

BOARD OF ZONING APPEALS

APRIL 15, 2013

The meeting was called to order at 5:30 p.m. by Chairperson Becky Williams. Board members present were: John Brown, Jason Decker, Eric Nicely, Jonathan Smith, and Becky Williams (5). Also present was Deputy Planning and Zoning Administrator Brody Walters.

Mr. Smith moved to approve the minutes of the March 11, 2013 meeting as written. Mr. Nicely seconded and they were approved 4-0. Ayes: Decker, Nicely, Smith, Williams (4). Abstain: Brown (1).

ZONING VARIANCE, 06-13 - Jerome Parker on behalf of Ranger Development Group, LLC requests two (2) zoning variances to permit the installation of a free-standing sign. The subject property is located at 10680 Fremont Pike and is zoned C-4 (Highway Commercial). These variances would permit the applicant to install a 45' high free-standing sign with a 100 S.F. message panel.

NOTE: 1250.32(a) *Permanent Signs Allowed*
C-4 Zoning:

If sign height is $\leq$ 10'
Max size – 72 SF
Setback – 10'

If sign height is $\leq$ 20'
Max size – 48 SF
Setback – 40'

NOTE: 1250.39 *Other Administrative Procedures*

The Board of Zoning Appeals may grant a variance only if it finds that all of the following apply:

- (a) That the literal enforcement of the requirements of this chapter would involve practical difficulties based on the presence of special conditions and circumstances which are peculiar to the land or structure involved and which are not applicable to other lands or structures in the same zoning district.
 - (1) Exceptional narrowness, shallowness or shape of a specific property on the effective date of this chapter or amendment; or
 - (2) Exceptional topographic or environmental conditions or other extraordinary situation on the land, building or structure; or
 - (3) The impact on the property of uses or development of immediately adjoining property or properties.
 - (4) Whether the applicant was aware of the relevant code limitation when the property was sold or leased to it.
 - (5) Whether the property in question will yield a reasonable rate of return in the absence of the proposed variance, or whether there

can be any beneficial use of the property without the proposed variance.

(6) Whether the issue could be resolved by some other method, even if this alternate method is less convenient or most costly to achieve.

- (b) That 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, and is the minimum variance necessary to provide relief.
- (c) That the variance would not adversely affect the delivery of governmental services (e.g. water, sewer, refuse).
- (d) That the variance as granted would not confer on the applicant any special privilege, or deprive the applicant of rights, when compared with those rights commonly enjoyed by immediately adjoining properties.
- (e) That 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.

1. The applicant is requesting a zoning variance to permit a sign that is 25' higher than otherwise permitted. The total height of the sign is proposed to be 45'.
2. The applicant is requesting a zoning variance to permit a sign panel that is 10' x 10' or 100 SF. The proposed sign is 52 S.F. larger than what would otherwise be permitted.

Recommendation:

1. No recommendation provided. The Planning and Zoning staff recommends review of required criteria against the applicant's responses as provided on the last two pages of application packet 06-13 and at the time of the meeting.
2. No recommendation provided. The Planning and Zoning staff recommends review of required criteria against the applicant's responses as provided on the last two pages of application packet 06-13 and at the time of the meeting.

Mr. Walters stated that this request is for the site of the former BP Car Wash on Fremont Pike. Jerry Parker said that he has been involved with the City for the last five or six months working through the revisions to the Sign Code including the variance process. He said that with the criteria established for a variance to be granted, there will be very few situations that will meet the criteria, but he feels this one does. He said that without a highway sign, Starbucks would be at a competitive disadvantage. He said there is no negative impact from granting this variance as there are signs in that area that are higher. He added that Starbucks has said they will not locate at this site without the sign. Mr. Parker said the BP sign is higher and the Chipotle sign across the street

from this location is higher and that was approved through the Township's variance process. Mr. Parker said they are asking to be treated like other properties in that vicinity. He said this is a unique situation, and he does not believe it will lead to any precedent being set.

Ms. Williams asked Mr. Parker if his statement about Starbucks not locating at this site without the sign also referred to the height. Mr. Parker said it does, and they have looked at other signs in that area. The BP sign is 60' and the Ralphies sign is 45'. Mr. Parker said this sign would be about the same as the Ralphies sign. Ms. Williams said the sign would be 595' from the highway. The Board reviewed the criteria in 1250.39. Ms. Williams said she does not have an issue with the height, but she is wrestling with the 100 square feet and whether this is the minimum variance necessary. Mr. Walters noted that this sign will be behind the building and the building height is 22'. Mr. Smith said that perhaps the sign could be a little smaller but with it being behind the building, he's not sure about that. A majority of the Board found that this variance request meets the criteria in 1250.39. Ms. Williams asked what would happen if the other tenant wants a sign. Mr. Walters said that if the variance is granted, this sign would meet and exceed the square footage allowed for the property so the other tenant would not be able to put up a freestanding sign without a variance.

Mr. Decker moved to approve Zoning Variance 6-13 as submitted. Mr. Nicely seconded, and it was unanimously approved.

ZONING VARIANCE, 07-13 – Norman and Jeanette Fairman request one (1) zoning variance and two (2) zoning exceptions to permit the construction of multiple additions to a single-family residence. The subject property is located at 854 Hickory Street and is zoned R-3 (Single-Family Residential). The variance and exceptions would permit the applicant to build an addition that is closer to both side property lines and closer to the front property line than would otherwise be permitted.

NOTE: *1230.01 Intensity and Dimensional Standards*

R-3 Zoning:

Front Yard = 35'

Rear Yard = 35'

Side Yard Min = 8'

Side Yard Total = 20'

Min. Dwelling Size = 1,200 S.F.

*** The average front setback in this block is 38'

1. The applicant is requesting a zoning variance to permit a residential addition to be constructed along the southern property line with a side yard setback of 0'. The Planning and Zoning Code currently requires that this side yard

setback be at least 12'. This request represents 100% relief of this requirement.

2. The applicant is requesting a zoning exception to permit residential additions to be constructed along the northern property line with a side yard setback of 4'- 5'. The Planning and Zoning Code currently requires that this side yard setback be at least 8'. This request represents 38% - 50% relief of this requirement.
3. The applicant is requesting a zoning exception to permit the construction of a 2' x 10' front entrance addition which would extend towards Hickory Street. Currently the average setback in this block is 38', with the current residence setback at only 24' from the front property line. This request represents 16' relief from the average front yard setback which represents 42% relief from this requirement.

Recommendation:

1. The Planning and Zoning staff recommends approval of the variance request to build up to the southern property line. This recommendation is based on several factors such as: the adjacent property is also owned by the applicant, the properties are separated by Grassy Creek, the addition would not reduce views, lighting, ventilation of any owner, the addition would not likely contribute to the communication of fire to another structure and any future purchaser of the property located at 868 Hickory Street would be aware of the addition and its placement to this property. Based on the variance criteria of Chapter 1275.02(c)(3) the Planning and Zoning Division believes that criteria B, C, D and G would be satisfied.
2. The Planning and Zoning staff recommends approval of the reduced side yard setback along the northern property line, in line with the existing structure, so long as neighbors do not object to further encroachment. However, the Planning and Zoning Division does not support, nor can it approve the construction of an addition that would be closer than 10' to the existing garage.
3. The Planning and Zoning staff recommends approval of the exception pertaining to the front yard setback. The additional 2' that is being sought is insignificant to neighboring properties and no negative consequences are foreseen should the exception be granted.

Mr. Walters reviewed Application 7-13 as listed above. He stated that he received several phone calls from neighbors who were notified about this application, but there was no opposition. Mr. Fairman said that he and his wife decided to downsize to a smaller house, and then they realized that they own one right next to where they currently reside. He said that the oversized garage is to compensate for the lack of a basement. He said they will make sure that they are not within 10' of the existing garage. Mr. Brown clarified that they are leaving the existing garage. Mr. Fairman said they are; it will be used as a workshop. He said that the new areas will be architecturally consistent with the existing. Ms. Williams asked about Grassy Creek setbacks. Mr.

Walters said that the creek could still be accessed from the property at 868 Hickory Street and to the best of our knowledge, this does not violate any setbacks. The Board reviewed the variance criteria in 1275.02(c)(3) with regard to the variance request to build up to the southern property line and found B, C, D and E to be true.

Mr. Smith moved to approve the zoning variance request to build up to the southern property line contained in Application 7-13. Mr. Nicely seconded, and it was unanimously approved.

Mr. Smith moved to approve the zoning exception request regarding the side yard setback on the northern property line contained in Application 7-13. Mr. Brown seconded, and it was unanimously approved.

Mr. Smith moved to approve the zoning exception pertaining to the front yard setback in Application 7-13. Mr. Decker seconded, and it was unanimously approved.

ZONING EXCEPTION, 08-13 – Nick Giovannucci on behalf of his client David Benson requests one (1) zoning exception to permit the construction of a new single-family residence within the required rear yard setback. The subject property is located at 3652 Turtle Creek Dr. and is zoned R-1 (Single Family Residential). This exception would permit the applicant to construct the proposed residence 30' from the rear property line.

NOTE: *1230.01 Intensity and Dimensional Standards*

R-1 Zoning:

Front Yard = 50'

Rear Yard = 60'

Side Yard Min = 10'

Side Yard Total = 25'

Min. Dwelling Size = 1,800 S.F.

1. The applicant is requesting a zoning exception to permit the construction of a new house 30' from the rear property line, which is 30' closer than would otherwise be permitted. The required rear yard setback is 60'.

Recommendation:

1. The Planning and Zoning staff recommends approval of this zoning exception. The plat clearly indicates the location of the rear yard setback, but it is believed that the rear yard setback was actually drawn differently than it would otherwise be interpreted thorough the application of the Planning and Zoning Code. Upon review of this request it was determined that all other dimensional requirements are being met including minimum front and side yard setbacks. Additionally, it appears as though the request if approved would not place this residence unreasonably close to any adjoining neighbor's property or residence.

Mr. Walters reviewed Application 8-13 adding that plat maps are reviewed for conformance to standards. The final plat was recorded and this lot may have been drawn incorrectly. Nick Giovannucci, contractor, Chris Finkbeiner, developer, and David Benson, property owner, were all in attendance. Mr. Giovannucci said that Mr. Benson thought that the house he wanted would lay out great on this lot; however the lot is almost worthless where the building line currently is. Mr. Giovannucci said that all of the trees on this lot are in front on the left hand side and these hundred year old trees will be kept intact.

Mr. Brown moved to approve Zoning Exception 8-13 as submitted. Mr. Smith seconded, and it was unanimously approved.

ZONING EXCEPTION, 09-13 – Ron Myers requests two (2) zoning exceptions to permit the construction of an addition to a single-family residence within the required front and side yard setbacks. The subject property is located at 928 Maple Street and is zoned R-3 (Single Family Residential). These exceptions would permit the applicant to construct the proposed addition 32' from the front property line and 7' from the northern side property line.

NOTE: *1230.01 Intensity and Dimensional Standards*

R-3 Zoning:

Front Yard = 35'

Rear Yard = 35'

Side Yard Min = 8'

Side Yard Total = 20'

Min. Dwelling Size = 1,200 S.F.

*** The average front setback in this block is 38.5'

1. The applicant is requesting a zoning exception to permit the construction of a residential addition 32' from the front property line, which is 6 ½' closer than would otherwise be permitted. The required front yard setback is normally 35' but the average setback of this block is 38 ½'. This request represents 17% relief from the requirement.
2. The applicant is requesting a zoning exception to permit the construction of a residential addition 7' from the northern side property line, which is 5' closer than would otherwise be permitted. This request represents 42% relief from the requirement.

Recommendation:

1. The Planning and Zoning staff recommends approval of the request to build an addition 32' from the front property line. The granting of this exception would only provide 6 ½' of relief and would allow for a more functional garage size.

2. The Planning and Zoning staff recommends approval of the reduced side yard setback along the northern property line, in line with the existing structure, so long as neighbors do not object to further encroachment.

Mr. Walters reviewed Application 9-13 and said that he received no phone calls for or against this project. Mr. Myers was present and stated that he would like to stay in the home, but they need more room. He said the previous owners poured a foundation and then decided not to move forward with an addition.

Mr. Smith moved to approve Zoning Exception 9-13 as submitted. Mr. Brown seconded, and it was unanimously approved.

There being no further business, Mr. Smith moved to adjourn at 6:30 p.m. Mr. Nicely seconded and the meeting was adjourned.

Respectfully submitted,

Mary Jo Sutton