

BOARD OF ZONING APPEALS

FEBRUARY 16, 2021 at 6:30pm Via Videoconference

The meeting was called to order by Mr. Jaskiewicz at 6:30pm.

Roll call: All members in attendance.

Members: Tom Jaskiewicz, Brad Swank, Michael Terry, Janika Adler, Diana McCoy

Others present: Taylor Brill (Zoning Official), Haley Lupton (Clerk), Paul Lafayette (Solicitor)

Visitors: Michele Ferguson, Stephanie Syfert, Stephen Syfert

Mr. Jaskiewicz read solicitors disclosure re HB 197.

Welcome to Diana McCoy, joining her first BZA meeting.

Appointment of Chair – Mr. Terry nominated Mr. Jaskiewicz as chair, seconded by Ms. Adler. Five yeas votes.

Mr. Terry nominated Mr. Swank as vice-chair, seconded by Jaskiewicz. Five yeas votes.

Approval of November 24, 2020 Corrected Meeting Minutes – Mr. Terry motioned to approve meeting minutes; Mr. Swank seconded. Four yeas. Ms. McCoy abstained.

Communications: Mr. Jaskiewicz asked Ms. Brill if notice was posted at least 15 days prior. Ms. Brill confirmed public posting.

New Business:

CU-21-001: 215 Shepper Avenue; Conditional Use
VAR-21-1: 215 Shepper Avenue; Area Variance

Ms. Brill gave an overview presentation of the conditional use application. The conditional and variance use is for an accessory dwelling unit (ADU) in RS3 District. Ms. Brill showed the location and context of the request. The existing structure is a garage, and the owner would like to put an accessory structure above the garage. The current zoning code requires accessory structures to be 25% or less of structure area. With the ADU above the garage, this structure would be ~1000 sq feet, making the structure about 50% of the floor. As proposed, the height of the structure would fall into current code. The conditional use is permitted in this district, permitted by the Board of Zoning Appeals review. Staff recommends the proposed conditional use and variance since they are consistent with the zoning code. The proposed conditional use falls within the existing character of the area and is appropriate. The variance falls within the intent of the zoning code. The 25% gross floor area is an arbitrary amount that limits the practical application. The applicant is at the meeting tonight and will speak to the board.

Mr. Jaskiewicz introduced the applicants and Mr. Lafayette swore them in under oath for testimony. They waived procedural hearing permissions in order to proceed virtually.

Mr. Jaskiewicz asked the applicants to provide more input.

Michele Ferguson - This renovation is a family project; her sister lives next door and other family lives nearby. This structure will provide a space for aging family members for several neighbors, when needed. The father of the family is a next-door neighbor and submitted a letter in favor of the project.

Ms. Brill has this letter and read it into the record. The letter is from Mike and Jerri Syfert of 146 E. 1st Avenue, a directly adjacent property, and outlines the support of the construction of the project.

No other residents, besides the property owners, were in attendance to speak on the conditional use or the variance use of this application.

Mr. Jaskiewicz read the Section 1138.06 - C(3) & C(4) of the codified ordinances and initiated discussion on whether this request met these conditions. The conditions are as follows:

- A. The proposed use is a conditional use of the zoning district, and the applicable development standards established in the Zoning Ordinance are met.
- B. The proposed development is in accord with appropriate plans for the area.
- C. The proposed development will be in keeping with the existing land use character and physical development potential of the area.

The first criteria have been met. The proposed development is in accord with the area. Mr. Jaskiewicz is familiar with this area and can confirm that there are multiple structures in the neighborhood with the same floor plans. Keeping with existing land use development and potential of the area - this is a well-established residential area and would expect it to remain the same.

After discussion of the Codified Ordinance criteria, Mr. Jaskiewicz believes that all three conditions are met for approval. Mr. Terry agrees that all three conditions are met and that the new structure will fit within the area. Mr. Swank agrees that the conditional uses are met, and the character of the neighborhood will remain the same. Ms. Adler agrees with all of the above and that the proposal meets the conditions. Ms. McCoy agrees that the character of the neighborhood will remain the same and meets conditions.

Mr. Lafayette clarifies that the original application is seeking a variance from the 25% gross floor area of the principal structure. The applicant clarified that the floor area is for the garage, not the house.

The second issue is under current code, the structure shall be completely in the rear of the principal structure. Ms. Brill clarified that this property is on a corner lot and has no rear yard, but the structure is in the side yard, which qualifies for this property.

Next is the variance consideration. A variance approval requires that, after 45 days of the public hearing, the BZA shall approve, approve with conditions, or disapprove appeals. The following findings must be made:

- A) The area variance will not be contrary to the public interest - no negative impact is determined by the board.
- B) The variance is justified due to special conditions - Mr. Terry noted that there are multiple special conditions, including that neighbors have existing similar structures. Mr. Lafayette confirms that not every condition needs to be met, but the decision is made on the totality of the criteria met. One unmet criterion does not disqualify the variance from being approved.

C) That the literal enforcement of the Zoning Ordinance will result in practical difficulties. This section was determined not relevant to this variance request.

- 1) Whether there can be any beneficial use of the property without the variance. Yes, there can be.
- 2) Whether the variance is substantial. Yes, it is substantial, however, the 25% seems to be an arbitrary number, as Ms. Brill noted. And when you add the additional lots to the equation, this footprint does not seem as substantial as the code may state. Mr. Terry asked Ms. Brill about current standards - she was referring to market trends to increase density of housing. The code tries to eliminate giant garages at a small house, but current trends try to increase density. Mr. Jaskiewicz asked if the zoning code rewrite would take this type of structure into account. Ms. Brill stated that a specific threshold of 25% eliminates expansion of existing structures but may allow for new structures to be built in the same way. The 25% does not help with redevelopment of current neighborhoods. Ms. Brill hopes that the new zoning code will take this into account and be edited during future development. Other cities do set maximums, but we need to ask ourselves if that is something we want to limit ourselves to.

Mr. Swank asked about Accessory Units in the Zoning Code. If this structure is an apartment and it starts to generate income, is it allowed in the zoning of this property? Mr. Lafayette noted that this apartment is limited to residential use, not commercial. The apartment should be limited to the family's living space. Under 1151.03 (H), the conditional use is an Accessory Dwelling Unit, and commercial renting of the unit is not accepted.

Mr. Jaskiewicz asked what would permit the homeowner to generate income from the apartment? The Village may never know if they start to collect income. Mr. Lafayette suggested approving the request with conditions, with the limitation that future use cannot be for commercial use or rental property. This gives the risk to the owner, and they will lose the conditional use if they violate the terms. Mr. Lafayette clarified that this should still be a single-family apartment, and not a duplex. Ms. Brill clarified that Accessory Dwelling Unit is an apartment and is not sure if the Village has the authority to decide if it can be rented out or not. Mr. Terry asked if the homeowner would be willing to accept an approach, with conditions.

Ms. Ferguson clarified that she would like the dwelling to have separate utilities and possibly a separate address. Ms. Brill confirmed that the other structures in the neighborhoods have separate addresses, this helps with emergency services and postal.

Mr. Jaskiewicz asked for clarification because, when houses are rented out, they do not have to be in a commercial district. Furthermore "accessory dwelling unit" suggests that the building will not be a primary residence. Mr. Lafayette is not suggesting that you cannot have rentals, but accessory structures cannot stand alone. If the structure is rented out, the primary residence would then be engaged in commercial activity. This property would not be considered a multi-family.

Ms. Brill would like to speak in more detail about accessory dwelling units, especially when they are rented out. If the board is worried about this issue, this should be considered further in future residential district requests. Mr. Jaskiewicz noted that, for this structure, as an accessory for this residence, the board should not be concerned about an income-generating property. Mr. Swank's point is valid, and the board should be cognizant of these uses when approving new structures.

- 3) Whether the essential neighborhood character will be affected -- no disagreements from the board.
- 4) Variance adversely affects delivery of governmental services - no disagreements from the board.
- 5) Whether the property owner purchased the property with the knowledge of the zoning restriction - no disagreements from the board. Ms. Ferguson did not have anything to add.
- 6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance. No disagreements from the board.

(D) That the spirit of the zoning ordinance will be observed. No disagreements from the board.

(E) That the variance is based on need not convenience or profit. The owner's intentions are not-for-profit but is for need for care of family members.

With that, everything has been heard and all codes have been discussed. Property owners and letters of support were read.

No other comment during the public hearing.

A decision is not made tonight. Mr. Lafayette will create a finding of fact, and the Board will reconvene on next Tuesday, February 23 at 6:30pm for the Finding of Fact meeting. At this time, the Finding of Fact will be voted on to adopt. Then a vote will be taken to approve, deny, or approve with conditions, on the conditional use and the variance.

Nothing else to report from any members.

Mr. Ferguson asked the Board, if the homeowner would like to eventually rent out the apartment, how would that be handled?

Mr. Jaskiewicz confirmed that, even if renting it out is its worst form, he would still be okay with it since it is a small structure and cannot house more than a couple of people. There is not a concrete answer for this question, and the future is always subject to change. If the application is approved with conditions, and the conditions are something that the owner is not comfortable with, then they would have to make the decision to make the investment in the property or not.

Mr. Terry clarified that, if the condition is approved, the Village cannot regulate if it is rented or not. Ms. Brill is not sure that the Board can regulate the renting of this unit since it is an apartment. However, Mr. Lafayette is not sure that an accessory dwelling can be income generating or rented out. Mr. Terry would like a clarification of exactly the limitations on renting an accessory dwelling unit to be presented during the findings of fact. The board would like to determine if the code allows for renting out accessory structures, or not.

Mr. Jaskiewicz added that this board does not set precedent. If something is approved, it does not mean it will be approved in the future. Everything is based on its own merits. For the property on North Avenue, the garage was part of a single-family structure and was split off and is now a rental.

Motion to close the public meeting by Mr. Jaskiewicz at 7:47pm.

Mr. Lafayette will take the week to develop the findings of fact.

Ms. McCoy was sworn in by Mr. Lafayette for the beginning of her term on the Board of Zoning Appeals.

Motion to adjourn by Mr. Jaskiewicz, seconded by Mr. Terry.

Meeting adjourned at 7:49pm.

Minutes submitted by Haley Lupton, Management Analyst