

BOARD OF ZONING APPEALS

October 14, 2019

The meeting was called to order at 5:30 p.m. by Niki Decker. Board members present were Niki Decker, Nathan Duricek, Brian Elmer, and Rob Vela (4). Jason Decker was absent (1). Also present was Cody Grodi, Zoning Inspector, and Mark Easterling, Deputy Planning and Zoning Administrator.

Mr. Vela moved to approve the minutes of the September 9, 2019 meeting as written. Seconded by Mr. Duricek. Ayes: (4). Nays: (0).

Mr. Vela moved to approve the minutes of the September 16, 2019 meeting as written. Seconded by Mr. Elmer. Ayes: (4). Nays: (0).

Ms. Decker administered an oath to those that would be speaking at the meeting.

APPLICATION 28-19 – Jack Sculfort is requesting two zoning variances to install one driveway with two curb cuts at the street. The property is located at 25900 Edinborough Circle and is zoned R-1 (Single Family Residential).

NOTE: *Chapter 1250.51(c)(3) Curb Cuts and Driveways:* Only one (1) access/curb-cut onto a public street shall be permitted.

1. The applicant is requesting a zoning variance that would allow for a second driveway with two curb cuts to be installed. This would be in addition to the driveway that leads to the garage. The proposed plan would allow for a “U” shaped driveway to be located in front of the house, creating a total of three curb cuts on the public road.

Recommendation:

1. The Zoning Inspector recommends denial of the variance as it does not meet enough of the conditions needed to grant a variance. The single curb cut driveway leads to the garage and serves for vehicular access into the garage. Removal of the “U” shaped driveway will not create a hardship as there will still be access to the garage and if parking is of concern, on street parking is allowed on this road. There are still options available to the homeowner that will create functionality in the front of the house outside of receiving a variance. A concrete walkway that attaches to the single curb cut driveway would still allow access to the front door. Having three curb cuts on this corner lot can also cause a safety concern.

Mr. Grodi reviewed Application 28-19. Mr. Sculfort was present, and said that he did not recognize that a pre-inspection was needed, nor a zoning variance, prior to the removal of his driveways. He passed out handouts from three contractors that bid on the resurfacing of his driveway, and referenced the need for the repairs and replacement. Mr. Sculfort noted that his driveway is thirty years old, hence the need for repair. Mr. Vela confirmed that the driveway is not growing in size, and Mr. Sculfort added that it is a direct replacement. Mr. Sculfort passed out additional handouts to the Board that referenced the four considerations needed for a variance. Ms. Decker confirmed that the freshly laid stone is to be paved. Mr. Vela asked how this application came to be, and Mr. Easterling said that the asphalt company had just laid the stone when the Planning and Zoning Division noticed the driveway. At that time it was determined that there was no permit on file for the driveway.

Mr. Vela asked if any comments had been received from the neighbors, and Mr. Grodi stated that none had been received.

Mr. Vela moved to approve Application 28-19, and finding B, C, D, and E of Chapter 1275.02(c)(3) to be true. Seconded by Mr. Elmer. Ayes: (4). Nays: (0).

APPLICATION 29-19 – Lane Williamson, on behalf of Nineteen Point Nine LLC, is appealing the application of Chapter 1245.34(a)(1), pertaining to window signs located within the Corridor Overlay. The property is located at 840 W. Boundary Street and is zoned C-4 (Highway Commercial).

NOTE: Chapter 1275.02(e)(1) Appeals to the Board: Appeals to the Board of Zoning Appeals may be taken after the initial applications to the Zoning Inspector for permit or, where it is apparent that such application would be in vain and useless, appeals may be made by initial applications to the Board. In either event, the procedural provisions of this chapter shall apply and be followed.

NOTE: Chapter 1245.34(a)(1) Limitation of Signs: The purpose and intent of this Chapter is to regulate the use of publicly visible displays or graphics; to protect and enhance the character of arterial roadways and surrounding areas; to prevent diminishing property values within these areas; to safeguard the public use and nature of arterial roadways; and to minimize visual distractions to motorists along public roads. The following shall apply to all signs in the Corridor Overlay: Signs and advertising structures shall not obstruct any window, door, fire escape, stairway, ladder or opening intended to provide light, air or ingress and egress for any building or structure.

NOTE: Chapter 1250.30(j) Definitions: Sign - Any words, numerals, figures, devices, designs, pictures or trademarks, painted upon or otherwise affixed to a building, wall, board, plate or any other structure for the purpose of making anything known. The definition of a sign shall not include the following: Signs not exceeding one (1) square foot in area and bearing only property numbers, post box numbers or names of occupants of premises; Flags and insignia of any government; Legal notices, identification information or directional signs erected by governmental bodies.

NOTE: Chapter 1245.31(a) Corridor Overlay Applicability: The boundaries of the Corridor Overlay are those non-residential properties abutting State Route 25 from the Maumee River to the City Corporate line.

1. The applicant is requesting an administrative appeal on the application of signage located within the Corridor Overlay. The Corridor Overlay consists of all non-residential properties along State Route 25 from the Maumee River to the City Corporation Line. 840 W. Boundary falls within the Corridor Overlay. Within the Corridor Overlay window signage is prohibited. A tenant located at 840 W. Boundary Street has placed signs in the windows.

Recommendation:

1. No recommendation provided.

Mr. Grodi reviewed Application 29-19. Mr. Williamson, Eastman & Smith, and Dr. Kyle Brodie, Nineteen Point Nine LLC, were present. Mr. Williamson handed out additional supplemental documentation to the Board, and added that they believe that there is an error in the staff's determination of a zoning violation at 840 W. Boundary. Dr. Brodie, owner of Brodie Optometry and building owner, stated that the windows have been tinted with sun shades to block the sun, while also allowing visibility out the window. Mr. Vela asked about the temporary signage portion of the Code which the applicant has referenced, and Mr. Grodi added that the building is located within the Corridor Overlay, so that portion of the Code supersedes temporary signage. Mr. Williamson referenced Chapter 1250.29 and identified the comprehensive signage, as well as a provision for temporary signage. He noted that in his findings that temporary signs are allowed without a permit. Mr. Williamson added that they understand the corridor concept, but that in his opinion that Chapter 1250.29 governs all signs. Mr. Williamson questioned the constitutional standpoint of the regulations of Chapter 1245.34(1). Mr. Grodi clarified that it's solely the location of the window sign that is in question. Mr. Easterling added that there are two sections of the Code that he has handed out to the Board for their reference; Chapter 1245.29 – Corridor Overlay (established in 2006), and Chapter 1210.08 – Conflict With Other City Provisions (established in 2006). Mr. Easterling clarified that when there is conflict within the Code as listed in Chapter 1210.08 that the more restrictive portion supersedes; therefore in this instance Chapter 1250 – Sign Regulations is superseded by Chapter 1245.29 – Corridor Overlay. Mr. Williamson referenced Chapter 1245.34 – Entranceway Structures and Signs, and stated that portion of the Code was identified in the notice letter that Brodie Optometry received. Mr. Easterling gave the Board examples as to the stricter standards within the Code, such as those within the Historic District and Levis Commons. Mr. Easterling confirmed that the Board is here to review the application and to determine if the Code was enforced correctly in this situation. There was a brief discussion about other businesses within the Corridor Overlay that have had window signage. Mr. Vela confirmed that Chapter 1210.08 subsides over the Corridor Overlay.

Mr. Vela moved to deny the Administrative Appeal for Application 29-19. Seconded by Ms. Decker. Ayes: (4). Nays: (0)

APPLICATION 30-19 – Kyle Bates is requesting a zoning variance to allow the installation of an in-ground swimming pool in the side yard. The property is located at 730 Chippewa Lane and is zoned R-3 (Single Family Residential).

NOTE: *Chapter 1250.58(c) Location of Swimming Pools:* Swimming pools, whirlpools, hot tubs, or similar features shall be permitted in the rear yard or within the side yard if a variance is approved by the Board of Zoning Appeals. In all cases, swimming pools shall maintain a minimum setback of five (5) feet from a property line to any deck or patio and of fifteen (15) feet to the water's edge. In all cases, whirlpools, hot tubs or similar features shall maintain a minimum setback of five (5) feet from any property line. The allowable distance from a residence to the above features is subject to any applicable building codes. No such structures may be placed within recorded easements for any purpose.

1. The applicant is requesting a variance to install an in-ground swimming pool that will be partially located in the side yard.

Recommendation:

1. The Zoning Inspector recommends approval of the zoning variance based on meeting the criteria for variances B, C, D, and F of Ch. 1275.02(c)(3). The side yard, which technically is located directly behind the house, is very narrow and the rear yard is mostly occupied by the driveway. The yard locations and the required swimming pool setbacks strictly limit where the swimming pool could be located. The proposed location of the swimming pool will not alter the character of the neighborhood. Without a variance the installation of a swimming pool would most likely not be possible.

Mr. Grodi reviewed Application 30-19. Mr. Bates was present, and referenced that his initial application also referenced the “tanning ledge” which he would still like it to be taken into consideration. Mr. Vela asked the staff why the “tanning ledge” could not be considered a part of the patio surrounding the pool, and Mr. Easterling added that it is considered a part of the pool, just as a garage is considered part of a house. Mr. Grodi noted that in reviewing this application that he had called Mr. Bates on the phone to let him know that the fifteen (15) feet would not be included in the variance, as it is not an option. Mr. Grodi told Mr. Bates that he has the option to appeal the interpretation of the code with regards to the “tanning ledge” at the next Board of Zoning Appeals meeting. Mr. Vela confirmed that no comments had been received from the neighbors. There was a brief discussion between the Board and staff regarding the inclusion of the “tanning ledge” to be considered as part of the application. Ms. Decker confirmed that the location of the pool in the side yard is the current request that they are reviewing.

Mr. Elmer moved to approve Application 30-19 for the side yard location of the pool, and finding B, D, F, and G of Chapter 1275.02(c)(3) to be true. Seconded by Mr. Vela.
Ayes: (4). Nays: (0).

Mr. Grodi added that the Board is welcome to further discussion the “tanning ledge” preference, but that it would have to be brought back to the November meeting and publicized. Mr. Easterling stated that the staff response to an administrative appeal would include that the “tanning ledge” is a continuance of the structure of the pool. He explained the building setbacks within the Code, and the setback to water’s edge. Mr. Bates asked if the “tanning ledge” and the pool could be considered two separate structures. Mr. Vela explained the administrative appeal process, and the interpretation of the Code. Mr. Easterling encouraged Mr. Bates to come into the Planning and Zoning office to discuss the “tanning ledge” administratively.

There being no further business, the meeting adjourned at 6:18 p.m.

Respectfully submitted,

Heather Alfaro