



ZONING BOARD OF APPEALS

Quality Services for a Quality Community

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MINUTES

January 9, 2019
54-B District Court, Courtroom 1
101 Linden Street

Present: Bradley, Ditschman, Hittner, Lal, Laxton, Ruddell, and Vlahakis Cole

Absent: Altmann and Jorgensen

Staff Present: Parcell

1) OPENING

A) Roll Call

Laxton called the meeting to order at 7:03 p.m.

At the calling of the roll, members Altmann and Jorgensen were absent.

B) Election of Officers

Ditschman nominated Laxton for Chair and Ruddell for Vice Chair. Ruddell accepted the nomination.

Motion: Hittner moved to appoint Laxton for Chair and Ruddell for Vice Chair. Bradley seconded the motion. **Vote:** All yeas. Motion passed unanimously by a vote of 7 to 0.

C) Approval of the Agenda

Motion: Laxton moved to approve the agenda without the approval of minutes. Ruddell seconded the motion. **Vote:** All yeas. Motion passed unanimously by a vote of 7 to 0.

2) COMMUNICATIONS

A) Written

- Letter from Mark Oppenhuizen in support of the appeal for 404 University Drive.
- Email from Eric Walters in support of the appeal for 1820 Coolidge Road.
- Email from Andrea Shea regarding 404 University Drive - Laxton stated Andrea Shea, the owner, has named Eric Kaiser as her representative given she is out of the state for a few months
- Email from John and Katie Hubbard regarding 404 University Drive

B) Oral – None

3) NEW BUSINESS

A) A variance request from Andrea Shea for the property located 404 University Drive, in the R-2, Medium Density Single Family Residential, zoning district for a variance from the following requirement of Chapter 50 – Zoning Code of the City of East Lansing:

Section 50-147(1)a. – Within any yard bordering a street, fences or walls, other than retaining walls, shall not exceed the following maximum heights:

- i. When less than 40 percent open and unobstructed.*
 - 1. Three feet at the property line.*
 - 2. Six feet, when set back at least 20 feet from the property line.*

The applicant is proposing a privacy fence at six feet tall around the existing patio and between the existing house and garage less than the required setback.

Parcell stated the fence has already been constructed and is approximately six feet high and only set back approximately five feet from the property line where the code requires 20 feet. He did note for the record the fence is setback quite a distance from the road but the code specifies from the property line not the road. Parcell further stated the owners built the fence to keep pedestrians from going across their property which is a corner lot.

Hittner asked which lines on the survey measure the setback. Parcell explained the setback requirement.

Bradley asked how the fence got built without a variance. Parcell explained a fence does not require a building permit; therefore, there was not review. He further stated a Certificate of Appropriateness, given the property is in a historic district, was not completed until after the fence was built.

Laxton asked what the requirements of the Historic District Code say about building something within a historic district. Parcell replied there are fence policies through the Historic District Commission (HDC) that guide the building of a fence and the fence at 404 University is a replacement to the fence that was already approved by the HDC.

Laxton asked if there is a substantial increase of crime in the area. Parcell replied he is unsure.

Eric Kaiser, Blue Skies Carpentry, representative for the applicant, addressed the Board and stated in response to crime he has 15 different threads on social media where the police have been called. He stated the homeowner is not trying to impede anyone's path but rather keep people off her property. Kaiser talked about the view from the driveway.

Laxton explained the Zoning Board of Appeals requirements and special findings in which to grant a variance. He stated he would not want the application to fail because the applicant did not understand the appeal. Laxton asked Parcell to indicate what part of the fence may have to come down if the variance was not approved.

Bradley asked if the applicant could address his question about the conversations with the city. Kaiser stated he talked with the building inspector. He further asked if Kaiser has read the email from Katie Hubbard as she suggested they and Kaiser had a conversation as well. Kaiser replied he did not have a conversation with Katie Hubbard but the owner did text and Hubbard never intimated there was an issue with anything.

Bradley further asked if any other construction was done to the interior or exterior. Kaiser replied negatively. Bradley asked if the only question to the building inspector was in regard to the fence. Kaiser replied affirmatively.

Hittner asked if the fence is more about privacy or keeping people off her property. Kaiser replied it is for safety purposes as she was feeling vulnerable with people coming on her property.

Hittner further asked if a wrought iron fence was considered. Kaiser replied negatively and stated Shea was specific about wanting the fence to match the existing fence.

Ruddell asked if there was anything in the code that would prevent Shea from having a three foot fence and add a 12 foot sculpture or Arbor Vitae behind it for additional screening. Parcell replied he is unaware of any requirement that would prevent that.

Motion: It was moved by Ruddell and seconded by Ditschman to grant variance approval for the request from Andrea Shea, for the property located at 404 University Drive, in the R-2, Medium Density Single Family Residential district from the following requirement of Chapter 50 – Zoning Code of the City of East Lansing:

Section 50-147(1)a. – Within any yard bordering a street, fences or walls, other than retaining walls, shall not exceed the following maximum heights:

- i. When less than 40 percent open and unobstructed.***
 - 1. Three feet at the property line.***
 - 2. Six feet, when set back at least 20 feet from the property line.***

The applicant is proposing a privacy fence at six feet tall around the existing patio and between the existing house and garage less than the required setback

The Board finds that under Special Finding (2), that there are exceptional or extraordinary circumstances or conditions which apply to the property in question that do not apply to other properties and which have not resulted from any act of the applicant subsequent to the adoption of the Zoning Code; based on the following grounds:

1. The house is on a corner lot and essentially has two front yards which is difficult to building a privacy fence.

Bradley stated Laxton pointed out that if the house were in any area other than a corner lot it would be approved which suggests to him that it is a substantial property right possessed by other properties within the same zoning district.

Friendly Amendment: It was moved by Bradley and seconded by Ditschman to include Special Finding (3), Special Finding (3), that such variation is necessary for the preservation of a substantial property right possessed by other properties within the same zoning district.

Vote: All yeas. Motion passed unanimously by a vote of 7 to 0.

Hittner stated he does not deny the property owner is entitled to privacy but his concerns with the fence could have been avoided with a different design such as space between slats, etc., and as such will not be voting in favor of the variance.

Laxton asked what other type of fencing type could be placed as the property is in a historic district. Parcell replied wood is acceptable, no chainlink fence, and a metal fence would require a review. He further stated that a former Historic Preservation Officer approved the fence to the north; the plan was to use the same materials so it would look similar.

Laxton stated he is sympathetic with the applicant but he is concerned with the look of it and other properties doing similar things but he's not sure if that is a valid reason not to grant the variance if it meets the special findings so he will probably be voting yes.

Ditschman stated she is concerned about the future and how it might affect other people wanting to construct a similar size fence and use the hardship criteria as a basis for approval of a less quality fence.

Bradley stated he agreed with Ditschman but feels the applicant or the applicant's representative did try to find out if what they were doing was correct with the fence; although, it is a little overkill and as such he is leaning slightly toward granting approval.

Hittner stated there are variables that come into play when determining the location, type, and size of fence and for a citizen to rely on just any employee to be the authority and to justify their actions.

The Board discussed the process for citizens to get questions about fences answered should they inquire.

Amended Motion Vote: *Yeas:* Bradley, Lal, Laxton, Ruddell, Vlahakis Cole. *Nays:* Hittner and Ditschman. Motion passed by a vote of 5 to 2.

- B) A variance request from Ghulam Sumbal for the property located at 1820 Coolidge Road in the R-3, Single and Two-Family Residential, zoning district for a variance from the following requirement of Chapter 50 – Zoning Code of the City of East Lansing:**

Section 50-301. – Minimum lot width. Minimum lot width in the R-3 zoning district for uses other than single-family is 100 feet.

The applicant is proposing to demolish the existing single-family structure and rebuild a new duplex structure with a lot width of 82 feet.

Parcell described the property, location, zoning of the property and the surrounding area, and the proposal as indicated in the Staff Report. He said the proposed plan meets all side and rear yard setbacks it is only the lot width requirement that is not met.

Tom James Gottchalk, owner of James Edward Builder, the contractor, addressed the Board and provided a letter of support from the neighbor. He said there are four duplexes in a row and multifamily across the street.

Laxton said he is confused as to why a variance is needed. Parcell stated the width of the property only allows for a single-family house. The zoning is all R-3 that whole area is single and two-family residential; an allowed use grandfathered in.

Hittner asked if there were tenants in the structure. Gottchalk stated there was a tenant they had move out at the end of August. He asked if both sides were being rented. Gottchalk stated it is a single-family home not an existing duplex. Laxton said it makes sense that the proposed project needs a variance as it would be non-conforming.

Ditschman asked if they currently have a demo permit. Gottschalk replied affirmatively and Parcell confirmed.

Ghulam Sumbal, the owner, addressed the Board and talked about the history of his contact with East Lansing regarding the demolition of the house and rebuilding as a duplex.

Nicholas Ellena, 2249 Luwanna Drive, Lansing, owner of 1802 Coolidge the house next door (which is a single family home not a duplex), addressed the Board and spoke to the side yard setback closest to his property; he would like a privacy fence and no windows facing the south toward his property and he would be okay with the proposal. Laxton said he understands the concern but it is not something the Board can do as they have no lawful ability to make those types of requirements.

Bradley asked if there are any properties in the R-3 zone that have duplexes other than the one being proposed. Parcell stated he does not know. Bradley asked if there are any with lot widths less than 100 feet. Hittner stated he can attest to there being a number of duplexes along Coolidge but he is not certain of the lot frontages. Laxton stated he concurs with Hittner as there are multiple duplexes in that area.

Ditschman asked what the future land use is for the area. Parcell stated he does not know in relation to the recently adopted Master Plan; however, there is no thought to changing the zoning in this area to his knowledge.

Hittner asked if it was possible to approve a conditional variance by requiring a fence. Bradley said in the past the City Attorney advised to try to avoid conditions because they are outside the scope of the Board's mandate.

Motion: Ditschman moved to approve the variance request from Ghulam Sumbal for the property located at 1820 Coolidge Road in the R-3, Single and Two-Family Residential, zoning district for a variance from the following requirement of Chapter 50 – Zoning Code of the City of East Lansing:

- a. *Section 50-301. – Minimum lot width. Minimum lot width in the R-3 zoning district for uses other than single-family is 100 feet.*

To demolish the existing single-family structure and rebuild a new duplex structure with a lot width of 82 feet.

The Board finds that under the Special Finding (1), that there are practical difficulties or unnecessary hardships resulting from the physical characteristics of the property in question which make it unfeasible to carry out the strict letter of the Zoning Code and under Special Finding (3), that such variation is necessary for the preservation of a substantial property right possessed by other properties within the same zoning district.; based on the following grounds:

1. Approval was given by the City to move forward and the limitation of the frontage with the exception for only a single-family home is inconsistent with the future land use.
2. Substantial number of duplexes in the area.

Motion was seconded by Ruddell.

Vlahakis Cole said although there has been work put into the property she does not know there was any work that was necessary to tear down and rebuild as a single-family home that would fit the requirements of the zoning. To tear down a single-family home on a smaller lot to build a duplex; she does not see the hardship because she does not know what the other duplexes lot widths are.

Laxton stated he concurs with the previous statements but understands wanting to build a duplex but as it stands, if they were to build a single-family home they still have the same property rights as before. The Code favors a single-family use on the property and the actual physical conditions of the property are indicative of a single-family home and he is struggling to find it is meeting any of the special findings and will likely vote no.

Bradley stated he believes Special Finding 3 could be used. What may or may not exist is properties with variances if there are other duplex in the R3 zoning on Coolidge then this proposal fits in Special Finding 3. He could vote today but might suggest to defer to the next meeting so additional

information can be gathered; otherwise, he would be voting no today.

Laxton asked the applicant if they would like a one-time adjournment of the request for staff to gather additional information to see if other duplexes in the R-3 district were granted a variance.

Gottschalk asked if Haywood would be at the next meeting. Laxton replied affirmatively.

Sumbal stated they wanted to adjourn their request to the February meeting.

4) OLD BUSINESS

- A) Consideration of an application from Extra Space, LLC for the property located at 645 Evergreen Avenue, in the R-2, Medium Density Single-Family Residential zoning district for a variance request from the following requirement of Chapter 50 – Zoning Code of the City of East Lansing:**

Section 50-816(3) – Yard paving restriction. In all residential districts, the amount of paving in a front yard and in a side yard along a street on a corner lot shall not exceed an amount equal to 25 percent of the front yard area as defined in section 50-9 of this chapter or up to 35 percent where 10 percent of the paving is pervious paving material. On lots within the RA, R-1, R-2, and R-3 districts, no more than 30 percent of the rear yard may be used for parking and access facilities, inclusive of garages, carports, and surface paving.

The applicant is proposing additional paving over the required 30% in the rear yard.

Parcell described the property, location, and the proposal as indicated in the Staff Report.

Hittner asked if the issue is access to the parking space or parking for each tenant.

The Board discussed:

- Gravel parking
- Access to the parking spot
- PACE ticketing the tenants

Marcella Fox-Brown, the applicant, addressed the Board and gave the history of the property and stated her goal is to have five parking spots. Bradley stated she's not asking for five parking spots she is asking for the right to pave the one gravel spot.

Ruddell asked if there are other properties nearby that have a larger percentage of parking over the 30%. Parcell replied affirmatively especially within the Historic Districts.

Motion 1: Ruddell moved to approve the variance request from Extra Space, LLC for the property located at 645 Evergreen Avenue, in the R-2, Medium Density Single-Family Residential zoning

district for a variance request from the following requirement of Chapter 50 – Zoning Code of the City of East Lansing:

Section 50-816(3) – Yard paving restriction. In all residential districts, the amount of paving in a front yard and in a side yard along a street on a corner lot shall not exceed an amount equal to 25 percent of the front yard area as defined in section 50-9 of this chapter or up to 35 percent where 10 percent of the paving is pervious paving material. On lots within the RA, R-1, R-2, and R-3 districts, no more than 30 percent of the rear yard may be used for parking and access facilities, inclusive of garages, carports, and surface paving.

To have over 40% total ground coverage.

The Board finds that under the Special Finding (1), that there are practical difficulties or unnecessary hardships resulting from the physical characteristics of the property in question which make it unfeasible to carry out the strict letter of the Zoning Code and under Special Finding (3), that such variation is necessary for the preservation of a substantial property right possessed by other properties within the same zoning district.; based on the following grounds:

1. The length of the driveway is short and there is no garage to allow for additional parking.
2. Other properties in the area have increased rear yard ground coverages.

Motion was seconded by Bradley.

Laxton stated he would be voting in favor of the variance as it is a unique property with a fairly large home with a long standing rental license. It makes sense to provide adequate parking for a license for five. It is consistent with other variances granted to other rental properties.

Hittner stated the rationale offered by the chair is understandable, yet the coverage percentages were generated in response to what has happened in this neighborhood which is single-family homes get turned into student rentals and the rear yards basically get paved over. The fact that the vehicles are too big is not a compelling reason in his mind to grant a variance and for those reasons he would not be voting in favor of the variance.

Laxton further stated that he agrees with Hittner but for this particular property; being on a corner lot, he feels it makes sense to grant the variance.

Bradley stated he agrees with 99% of what Hittner said and believes there are a lot of properties in the City that were granted variances that make it difficult to not grant a variance for the same thing in the same zoning district as long as it meets one of the Special Findings and as such will be voting in favor of the variance.

Vlahakis Cole stated she is leaning toward voting against the variance due to the amount of pavement. She further stated that it looks like there is a lot of unused space that needs some work to be utilized for parking. Laxton asked if she is saying to allow a variance but on a limited scale, she replied affirmatively. He said it is hard to determine what exactly the Board is allowing and the City would rather not have a variance granted as such.

Laxton asked the applicant if they were willing to move the northern edge south four feet (4') as indicated on the survey. Fox-Brown replied affirmatively.

Motion 1 Vote: *Yeas:* Bradley, Lal, Laxton, Ruddell, Vlahakis Cole. *Nays:* Hittner and Ditschman. Motion passed by a vote of 5 to 2.

Motion 2: Ruddell moved to approve the variance request from Extra Space, LLC for the property located at 645 Evergreen Avenue, in the R-2, Medium Density Single-Family Residential zoning district for a variance request from the following requirement of Chapter 50 – Zoning Code of the City of East Lansing:

Section 50-816(3) – Yard paving restriction. In all residential districts, the amount of paving in a front yard and in a side yard along a street on a corner lot shall not exceed an amount equal to 25 percent of the front yard area as defined in section 50-9 of this chapter or up to 35 percent where 10 percent of the paving is pervious paving material. On lots within the RA, R-1, R-2, and R-3 districts, no more than 30 percent of the rear yard may be used for parking and access facilities, inclusive of garages, carports, and surface paving.

To include additional paving over the required 30% in the rear yard.

The Board finds that under the Special Finding (1), that there are practical difficulties or unnecessary hardships resulting from the physical characteristics of the property in question which make it unfeasible to carry out the strict letter of the Zoning Code and under Special Finding (3), that such variation is necessary for the preservation of a substantial property right possessed by other properties within the same zoning district.; based on the following grounds:

1. The length of the driveway is short and there is no garage to allow for additional parking.
2. Other properties in the area have increased rear yard ground coverages.

Motion was seconded by Ditschman.

Motion 1 Vote: *Yeas:* Bradley, Lal, Laxton, Ruddell, Vlahakis Cole. *Nays:* Hittner and Ditschman. Motion passed by a vote of 5 to 2.

- 5) **STAFF REPORTS** – None
- 6) **BOARD MEMBER CONCERNS** – None
- 7) **ANNOUNCEMENTS**

Laxton introduced Vlahakis Cole to the Board.

Bradley said he would not be available for the next two meetings.

- 8) **ADJOURNMENT**

Motion: Bradley moved to adjourn. Ditschman seconded the motion. **Vote:** All yeas. Motion passed unanimously by a vote of 7 to 0.



Brian Laxton
Chair



Jake Parcell
Secretary