

BOARD OF ZONING APPEALS

JUNE 13, 2016

The meeting was called to order at 5:30 p.m. by Vice-Chairman Jason Decker. Board members present were Greg Bade, John Brown, and Jason Decker (3). Niki Decker and Craig Pickerel were absent (2). Also present were Karlene Henderson, Law Director, and Brody Walters, Planning and Zoning Administrator.

Approval of Minutes

Mr. Bade moved to approve the minutes of the May 9, 2016 meeting as submitted. Mr. Brown seconded and they were unanimously approved.

APPLICATION, 19-16 – Ray Corrigan is requesting one zoning variance that would allow him to keep the existing five (5) foot and six (6) foot fences in the side yard. The property is located at 223 W. Second Street, and is zoned “R-3” Single Family Residential. The requested variance would allow the applicant to keep the unpermitted five (5) and six (6) foot privacy fence in his side yard.

NOTE: *Chapter 1250.42 Fences, Walls, Structural Screens, Hedges, and Screen Plantings:*

	Max Height	
	Permitted	*Restricted
Front Yard	4'	6'
Side Yard	4'	6'
	*Requires BZA Approval	

1. The applicant is requesting permission to keep the existing unpermitted five (5) and six (6) foot fence in his side yard.

Recommendation:

1. No recommendation provided.

Mr. Walters reviewed Application 19-16. Mr. Corrigan said that he and his next door neighbor, Larry Hutson, share the fence. Mr. Hutson received approval from the Historic Landmarks Commission and it was an oversight that they did not get approval from this Board. He said that a lot of his neighbors have complimented the fence. Mr. Brown asked Mr. Walters if he had heard from any neighbors. Mr. Walters said that he has heard only compliments about the fence.

Mr. Brown moved to approve Application 19-16. Mr. Decker seconded and it was unanimously approved.

APPLICATION, 20-16 – Ted and Diane Barnes are requesting one zoning variance to permit an existing accessory structure to remain within five (5) feet of the side property line. The accessory structure is located at 800 Ashbury Drive and is currently zoned “R-3” Single Family Residential. The requested variance would permit the applicants to keep the structure in the five (5) foot rear setback.

NOTE: *1250.61(b) Accessory Buildings and Uses: Accessory buildings such as garages and utility buildings, may be located in a rear yard, provided that such buildings are separate from the main structure by at least ten (10) feet and are set back at least five (5) feet from the side and rear lot lines.*

1. The applicant is requesting approval to keep the existing accessory structure within the rear property five (5) foot set back (structure is currently approximately 1’ from the property line).

Recommendation:

1. The Zoning Inspector recommends approval of the zoning variance. The existing landscaping provides very little room to move the shed and the adjacent neighbor has expressed that they have no issue with the current placement of the shed. It would also be the recommendation of the Zoning Inspector that the shed be approved for relief up to two (2) feet from the property line to allow for future maintenance of the shed. (Ch. 1275.02(c)(3) –B, C, D, F)

Mr. Walters reviewed Application 20-16. Diane Barnes was present and said that the shed was a birthday gift from her husband and they talked to their neighbors about where to put it so it was hidden. Mr. Decker asked for clarification on the recommendation. Mr. Walters said that the Zoning Inspector is recommending that it be moved 1’ to allow access for maintenance. Ms. Barnes said that the company is out of business and they would need a crane to get it moved. Mr. Bade said that he appreciates that they are using it for screening, but a shed is not screening. However, having to move it would be a hardship.

Mr. Bade moved to approve Application 20-16. Mr. Brown seconded and it was unanimously approved.

APPLICATION, 21-16 – Stephen Chovanec is requesting one zoning variance for front yard setback relief to permit the construction of a patio in his front yard up to the property line. The property is located on a corner lot at 402 E. Seventh Street and is currently zoned “R-3” Single Family Residential. The requested variance would permit the applicant to construct a deck within the thirty-five (35) foot front yard setback.

NOTE: *Chapter 1230.01 Intensity and Dimensional Standards:*
R-3 Zoning:

Front Yard = 35’
Rear Yard = 35’
Side Yard Min = 8’

Side Yard Total = 20'

1. The applicant is requesting a zoning variance to reduce the required front yard setback. The variance would permit the front yard setback to be reduced to six (6) inches, rather than the required thirty-five (35) feet.

Recommendation:

1. The Zoning Inspector recommends approval of the variance based on the uniqueness and size of the lot. The applicant, in 2013, had received a variance that allowed their front yard setback to be reduced to six and one half (6.5) feet. It is this variance that the applicant is requesting a setback reduction but did not include an indication of a potential patio. (Ch. 1275.02(c)(3) –C, D, E, F)

Mr. Walters reviewed Application 21-16. Steven Chovanec said that in 2013 when he received approval to build his residence, the original drawings were too vague about where the patio would be. The Board discussed the style of the patio.

Mr. Brown moved to approve Application 21-16. Mr. Bade seconded and it was unanimously approved.

APPLICATION, 22-16 – Michael Skaff is requesting one zoning variance to permit the installation of a six (6') fence in his side yard. The property is a corner lot located at 160 Aspen Drive, is zoned as R-4 Single Family Residential.

NOTE: 1250.42(a)(5) *Fences, Walls, Structural Screen, Hedges and Screen Plantings: For fencing purposes the side yard shall consist of the area between the front of the house to the midpoint of the side yard. Any portion of yard between the midpoint of the house and the rear façade of the home shall constitute a rear yard for fencing purposes only.*

1. The applicant is requesting permission to install a 6' tall fence along the side of his residence that extends beyond the midpoint of said residence.

Recommendation:

1. The Zoning Inspector recommends approval of the variance. The resident has large dogs whom have and are able to jump over the current four (4) foot fence. (Ch. 1275.02(c)(3) –B, C, D, F)

Mr. Walters reviewed Application 22-16. Michael Skaff said that he had a split rail fence but it's falling down and the dog can jump it. He said that the only side that is not permitted is the Partridge Lane side. Mr. Decker asked if any comments were received from neighbors and Mr. Walters said no comments were received. Mr. Decker asked what style fence Mr. Skaff will be installing if approved. Mr. Skaff said that he will use a 6' dog eared privacy fence.

Mr. Bade moved to approve Application 22-16. Mr. Brown seconded and it was unanimously approved.

APPLICATION, 23-16 – Northcreek Properties, LLC is requesting one zoning exception to permit rear yard setback relief. The property is located at 1013 Wilderness Court, and is zoned “R-1” Single Family Residential. The requested exception would permit the applicant to construct a covered porch within the required sixty (60) foot setback from the rear property line.

NOTE: *Chapter 1230.01 Intensity and Dimensional Standards:*
R-1 Zoning:

Front Yard = 50’
Rear Yard = 60’
Side Yard Min = 10’
Side Yard Total = 25’

1. The applicant is requesting a zoning exception to reduce the required rear yard setback. The exception would permit the rear yard setback to be reduced to approximately fifty-three (53) feet, rather than the required sixty (60) feet.

Recommendation:

1. The Zoning Inspector recommends approval as the current property sits in a cul-de-sac, and the shape of the parcel does provide difficulty in design. The proposed layout would meet the requirements of the front and side setbacks without encroaching on the sixteen (16) foot utility easement in the rear. (Ch. 1275.02(c)(3) – B, C, D, F)

Mr. Walters reviewed Application 23-16. Rick Prokup, 9950 Sheffield, was present on behalf of the applicant. He said the house next to this property is the same, but it’s a cul-de-sac. Mr. Bade asked if it is under construction and Mr. Prokup said it is not. Mr. Bade clarified that this is about a 6’ variance and Mr. Walters said that is correct.

Mr. Brown moved to approve Application 23-16. Mr. Bade seconded and it was unanimously approved.

APPLICATION, 24-16 – Don Wietrzykowski is requesting one zoning variance to permit the expansion of a driveway within the five (5) foot setback from the side property line. The property is located at 260 Birchdale Road, and is zoned “R-3” Single Family Residential. The variance would allow the applicant to expand his driveway.

NOTE: *Chapter 1230.02(g) Driveways: In all Residential Districts, driveways shall be a minimum of five (5) feet from the side and rear property lines. All driveways shall be improved with a concrete, asphalt, driveway paver or similar impervious and dustless surface. In those instances where driveway pavers are utilized, a compacted depth of fine grade sand or screening six (6) inches of #304 and six (6) inches of #411 for a total of twelve (12) inches depth thick shall be provided and*

maintained. There is hereby established a minimum twenty- five (25) foot side yard setback between the side property line and the garage for all residential dwellings with side-loading garages. In these instances the required sum of the side yards would be twenty five (25) feet plus the minimum setback for either side yard established above, or the stated sum of the side yards, whichever is greater.

NOTE: Chapter 1250.02(l) General Parking Requirements: Parking in residential districts shall not be permitted in any required front yard area or in the street side yard area of a corner lot except in a driveway or a defined parking area. The aggregate area of the driveway or defined parking area shall not exceed thirty-five percent (35%) of the front yard. The parking area shall be paved with concrete, asphalt, driveway pavers or similar impervious and dustless surface. In those instances where driveway pavers are utilized, a compacted depth of fine grade sand or screening six (6) inches of #304 and six (6) inches of #411 for a total of twelve inches (12") depth thick shall be provided and maintained.

1. The applicant is requesting a zoning variance to reduce the five (5) foot setback from the property required for driveways.

Recommendation:

1. The Zoning Inspector recommends denial of the zoning variance to allow the expansion of the driveway. Neighbors have expressed concern in reference to encroaching distance from the property line, as well as existing and future property values. The street is also uncurbed which provides addition parking in the right-of-way. Therefore, only conditions D of Chapter 1275.02 have been satisfied. If approved, it shall be required that the expansion remain within the 35% maximum parking area set forth in Ch. 1250.02(l).

Mr. Walters reviewed Application 24-16. He called attention to comments received from neighbors that were distributed to the Board. Mr. Wietrzykowski said that his family has grown into a four car family with a two car garage. He said that he had a car parked on the street and it was totaled. He stated that parking is only allowed on one side of the street. He said that the first he heard that there was an issue was after installation was started and gravel is there now. Mr. Wietrzykowski said that he has letters from three realtors stating that property values will not be impacted and signatures of neighbors who do not oppose the driveway expansion. Mr. Bade said that to him the opinion of the neighbor whose property the driveway abuts outweighs everyone else's opinion since they are directly affected. Mr. Decker said that he understands Mr. Bade's opinion but the adjacent neighbor expressed concern about the property values so the letters from realtors, although opinions, carry some weight. Miriam Huff, 270 Birchdale, said that she lives directly next door to the subject property and when Mr. Wietrzykowski discussed doing this, he talked to her twenty-one year old son. She said that that looking out her window and seeing a car sitting there would bother her and when they get out of the car it would only be a couple of steps until they would be looking into her window so there is

a privacy issue. Mr. Walters said that if the Board does not approve this application the gravel section would have to be removed and restored to grass.

Allison Pittner, 239 Birchdale, said that her next door neighbors have the same driveway layout. She said that cars parked on the street are a danger because it is hard to see around the curve and there is a bus stop near this. Mr. Bade said that there is some benefit to having cars off the street, but anyone could park along there. Kirstin Berlan, 249 Birchdale, said that she is concerned about her children playing in the yard. These people have four cars and if they park on the street it could increase the chance of an accident. Melissa Huff, 270 Birchdale, said that there are still people parking on the street and the applicant could move their cars out of the driveway when they need to. Mr. Bade asked how much of this encroaches upon the 5' setback. Mr. Walters said that the application is not based on a survey but at least a portion of it would need to have a zero setback to the property line. Mr. Brown clarified that the whole driveway would not be at the property line. Mr. Walters said it is not the whole driveway, but he would base it on zero because we have to base it on the information we have.

Mr. Bade made a motion to grant a variance of 2 1/2' from the property line for the expansion of the driveway at 260 Birchdale. Mr. Decker seconded and it was unanimously approved.

APPLICATION, 25-16 – David and Mary Heather Munger are requesting one zoning variance that would allow them to construct a six (6) foot fence in their side and front yard. The property is located at 425 W. Front Street, and is zoned "R-3" Single Family Residential. The requested variance would allow the applicant to construct a six (6) foot fence past the half way point of the side house and partially into the front yard.

NOTE: Chapter 1250.42 Fences, Walls, Structural Screens, Hedges, and Screen Plantings:

	Max Height	
	Permitted	*Restricted
Front Yard	4'	6'
Side Yard	4'	6'
	*Requires BZA Approval	

1. The applicants are requesting permission to build a six (6) foot fence in their side and front yard.

Recommendation:

1. No recommendation provided.

Mr. Walters reviewed Application 25-16. David Munger was present and said that they have to take down some mature trees and this will help fill in the gap. Mr. Walters said that he received a phone call from the property owner to the east and she is supportive

of the fence. Mr. Munger explained that all the other houses are closer to the sidewalk than his and if this fence were going on the Bothe's property, it would not be considered front yard. He said only 6" of the fence will be visible to the street, the rest will be within the planting area. The fence will be a wood stockade fence, not dog ear, and no part of the structure will be exposed as there will be boards on both sides. Mr. Brown asked if they plan on taking out only some of the trees and Mr. Munger said yes.

Mr. Brown moved to approve Application 25-16. Mr. Decker seconded and it was unanimously approved.

APPLICATION, 17-16 – Steve Wise is requesting an administrative appeal on the interpretation of Chapter 1250.02(r) in reference to the amount of parking relief allowed and whether or not it could be reviewed by the Board of Zoning Appeals. The properties are identified as parcels Q61-000-901206005001, Q61-000-901205004000, Q61-000-901205003000 (located along Water Street), and are zoned "C-1" Neighborhood Commercial and "P" Parks.

The request would allow for the applicant to submit an application to the Board of Zoning in which the board would have the option to provide 100% parking relief for both of the proposed structures.

NOTE: Chapter 1275.02(1): 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 1250.02 The number of off-street parking spaces required for the uses located in and permitted in C- 1, C-3, C-4 and INS districts may be reduced up to thirty-three percent (33%) of the total required, provided that the following conditions are met:

(Ord. 151-2007. Passed 10-2-07.)

(1) The number of off-street parking spaces required for the use or uses exceed fifteen (15).

(2) The applicant shall submit an acceptable site plan showing that an adequate reserve of land is set aside for additional parking spaces, so that the total depicted on the plan is adequate to meet the requirements under 1250.03 of this Chapter.

The plan shall indicate the reserve area so that all dimensional requirements as to spaces, aisles and other applicable requirements of this Chapter can be met. The reserve area shall not be used for water retention, for required greenbelts or as the location for replacement trees or other deciduous or evergreen trees required by this Chapter. The landscape plan submitted for the site shall include a plan for the reserve area.

(3) The City has determined that the applicant has submitted substantial evidence showing that the parking needs of the specific occupant will be less than would be required by this Chapter.

(4) The property owner shall execute an agreement prepared by the City Law Director requiring the construction of the additional spaces within one hundred and eighty (180) days of notification that the City has determined a need exists for such spaces. The agreement shall run with the land, be binding upon successors and assigns and shall be recorded with the County Recorder.

(5) A permit for change of occupancy shall not be issued until the City has reevaluated the need for parking by the new occupant relative to the number of spaces required by this Chapter.

NOTE: Chapter 1275.02(b)(5): *To vary the parking requirements applicable, whenever it has been clearly demonstrated that the providing of full parking facilities is unnecessary or where such a requirement would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or a convenience.*

1. The applicant is requesting an administrative appeal on the whether the Board of Zoning Appeal can grant 100% parking relief for properties zoned as "C-1" Neighborhood Commercial.

Recommendation:

1. No recommendation provided.

Mr. Walters reviewed Application 17-16. Steve Wise, 14814 Stonehaven Drive, Linde Webb, attorney, Kate McPherson, architect, and Rick Thielen, 2333 Woods Edge, were present on behalf of the applicant. Ms. Webb said that the original application submitted by the Boat Club contained six variance requests but only three were considered. Two of those were approved and one was denied. She said they are requesting relief of seventeen (17) parking spaces for the properties which are zoned C1 (Neighborhood Commercial) and P (Parks). She said the Board has jurisdiction according to 1250.01-07 and they have the power to do a variance or exception. She said there is an unreasonable hardship because of the topography. She stated that there is parking available at Hood Park and on Water Street. Mr. Thielen stated that the parking is unnecessary and the Boat Club has functioned for 80 years and they never had parking other than public parking. He added that 1250.08 gives the Board of Zoning Appeals the authority to grant parking relief in excess of 33%. Mr. Wise called attention to a letter received from Paul Belazis in support of this request. Ms. MacPherson stated that she knows asking for 100% relief is a big ask but the Board has the authority to grant it per 1250.08. She said that it has been suggested that they rezone to C2 but they feel that it is completely inappropriate for the riverfront. She added that there is precedent for over 80 years. Mr. Bade said there is no precedent. Mr. Walters said that the common ground here is that the Board of Zoning Appeals does have authority to vary the parking, but the difference in opinion is to what extent. Mr. Walters said that he feels 1250.08 complements the previous sections of the Code and that it does not stand alone.

Mr. Decker moved to approve Application 17-16. Mr. Brown seconded and it was unanimously approved.

APPLICATION, 18-16 – Steve Wise is requesting an administrative appeal on the interpretation of the southern property as an accessory structure as defined in Chapter 1215.02(2) and 1215.02(3). The property is identified as parcel Q61-000-901206005001 (located along Water Street), and are zoned “C-1” Neighborhood Commercial.

NOTE: Chapter 1215.02(2): Accessory Structure (or Building): A subordinate structure, located on the same lot as the principal building, the use of which is naturally and normally incidental to the principal use of the principal building or land.

NOTE: Chapter 1215.02(3): Accessory Use, or Accessory: An "accessory use" is a use that is clearly incidental to, customarily found in connection with, and (except in the case of accessory off-street parking spaces or loading) located on the same zoning lot as the principal use to which it is related. When "accessory" is used in the text, it shall have the same meaning as "accessory use". An "accessory use" includes, but is not limited to, the following:

- A. Swimming pools for use of the occupants of a residence or their guests.
- B. Domestic or agricultural storage in a barn, shed, tool room, or similar accessory building or other structure.
- C. Home occupations when carried on by the owner - resident of the dwelling and when no physical or visual effects are observed beyond the walls of the residence.
- D. Storage of merchandise normally carried in stock in connection with a business or industrial use, unless such storage is excluded in the applicable district regulations.
- E. Storage of goods used in or produced by industrial uses or related activities, unless such storage is excluded in the applicable district regulations.
- F. Accessory off-street parking spaces, open or enclosed, subject to the accessory off-street parking regulations for the district in which the zoning lot is located.
- G. Accessory signs, subject to the sign regulations for the district in which the zoning lot is located.

1. The applicant is requesting an administrative appeal on the decision to classify the potential building south of Water Street as an accessory structure based on the definitions provided and potential uses listed.

Recommendation:

1. No recommendation provided.

Mr. Walters reviewed Application 18-16. Mr. Brown asked for clarification. Mr. Walters explained that when this was originally discussed with representatives of the Boat Club, the functions of the buildings, as presented, caused him to designate this building as an accessory structure to the building on the north side of Water Street. Ms. Webb stated that 1215.02(2) states that the accessory structure is to be on the same lot and this is not.

Ms. McPherson said that both buildings will be used similarly. The north building will have bathrooms, meeting rooms, a kitchenette, and an outside deck. The south building will also have bathrooms and a shower. Both buildings will have storage. Mr. Wise said that they are trying to be a good neighbor and not block the view of the river. Mr. Decker said that based on what they are stating it does not sound like an accessory structure, but that could change. Mr. Walters said that the floor plans can be reviewed prior to permits being issued. Mr. Brown said that based on the programming it does not sound like an accessory structure, but they will have to follow the programming.

Mr. Brown moved to approve Application 18-16. Mr. Decker seconded and it was unanimously approved.

There being no further business, the meeting adjourned at 7:19 p.m.

Respectfully submitted,

Mary Jo Sutton