

December 17, 2012

Mr. Jim Eichmann – Chairman
Mr. Ted Leugers – Co-Chairman
Mr. Tom Scheve – Member
Mr. Jim LaBarbara – Secretary
Mr. Jeff Heidel – Member

Item 1. – Meeting called to Order

Chairman Eichmann called the meeting of the Board of Zoning Appeals to order at 7:00 PM on Monday, December 17, 2012.

Item 2. – Roll Call of the Board

Mr. LaBarbara called the roll.

Members Present: Mr. Eichmann, Mr. LaBarbara, Mr. Scheve, Mr. Leugers and Mr. Heidel

Also Present: Greg Bickford, Harry Holbert and Beth Gunderson

Item 3. – Opening Ceremony

Mr. Eichmann led the Pledge of Allegiance.

Item 4. – Swearing In

Mr. Eichmann swore in those providing testimony before the board.

Item 5. – Approval of Minutes

Mr. Eichmann stated the next order of business was to approve the November 19, 2012 meeting minutes.

Mr. Eichmann asked for any corrections to the November 19, 2012 meeting minutes. No response.

Mr. Leugers moved to approve the November 19, 2012 minutes as written.

Mr. Scheve seconded.

Mr. LaBarbara called roll.

All voted yes to approve the minutes.

Item 6. – Old Business

B2012-18V
James Feldhaus
3752 Belfast Ave.
Variance

Mr. Bickford presented the resolution approving as submitted the variance request for case# B2012-18V.

Mr. Eichmann asked for any comments.

Mr. LaBarbara called roll.

Mr. Heidel – AYE
Mr. Scheve – AYE
Mr. Eichmann– NEA
Mr. Leugers – AYE
Mr. LaBarbara – AYE

B2012-19V
George T. Cooper
11950 7th Ave.
Variance

Mr. Bickford presented the resolution denying the variance request for case# B2012-19V.

Mr. Eichmann asked for any comments.

Mr. LaBarbara called roll.

Mr. Heidel – AYE
Mr. Scheve – AYE
Mr. Eichmann– AYE
Mr. Leugers – AYE
Mr. LaBarbara – NEA

B2012-17C
Moeller High School
9001 Montgomery Road
Conditional Use

Mr. Bickford presented the resolution approving a variance request for a Conditional Use permit with variances for case# B2012-17C. Mr. Bickford read the findings of fact and conclusions by law and the list of conditions attached to the approval in their entirety.

Mr. Eichmann asked for any comments.

Discussion ensued among the board members in regards to condition "f" on the resolution, which states that Moeller must obtain a Zoning Certificate for any temporary bleachers used for events on the fields. The board expressed concern about the addition of this condition when it was not expressly spelled out in the public hearing on November 19th. Mr. Holbert and Mr. Bickford explained that staff met with the applicant and some concerned neighbors and revised the resolution to include condition "f" as a way to regulate temporary bleachers.

The board discussed the possibility of striking condition "f" from the resolution before voting on it.

Mr. Scheve suggested taking a vote to see how many board members wish to keep the conditions as written on the resolution.

Mr. LaBarbara called roll.

Mr. Heidel – AYE
Mr. Scheve – NEA
Mr. Eichmann– AYE
Mr. Leugers – AYE
Mr. LaBarbara – NEA

Mr. LaBarbara called roll to approve Resolution# B2012-17C.

Mr. Heidel – AYE
Mr. Scheve – NEA
Mr. Eichmann– AYE
Mr. Leugers – AYE
Mr. LaBarbara – NEA

Mr. Eichmann stated that the resolution passed by a vote of three to two.

Item 7. – New Business

Mr. Eichmann took a moment to review the process by which the Board of Zoning Appeals makes its decisions and the standards that are used to justify approval or denial.

B2012-09V
Andre Willis
7715 Dartmoor Court
Variance

Harry Holbert presented the case and case history in a power point presentation. The applicant had constructed a deck without a zoning certificate that does not meet the required 35 feet rear yard setback.

The board asked questions of Mr. Holbert.

Mr. Scheve asked about the shape of the lot hindering the applicant’s ability to build a deck at all as of right.

Mr. Holbert said it is not a buildable lot because its configuration makes it impossible to meet the required setbacks.

Mr. Heidel asked if other decks in the neighborhood were non-conforming.

Mr. Holbert said he had not inspected other properties and was not sure.

Mr. Scheve asked if the variance were to be approved and the deck permitted to remain, would there be a penalty for building the deck without a permit.

Mr. Holbert answered in the affirmative.

Mr. Eichmann asked about the applicant’s statements in the letter of intent that the contractor had told Mr. Willis he had taken care of the necessary permits.

Mr. Holbert said that is what the Planning and Zoning office had been told.

Mr. Eichmann asked if the applicant was present to speak.

Mr. Andre Willis, the applicant, of 7715 Dartmoor Court, Cincinnati, OH 45236, addressed the board. Mr. Willis purchased the house with the intent to build a deck because not only is the backyard irregular shape, it is also a hill side making it difficult to use. The contractor he hired told him the permits were in hand. He stated he would like to keep the deck as long as it does not infringe on his neighbors.

Mr. Scheve asked if the applicant lives in the house.

Mr. Willis answered yes.

Mr. Eichmann asked if the contractor had told Mr. Willis that he had permits for the work.

Mr. Willis stated that he specifically asked the contractor about the permits on several occasions and was told that they had been taken care of and that a variance had been approved. He did not find out until afterward that the contractor did not obtain the necessary permits.

Mr. Scheve asked how he found the contractor.

Mr. Willis said through a referral.

Mr. LaBarbara inquired about the sturdiness of the deck.

Mr. Willis indicated it is structurally sound.

Mr. Scheve asked if he had obtained a building permit.

Mr. Holbert said he had not and that if the variance was approved and the applicant approved by zoning, he would then have to go to the county for a building permit.

Mr. Eichmann asked if anyone else was present who wished to comment on the case.

Mr. Eichmann swore in members of the attending public.

Mr. Matthew Linser, of 7793 Styrax Lane, Cincinnati, OH 45236, addressed the board. Mr. Linser stated he lives directly behind Mr. Willis and that the deck is aesthetically pleasing and enhances property values.

Mr. Dave Dawson, of 7716 Dartmoor Court, Cincinnati, OH 45236, addressed the board. Mr. Dawson said the deck looks better than the concrete landing and stairs that were in that location.

Mr. Ken Morgan, of 7789 Styrax Lane, Cincinnati, OH 45236, agreed that the deck is a great asset and added that it is well constructed.

Mr. Eichmann closed the floor to comments and questions from the public and the board discussed the issues brought before them.

Mr. Leugers said the irregular lot constitutes a hardship.

Mr. Scheve agreed.

Mr. Eichmann stated his concerns about setting a precedent.

Mr. Eichmann entertained a motion.

Mr. Scheve motioned to approve case# B2012-09V as submitted.

Mr. Leugers seconded.

Mr. LaBarbara called roll.

Mr. Heidel – AYE

Mr. Scheve – AYE

Mr. Eichmann– AYE

Mr. Leugers – AYE

Mr. LaBarbara – AYE

Mr. Bickford stated that a resolution approving case# B2012-09V would be prepared for the January meeting.

B2012-20V
Marino Custom Homes
7904 Kugler Mill Road
Variance

Continued to January 22, 2013 per the applicant's request.

B2012-21V
Bonny B. Dyer
6272 Euclid road
Variance

Harry Holbert presented the case and case history in a power point presentation. Mr. Holbert noted that the owner has three separate properties that all share one driveway. He said there have been property maintenance issues on the properties.

The board asked questions of Mr. Holbert.

Mr. Heidel asked if the intent was to build on the existing foundation.

Mr. Holbert referred him to the applicant but noted he was not sure the condition of the foundation was suitable for use.

Mr. Scheve asked if a developer could purchase all three properties and build three houses.

Mr. Bickford said yes, they are all legal lots of record and someone could build a house on each as of right if zoning requirements are met.

Mr. LaBarbara asked if the setbacks had changed because of the ODOT sound wall adjacent to the lot.

Mr. Holbert said no.

Mr. Eichmann asked what the other two lots had to do with the request.

Mr. Bickford stated selling the lot in question would require an access easement if the new owner wanted to use the existing driveway.

Mr. Eichmann asked if the applicant was present to speak.

Ms. Bonny B. Dyer, the applicant, of 6272 Euclid Road, Cincinnati, OH 45236, addressed the board. Ms. Dyer presented photos to the board of the house that was on the property in question before it burned down in 2010. The foundation, part of the fireplace and the garage is all that is left of the house. Ms. Dyer explained she has been trying to sell all three properties and was seeking the variance to remove that obstacle. Ms. Dyer said the property maintenance issues were the result of a lawn man dumping items on her property. Once the neighbors complained she had the items removed.

Mr. Eichmann reviewed for Ms. Dyer the conditions that must be present in order for the board to grant a variance request.

Mr. Eichmann asked why she would want to build 2.75 feet away from the property line.

Ms. Dyer explained she had a potential buyer interested in building on the foundation of the house that burned down and wanted to have that option available.

Mr. LaBaraba asked if the garage had a variance.

Mr. Bickford said the garage is existing; any new construction would have to meet current setbacks to be built as of right.

Mr. Scheve commented that setbacks are in place to appease neighbors and in this case there are no neighbors just the sound wall.

Mr. Eichmann thanked the applicant and asked if anyone else was present who wished to comment. No response.

The Board discussed the issues brought before them.

Mr. Leugers said he did not see a hardship because the lot allowed for a house to be built meeting the setback requirements.

Mr. Eichmann agreed.

Discussion ensued regarding the condition of the foundation and the access easement.

Mr. Leugers made a motion to deny case# B2012-21V.

Mr. Heidel seconded.

Mr. LaBarbara called roll.

Mr. Heidel – AYE

Mr. Scheve – AYE

Mr. Eichmann– AYE

Mr. Leugers – AYE

Mr. LaBarbara – AYE

Mr. Eichmann stated that the request had been denied.

Mr. Bickford stated that a resolution denying the variance request for case# B2012-21V would be prepared for the January 22nd meeting.

B2012-22V
Everest Real Estate
7402 Kenwood Road
Variance

Harry Holbert presented the case and case history in a power point presentation. Mr. Holbert showed the existing signs on the property and stated that the applicant's request included removing the existing empty sign cabinets and installing a new 40 square foot sign on the store front facing Kenwood Road. He explained that the building currently has seventeen building signs. Mr. Holbert said the existing signs are non-conforming and if removed could not be replaced.

Mr. Bickford pointed out that a sign face change to existing signs would be permitted.

The board asked questions of Mr. Holbert.

Mr. Scheve asked how many tenants were in the building.

Mr. Holbert said there are two tenant spaces, one currently occupied by Cord Camera and one vacant space.

Mr. Leugers stated the board reviewed a similar case with a lot of existing non-conforming signage a few years ago.

Mr. Heidel asked what signage could be installed as of right.

Mr. Bickford said no additional signage was permitted as of right unless the other signs were removed.

Mr. Holbert said that staff had given the applicant three options:

1. Remove all signs except for the existing Cord Camera sign on the front of the building and the applicant could then install one new building sign based on the frontage of the tenant space.
2. Complete a face change on the existing cabinet signs. The resulting face change would not permit a sign on the front of the building, nor could any of the signs be relocated.
3. Apply for a variance.

The applicant chose to apply for a variance.

Mr. Eichmann asked if the applicant was present to address the board.

Ms. Karen Duesing, the applicant, of Everest Real Estate, 9912 Carver Road, Cincinnati, OH 45236, addressed the board. Ms. Duesing said because of the small amount of parking spaces, they are limited to renting the space to a retail tenant. The fact that they cannot have an as of right sign facing Kenwood Road is a problem with getting a tenant

into the space. They cannot erect a free standing monument sign because it would take up parking spaces and they do not have the required setback available.

Mr. Eichmann indicated he would like to see more signs removed from the building before the board allows a new sign facing Kenwood Road. The other board members agreed. There was some discussion about how many and which signs should be removed. The applicant noted that Cord Camera may get co-op money from Minolta, Fuji film and other companies for the signs. She also stated she would have to discuss removing more signs with Cord Camera and the owner.

Mr. Holbert suggested that it may be best to continue the case so that other interested parties could be present.

Ms. Duesing agreed and requested a continuance until the January meeting.

The board took a vote on granting the applicant's request for a continuance.

Mr. LaBarbara called roll.

Mr. Heidel – AYE
Mr. Scheve – AYE
Mr. Eichmann– AYE
Mr. Leugers – AYE
Mr. LaBarbara – AYE

Item 8. – Communications and Miscellaneous Business

Mr. Bickford informed the board members of changes to the PERS system and to their salary. He also stated that an alternate should be appointed to the board for the new year.

Item 9. – Date of Next Meeting

Mr. Eichmann noted the date of the next meeting – Tuesday, January 22, 2013.

Item 10. – Adjournment

Mr. Eichmann adjourned the meeting at 9:25 PM.

Minutes Recorded by: Beth Gunderson, Planning & Zoning Assistant