

Board of Zoning Appeals

Minutes (amended)

August 12, 2014

Members present: John Golzy (Chairperson), Lisa Carson, Betty Hollow, Joan Kraynanski, Kay Tousley, Edward Baum (alternate), Ellen Soltow (alternate)

City officials present: John Paszke (Zoning Administrator), Paul Eschenbacher (secretary).

The meeting was called to order at 7:00pm in Council Chambers, third floor of City Hall. A video about the policies and procedures of the Board of Zoning Appeals was shown. The Chairperson then swore in, under oath, those intending to give testimony.

Case #14-08V 30 Utah Place Zone R-1 Bruce Wentworth, appellant

Appellant is requesting a variance from ACC 23.03.14 to allow a wall, eight feet (8') in height, where six feet (6') is the maximum height allowed, with a front setback of twenty-five feet (25'), where zero feet (0') is allowed, and a side yard setback of twelve point five feet (12.5'), where zero feet (0') is allowed.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator noted that the wording of the variance request is reversed, and that it should read as a front setback of zero feet where 25 feet is the required minimum, and a side setback of zero feet where 12.5 feet is the required minimum. He described the proposed wall as masonry and brick.

The Chairperson called on the appellant to testify.

Bruce Wentworth said that they would reconstruct what was there to have it more secure and solid. Mr. Wentworth then presented photographs of the property and wall. He referenced the old chain-link fence on the north side of the property that is to be replaced.

Ms. Kraynanski asked why the fence needs to be eight feet in height instead of six feet. Mr. Wentworth said that it is for privacy and noise from the nearby highway. He added that the tall house next door will not be impacted by an eight-foot wall. Mr. Wentworth also said that the proposed wall will be on the subject property and not on the property line. Mr. Baum asked what would be lost with a six-foot fence. Mr. Wentworth said that privacy, protection from noise and consistency of height would be lost. He stated that the extra two feet in height is essential to what the owner wants, and is more effective.

The Chairperson called on anyone wanting to speak in favor of the variance.

Scott Malcom (31 Utah Place) addressed the Board. Mr. Malcom said the wall is of varying height. He also indicated that there is practical difficulty at the property because of the highway noise. Mr. Malcom said that an exceptional circumstance with the property is that the house is being remodeled, and the proposed wall would match the house and enhance the

neighborhood. He also stated that, as far as equal property rights go, there is another nearby house with a retaining wall and fence. Mr. Malcom noted that the neighboring property, which has the children's services facility, is not in the City and not zoned. Mr. Malcom said the new neighboring house will be on a higher grade than the wall.

Marjorie Malcom (31 Utah Place) addressed the Board. Ms. Malcom said that she is in favor of the wall to be built. She said renovations on the property will be done to perfection.

The Chairperson called on anyone wanting to make general comment about, or speak in opposition to the variance. No one came forward.

The Chairperson asked if any point(s) on the wall would be over eight feet in height. Mr. Wentworth said that some columns in the wall may be six to eight inches taller, due to difficulty in the ground level.

The Chairperson closed the floor for discussion. Ms. Kraynanski suggested splitting the variance request, to vote on the height and setbacks separately. The secretary suggested that questioned whether the appellant would have to give his approval of such an action. Ms. Hollow said that the Board had done so in the past. Mr. Wentworth said that he wants the wall to be consistent. Ms. Hollow said that this is one of the grandest houses in town, and that the eight-foot fence in back would not be visible to many people.

On a motion by Ms. Carson, seconded by Ms. Tousley, the Board considered to grant a variance, in Case #14-08V, from ACC 23.03.14. to allow a wall, eight feet (8') in height, where six feet (6') is the maximum height allowed, with a front setback of zero feet (0'), where twenty-five feet (25') is the minimum allowed, and a side yard setback of zero feet (0'), where twelve point five feet (12.5') is the minimum allowed.

FINDINGS:

- 1.) **HARDSHIP AND DIFFICULTY:** The fence is for privacy and noise protection. The Board does not have to create a hardship by denying the variance.
- 2.) **EXCEPTIONAL CIRCUMSTANCES:** A six-foot privacy fence is more than sufficient, but not always. The neighboring house is up on a higher rise, but that is not exceptional.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** There is another house nearby with a wall.
- 4.) **MINIMUM VARIANCE:** Eight feet in height is not minimal; six feet in height is a reasonable use.
- 5.) **ABSENCE OF DETRIMENT:** No detriment to City Code.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Hollow – yes, Carson – yes, Tousley – yes, Kraynanski – no, Golzy – no. Motion approved 4-1; variance granted.

Case #14-09V 75 Stewart Street Zone R-3 Trent DeBruin, appellant

Appellant is requesting a variance from ACC Title 25 to allow an addition to a structure for which the addition has a base flood elevation of six hundred thirty-five point three feet (635.3') where six hundred thirty nine feet (639') is the minimum requirement.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator noted that the current rectory building received a variance (#91-18V) for flood elevation. He said the proposed addition means the original plans have changed, thus causing the Church to come back for a variance. The Zoning Administrator asked if there were any Board members who were Church members. Ms. Carson and Mr. Baum recused themselves from hearing this case, so Ms. Soltow was a full member for this case.

The Chairperson called on the appellant to testify.

Trent DeBruin said that plans for the rectory include moving the kitchen and office area, and increasing the hall size. Mr. DeBruin said the plans would change no function inside. He also said that the proposed addition would be 1930 square feet in the back.

Mr. DeBruin presented a site plan to the Board, and read aloud from his prepared statement. Ms. Soltow asked why he wanted to build the addition lower than flood elevation. Mr. DeBruin said that the rectory was built below flood elevation, as per the 1991 variance.

The Chairperson called on anyone wanting to speak in favor of, make general comment about, or speak in opposition of the variance. No one came forward.

Ms. Kraynanski asked about if the building services (electricity, heating facilities) were to be located so as to be flood proof. Mr. DeBruin confirmed that would happen.

The Chairperson closed the floor for discussion.

On a motion by Ms. Kraynanski, seconded by Ms. Hollow, the Board considered to grant a flood hazard variance to the property at 75 Stewart Street a variance from ACC Title 25 to allow an addition to a structure for which the addition has a base flood elevation of six hundred thirty-five point three feet (635.3') where six hundred thirty nine feet (639') is the minimum requirement.

FINDINGS UNDER ACC 25.50.04(C):

--Factors and considerations

1.) The proposed addition would match the existing exterior building construction of brick, reinforced concrete block and concrete slab on grade. The danger that materials may be swept onto other lands is not increase(d) with the proposed addition. The whole building would have to go.

2.) There would be minimal effects on the flood plain as the existing grade within the perimeter of the proposed addition is near the existing floor height. The danger to life and property due to flooding or erosion due to this addition is minimal, if any.

3.) The susceptibility of the proposed facility and its contents to flood damage and the effects of such damage on the owner is increased minimally due to the proposed work, since the building will have the same functions.

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4.) The services provided by this religious community in ministries and service are invaluable. From serving the college students, to the elderly, sick, and homebound, to those in need of food, clothing and other necessities of life, the Catholic Church is an integral part of the community.

5.) An alternative site location is not applicable since the addition must be attached to the existing structure.

6.) The necessity of a waterfront location is not applicable to this project.

7.) The compatibility of the proposed work will provide the same functions as the current building. The spaces are proposed to be re-configured and/or increased in size due to the growth of this church community.

8.) In 1991 a variance was granted for the existing building for plans as submitted. We are requesting the same variance be extended to the proposed project. It is our understanding that had there not been a variance provided for the original structure, the value of the addition would have been compared to the value of the existing building and that calculation would have been sufficient to allow the work to proceed.

9.) The safety of access to the property in times of flood would remain unchanged by the proposed work.

10.) This addition does not increase the expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action expected for this site.

11.) The costs of providing governmental services during and after flood conditions are not increased due to the proposed work. The existing utilities remain unchanged with the proposed construction. The existing HVAC units as well as the proposed units will be mounted on the roof. The proposed instant water heater will be mounted on the wall above the base flood elevation.

--Findings

1.) The Church is growing; they need additional space.

2.) The Church is growing; they need additional space.

3.) It will not result in increased flood heights.

4.) The parking lot would help pool flood water. The addition will be eight-inch thick masonry and four-inch brickwork.

5.) Yes.

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The Chairperson called for a vote: Kraynanski – yes, Tousley – yes, Hollow – yes, Soltow – yes, Golzy – yes. Motion approved 5-0; flood hazard variance granted. The Board reminded the appellant that the cost for flood insurance could increase, based on the project.

Case #14-10V 24 South Shafer Street Zone R-3 Gary Rothwell, appellant

Appellant is requesting variances from ACC 23.10, Table A, Schedule of Bulk Controls, to allow an addition to a structure with a front setback of six feet (6') where twenty-five feet (25') is the minimum requirement, with a rear setback of fourteen feet (14') where thirty feet (30') is the minimum requirement, with lot coverage of thirty-six percent (36%) where thirty percent (30%) is the maximum allowed, from ACC 23.03.03(B) to have a right side setback of three feet (3') where four feet (4') is the minimum requirement, and from ACC 23.10, Table B, Off-Street Parking Requirements to have one (1) accessible parking space where two (2) accessible parking spaces are the minimum requirement.

The Chairperson called on the Zoning Administrator to testify.

The Zoning Administrator noted that this property was recently purchased. He said the proposed project on the house is to extend the roofline and add square footage on the second floor.

The Chairperson called on the appellant to testify.

Gary Rothwell presented plans of the project to the Board. He read aloud from his submitted letters to the Board. Mr. Rothwell explained that, because he had indicated no footprint change to the house, it was initially approved by the Code Enforcement Office, but that after discovering the plan to expand the second floor, the project was refused.

Mr. Rothwell indicated that it is his intent to have his son live there, and possibly rent out two of the bedrooms. He said that the proposed added space would be a new bedroom.

Mr. Rothwell noted that most nearby properties are rental properties.

Mr. Rothwell gave a power-point presentation of the layout and plans of the property, and photographs of the site. He also noted the letters submitted to the Board from neighbors not opposing his variance request. Mr. Rothwell then described the renovation work for the house.

Mr. Rothwell said that he has checked into getting off-site leased parking. He also said that, after a survey of this property, there may be room for a second accessible parking space on site. Mr. Baum asked about parking on site. Mr. Rothwell said that he was not sure yet, due to the impending survey, but has discussed with a neighboring property owner, J. David Sturbois, about possibly redoing the driveway on the lot, and hopefully having three or four parking spaces for the houses next to, and at the back of, this house. Mr. Rothwell said that if he had to purchase parking space, it would be no problem. Ms. Hollow asked to clarify that there is one parking space on site. Mr. Rothwell said that there was a space.

The secretary noted that if the appellant wants to have this house as a rental, he would submit a rental permit application, and if the parking did not meet requirements, that would be a separate issue to address.

The Zoning Administrator indicated that the City had offered the previous owner aid in fixing up the house, but got no response.

The Chairperson closed the floor for discussion.

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On a motion by Ms. Hollow, seconded by Ms. Kraynanski, the Board considered to grant to the property at 24 South Shafer Street variances from ACC 23.10, Table A, Schedule of Bulk Controls, to allow an addition to a structure with a front setback of six feet (6') where twenty-five feet (25') is the minimum requirement, with a rear setback of fourteen feet (14') where thirty feet (30') is the minimum requirement, with lot coverage of thirty-six percent (36%) where thirty percent (30%) is the maximum allowed, from ACC 23.03.03(B) to have a right side setback of three feet (3') where four feet (4') is the minimum requirement, and from ACC 23.10, Table B, Off-Street Parking Requirements to have one (1) accessible parking space where two (2) accessible parking spaces are the minimum requirement.

FINDINGS:

- 1.) **HARDSHIP AND DIFFICULTY:** It is a particularly small lot, and a narrow house.
- 2.) **EXCEPTIONAL CIRCUMSTANCES:** It is a particularly small lot, and a narrow house.
- 3.) **PRESERVATION OF EQUAL PROPERTY RIGHTS:** The footprint will be the same. The cubic content increase will increase the house's livability.
- 4.) **MINIMUM VARIANCE:** The footprint will be the same, the setbacks are pre-existing.
- 5.) **ABSENCE OF DETRIMENT:** No detriment. The house will be rebuilt without detracting from its style.
- 6.) **NOT OF A GENERAL NATURE:** Yes.

The Chairperson called for a vote: Hollow – yes, Carson – yes, Tousley – yes, Kraynanski – yes, Golzy – yes. Motion approved 5-0; variance granted.

OTHER BUSINESS:

--Disposition of minutes from June 10, 2014 meeting. Ms. Carson moved to accept the minutes as presented. Motion approved 6-0.

--Rules procedure update. Mr. Baum said the update will soon be ready for review.

The meeting was adjourned at 8:53pm.

John Golzy, Chairperson

Paul Eschenbacher, secretary