

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

**ZONING BOARD OF APPEALS
Approved Final Minutes**

Tuesday, April 18th at 7:00pm

- 1) Meeting called to order, 7:03pm
- 2) Roll call: Arkwright, Catallo, DaCosta, Meyland, Basinger – all present
- 3) Approval of Agenda – Motion to approve agenda made by Arkwright, seconded by Basinger.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger
Opposed: None

OLD BUSINESS

- 1) Approval of minutes from February 7th, 2017 Meeting. With noted clerical corrections, Motion to approve February 7th, 2017 ZBA meeting minutes made by Catallo, seconded by DaCosta.
In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger
Opposed: None
- 2) The above-mentioned hearing concerns the rear yard setback variance previously granted by the ZBA, on 2/7/17, for the construction of a two story, two car garage at 65 N. Holcomb and specifically whether a pre-construction condition specified by the ZBA in the variance approval has been satisfied. Application for Zoning Board of Appeals, 65 North Holcomb Road (R-2), Request to build attached garage. Applicants John L. Hinze and Kara S. Evans.

The ZBA's reason for meeting is due to the building department seeking ZBA interpretation of:

- A review of the motion approved on the February 2, 2017 ZBA meeting, referencing the statement where "it is unlikely that the proposed construction will cause any significant decline in the health of the tree."
- Additionally, the arborist's conclusions and reports were forwarded by letter on 2/26/2017 to the applicants and the City.
- The Hinzes provided a letter (attached as separate document, filename: HinzeLettertoZBA0418201765NHolcomb2of2.pdf) to the ZBA dated April 18, 2017, summarizing their thought process as it relates to the arborist report and corresponding ZBA variance request.

The ZBA indicated that the variance granted was associated with saving the tree, and if the tree were to fail as a result of injuries resulting from construction allowed by the variance, the original basis for the variance would no longer exist.

Feedback from the arborist indicates that the only way to properly evaluate the effect of the proposed construction on the health and stability of the tree is to evaluate root damage after digging trenches for the proposed addition foundations.

Basinger referenced the topic of hardships – as it relates to variance authority, section 16.04 C, the risk

assessment requires that public safety is secured, and that assessment can only be made if the arborist has proper access to evaluate any damage to the roots of the tree.

The Arborist's qualifications and certifications were not questioned by the applicants.

The applicants confirmed with the arborist that there was no pruning or other method of "preservation" that could be done to help preserve the tree prior to trenching.

Trenching would be done at a depth of approximately 4'.

The City Manager noted that the Arborist uses an algorithm with the severed root diameter calculations which assess risk of the tree, primarily as it relates to stabilization and potential of the tree to fail.

The residents of 59 N Holcomb were present, and shared input re: Google searches about Silver Maple trees. The ZBA acknowledged objections from neighbors relating to their concerns about the proposed construction project, but noted that the opposing opinions regarding the tree's health should be settled by an expert. These residents indicated they were satisfied with the qualifications of the expert previously selected by the City.

The applicants confirmed that they would like to start the construction project, but do not want to remove the tree unless absolutely necessary. They confirmed that the proposed breezeway is "tied" together, and structurally attached between the house and proposed garage.

Discussion was held regarding the Arborist communication/report, and the term failing vs. falling. The interpretation of the totality of her comments is that the failing of the tree is what is being considered.

In addition to the health of the tree, the stability is also a concern to consider. The practical difficulty and hardship is associated with the fact that the tree would be impractical to move.

The applicants were asked if a monolithic trench was considered, which could provide a less intrusive observation of the tree roots for arborist assessment. The applicants were in favor and would consider investigating such a method, and would be in favor of adding such language to any motion as well.

Basinger made the following motion, seconded by DaCosta:

Findings:

On February 2, 2017, the Board granted a rear yard setback variance in this case one condition of which was that "a qualified arborist selected by the City must determine the Maple tree in question is healthy" and that "it is unlikely that the proposed construction will cause any significant decline in the health of the tree".

The Arborist's conclusions and reports were forwarded by letter on 2/26/17 to both the Applicants and City. While she concluded the tree in question was healthy she also concluded that trenching for the breezeway foundation could result in root loss which "can undermine tree stability to an unacceptable level", that the size and location of the cut roots "will determine the severity of the injury" and that "[i]t is possible that the severing of the roots will result in high risk and recommended removal". In discussions with City Officials, she concluded the only way to properly assess such risk was to perform the trenching and have an expert, such as herself, directly examine the root injuries.

Based on the foregoing, the Board finds that since the tree failing would obviously cause a “significant decline in it’s health” – i.e., it’s certain death, the expert Arborist has not determined nor could determine that “it is unlikely that the proposed construction will cause any significant decline in the health of the tree”, as conditionally required by Board, without an post-trenching examination of the root injuries.

Additionally, the Board notes that §16.04 C., which authorizes it’s variance authority, requires it to assure that “public safety” is “secured” and it cannot make such assurance absent the root injury inspection proposed by the Arborist.

Motion:

Therefore, based on the foregoing findings, it is moved that should the Applicants wish to further pursue their addition project as conditionally approved, on 2/7/2017, they must:

- (1) Arrange for the breezeway foundation trenching or alternative foundation excavation to be performed and immediately inspected thereafter by the previously selected Arborist at their expense; and,
- (2) That for such limited excavation no variance appears required and the Board requests that the Building Department issue a permit limited to such excavation; and,
- (3) That the above-discussed variance condition only be considered fulfilled, and regular construction permits issued for the project as proposed and conditionally approved, if the Arborist advises the Building Department that the resulting root injuries are unlikely to undermine tree stability to an unacceptable level or steps can be taken to mitigate any injuries which would result in an unacceptable stability level. The Building Department shall confirm the completion of the mitigation steps.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger
Opposed: None

- 3) Approval of minutes from March 7th, 2017 ZBA Meeting.

With noted clerical corrections, Motion to approve March 7th, 2017 ZBA meeting minutes made by Arkwright, seconded by Catallo.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger
Opposed: None

- 4) Confirmation of upcoming ZBA meeting date(s.)

- a. May 2, 2017 – 44 E Washington Street – seeking 46% lot coverage for R-2 lot which normally allows for 25% lot coverage.
- b. Provisional dates for follow up (5/4 or 5/9) for 117 North Main Street depending on Planning Commission findings.

Motion made to adjourn by Arkwright, seconded by DaCosta.

In favor: Meyland, DaCosta, Catallo, Arkwright, Basinger
Opposed: None

Adjourned at 8:45 p.m.

Respectfully submitted,

Scott Meyland
ZBA Chairperson