

CITY OF THE VILLAGE OF CLARKSTON
375 DEPOT ROAD
CLARKSTON, MI 48346

ZONING BOARD OF APPEALS
Minutes FINAL
Tuesday, February 7, 2017 at 7:00pm

- 1) Meeting called to order 7:05pm
- 2) Roll: Arkwright, Catallo, DaCosta, Meyland, Basinger (participating via FaceTime) – present
Bill Basinger participated in the meeting via FaceTime, which is permitted through the Open Meetings Act.

- 3) Approval of Agenda

Motion made by Arkwright to approve agenda, seconded by Catallo.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger

Opposed: None

- 4) Minutes: Minutes from January 3rd, 2017 ZBA meeting were reviewed. One correction required in two places, addition of “requiring rear yard setback variance” to description of request.

Motion made by Arkwright, seconded by DaCosta to approve the minutes with the addition to the description.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger

Opposed: None

NEW BUSINESS

- 1) An application has not yet been received, however a new application for setback variance(s) is pending for the vacant property at 117 N. Main Street. Pending receipt of the drawings, application, and proper procedural next steps, a ZBA meeting was tentatively set for Tuesday, March 7th, 2017 at 7:00pm.

OLD BUSINESS

- 1) Application for Zoning Board of Appeals, 65 North Holcomb Road (R-2), Request to build attached garage, requiring a rear yard setback variance. Applicants John L. Hinze and Kara S. Evans

John Hinze reviewed the application history – in July, 2015, a variance was granted for 65 N. Holcomb Street that read as follows:

"Findings of fact: approximately 10-12' in back of house is a mature healthy maple tree approximately 4.5' in diameter. Mature trees such as this have been recognized as a valuable resource contributing to the character of the Historic District and its homes. While this property is not within the District, the home is historic and removal of the tree for an addition would adversely affect the character of the house and property and cause an unnecessary hardship."

The existing garage has inadequate space and proximity to the house (minimum of 10' between buildings is required), while there is a side entrance to the house. Therefore it is logical for the cars to be stored in the current garage, but the current garage blocks ingress/egress to the rear of the property.

It is noted that the applicant asked for the addition to protect space for 3 cars, but a 2 car garage space requires less variance for setback, combined with the living space on the upper level, resulting in a 26.45' variance. The board's determination will grant a variance up to 19.0' from the rear lot line, netting 16.0', to accommodate a 2 car garage. The variance of 19.0' and corresponding accommodation of the tree results in the proposed structure no closer than 16.0' to the rear lot line.

In addition, the seven unique circumstances required for being granted a variance have been met.

The project was not initiated within 6 months of the granting of the variance, and thus the 2015 variance became null & void pursuant to Section 16.04 C. 10 a. of the Zoning Ordinance.

The Hinzes re-applied, in July 2016, for a rear yard setback variance to build an attached garage with living space above pursuant to a revised set of Construction plans.

The drawings provided, with supporting data indicating the lot coverage, proposed structure height, and proposed additional square footage addition met the zoning ordinance requirements.

The existing rear setback requirement of 35' could not be met unless an existing maple tree was removed.

DaCosta asked a question based on the drawing/plans showing a guest room over the proposed added garage: Would this space be considered a living space? As an R-2 single family dwelling, should this aspect be considered for a variance?

Basinger shared feedback from research of other jurisdictions definition of "single family unit" residential household, the definition of a family, and a domestic family residing together as part of a single housekeeping unit that is NOT related by blood, is defined in a way that the family must have one common cooking space to operate as a single family housekeeping unit. This drawing/information has not yet been reviewed by the code officer, and the ZBA does not ordinarily review construction drawings, and cannot consider granting an associated variance.

Arkwright clarified the absence of a second entrance to the proposed added garage. The only entrance to the proposed added garage would be through the breezeway.

Further discussion – for structures that have separate main entrances defines the unit as "NOT single family", which is backed up by language in the Zoning Ordinance.

The ZBA noted the presence of a "kitchenette" with stovetop in the construction drawings that the ZBA reviewed. Discussion ensued regarding the R-2 requirement for "One-family detached dwellings" and that the definition of "Family" required that occupants function as a "single housekeeping unit" so such definition must equally apply to related family households. While "single house keeping unit" is not separately defined, it was noted that the ordinance definition of "Family" also states that for unrelated individuals to be the "functional equivalent" of a related household they "must be cooking and otherwise operating as a single housekeeping unit"

Basinger noted that the hardship alleged was not predicated on the need for another kitchen nor the need for a 3rd entrance to the house in addition to that from the new garage, but rather upon expanding their living space in respect to bedrooms and bathrooms while preserving a mature tree and that the relief granted should only be the minimum necessary to overcome the hardship.

Mr. Hinze stated that they had no intentions of creating a 2-Family dwelling and the "kitchenette"

was not necessary to their plans.

A question was asked if an entrance was added later to the proposed garage. If a variance is granted, the conditional ordinance stays with the land and not the current owner of the property. While enforcement of the code is not the provenance of the ZBA, it was observed that establishing conditions and safeguards in the variance would aid in ensuring future compliance with the conditions upon which the granting of the variance was predicated and protect the surrounding neighborhood consistent with the ordinance's intent.

Hinzes acknowledged the statements made during the proceeding discussion.

Don Weber, Jason Weber, and Shayna Liford of 59 N. Holcomb shared questions/comments:

- 1) The reason the proposed structure is so far back on the property is because of the existing tree. The structure is large because of the tree, and the tree could be removed.
- 2) They believe that the tree will die and/or fall as a result of the construction.

The Hinzes have not had an arborist review the tree, only the architect.

A question was asked about the proposed garage space, and overall size. The elevation and height, are allowable for an attached structure . (In this case only the rear yard setback was at issue)

Discussion was held regarding the fact that the hardship was entirely predicated upon the tree's existence and should that be threatened the reason for the hardship might cease to exist. Discussion ensued concerning possibly defining a condition of a proposed plan associated with a review by a certified arborist. Since the hardship associated with the ZBA application is associated with an existing tree, the Code Officer could confirm the current and future potential health/life of the tree and the effects upon it caused by the proposed construction.

The Hinzes would agree to such a proposal.

The length of the breezeway was confirmed to be 24'

Don Weber, Jason Weber, and Shayna Liford of 59 N. Holcomb shared questions/comments:

- 1) Expression of concerns about the size of the proposed structure – there would be no yard left and no beauty left, and the proposed garage would be an obstruction.

Basinger noted that the loss of required rear yard would be offset by the increase in side yard area by moving the addition back.

The only issue under review by the ZBA relates to the rear yard setback requirement.

Motion made by Basinger (via FaceTime), seconded by Arkwright, that:

A variance be granted of 19' from the R-2 District's 35' rear setback requirement, based upon the findings in the Board's decision of 7/21/15, which are incorporated herein, but further subject to the all of the conditions prescribed below which are based upon additional findings that the asserted hardship is predicated upon the preservation of a single mature tree, that R-2 zoning requires all residents of the original structure and proposed addition must function together as a "single housekeeping unit" and that two major elements thereof are residents cooking as a unit and sharing a common building entrance:

- (1) A qualified arborist selected by the City must determine that the mature Maple tree in question is healthy and that also, with input from the architect, that it is unlikely that the

proposed construction will cause any significant decline in the health of the tree; and,

- (2) The living areas of the addition cannot now or in the future contain facilities for cooking nor gas or high voltage utility outlets which might facilitate their installation; and,
- (3) Ingress and egress to the proposed addition, including installation of any doors, be constructed per the plans as presented to the ZBA on 3/7/17 and may not be altered in any way in the future.
- (4) In addition, the seven unique circumstances required for being granted a variance have been met.

In Favor: Catallo, Arkwright, Basinger (via FaceTime), DaCosta, Meyland

The City Code Officer/Building inspector would ensure application and enforcement of the specific conditions and safeguards established in this variance.

Motion to Adjourn made by Arkwright, seconded by DaCosta.

In Favor: Catallo, Arkwright, Basinger (via FaceTime), DaCosta, Meyland
Opposed: None

Meeting adjourned at 8:20pm

Respectfully submitted,

Scott Meyland
ZBA Chairperson