller tree heights.

Ms. Herbert requested clarification of the recommendation provided by Mr. Whalen's landscaper.

Mr. Whalen responded that Mr. Buck recommended two small trees.

Ms. Herbert inquired if the only place the trees could be planted would be west of the driveway and the drainage lines.

Mr. Whalen responded affirmatively.

Mr. Nigh inquired if the landscaper's recommendation contemplated a small tree by the driveway and a medium tree farther west on the lot.

Mr. Whalen responded that it did; however, he would prefer two small trees due to the drainage lines.

Ms. Cooper noted that there already is a medium tree in the right-of-way easement.

Mr. Nigh responded that he would be supportive of two small trees.

Ms. Cooper stated that the request for a variance could be approved with a condition that two small trees be planted.

Ms. Husak noted that staff's recommendation would be that the condition require the applicant to work with staff on the appropriate siting of the two small trees.

Ms. Herbert stated that the requirement should be that the trees be sited west of the driveway.

Mr. Nigh suggested that the condition require only that the trees be located outside the power line easement, giving the applicant and his landscaper the greatest freedom possible in their compliance without interfering with the easement.

Ms. Cooper stated that she would prefer the applicant be permitted to work with his own landscaper on selection of their preferred location.

Mr. Deschler recommended that the applicant's landscaper work with the City landscaper on the site selection.

Ms. Cooper stated that she believes the applicant has met both the Special Conditions and Applicant Action/Inaction criteria.

Mr. Nigh concurred. All three of the non-use variance review criteria are met and two of the four non-use variance analysis criteria are met.

Mr. Nigh moved, Ms. Herbert seconded that a Non-Use (Area) Variance of the Landscape Code, Section 153.133(D)(2)(b) be granted with the following condition:

1. The applicant work with the City to locate two small trees outside the overhead electrical easement.

Vote on the motion: Ms. Cooper, yes; Mr. Deschler, yes; Mr. Nigh, yes; Ms. Herbert, yes.  
(Motion carried 4 – 0)

Ms. Cooper stated the next BZA meeting is scheduled for August 27, 2020.

## **ADJOURNMENT**

The meeting was adjourned at 7:22 p.m.

*Martha Cooper*

Chair, Board of Zoning Appeals

*Judith K. Beal*

Deputy Clerk of Council