

APPROVED

Feb 1, 2022

MELROSE TOWNSHIP ZONING BOARD OF APPEALS MINUTES OF JAN. 25, 2022

CAL TO ORDER: THE MEETING WAS CALLED TO ORDER AT 7:02PM BY
CH. LEE

ROLL CALL: Members Present: Ch. Lee, Todd Reeves, Bart Wangeman, David Beier, Mary Pat Goldich, Vern Goodwin, Zoning Administrator and Bunny Marquardt, Recording Secretary,

ELECTION OF OFFICERS: Ch Lee turned the meeting over to Bart for the Election of Officers. Todd moved to nominate Errol Lee for Chairman and Bart seconded. Motion Passed - All Ayes
Ch. Lee asked for nominations for Secretary. Bart moved to nominate Todd Reeves and David seconded. Motion Passed - All Ayes.
Ch. Lee asked for nomination for Vice Chairman. Todd moved to nominate David and Mary Pat seconded. Motion Passed - All ayes.

APPROVAL OF SEPT 8, 2021 MINUTES: Todd moved and Mary Pat seconded to approve the Minutes of Sept. 8, 2021 with several minor correction. Motion Passed - All Ayes.

SCHEDULED PUBLIC HEARING - ZBA Case # 1 2022 - Expansion of a non-conforming structure at 0414 Windsor - Cathy and Steve Byrnes. (Errol moved to strike *conforming* from the case and David seconded - All Ayes)

Ch. Lee opened the Public Hearing by giving instruction for the the Public Hearing and he then stated the following:

Case # ZBA #1-2022, Cathy & Steve Byrnes, 04141 Windsor
(Tax ID #15-010-700-012-00)

Ch. Lee then stated the following:

REQUEST and BACKGROUND:

The Byrnes have requested permission to expand a non-conforming structure at 04141 Windsor. This parcel is in the C-3, Village Commercial District. The foundation of the proposed addition will be inside the 10' side yard setback, but

because the roof overhang would encroach in the side yard setback, a variance is needed for the addition as proposed. The property was used residentially, had no commercial use, and housed three dwellings prior to zoning. Therefore, it is a legal non-conforming use.

At the May 2016 meeting, the ZBA approved a request by the Byrnes to add a porch connecting there two adjacent cottages, effectively making two non-conforming structures into one. The house is non-conforming because it is in a C-3 district (residences are not allowed, except over a commercial establishment) and also because the SE side is in the side yard setback.

This case has two parts:

1. A variance (the addition encroachment), and
2. Expansion of a non-conforming use.

A public hearing is required for a variance. After the public hearing, the ZBA can consider the variance request. The ZBA can approve the requested expansion of a non-conforming use, provided that "such expansion shall not be detrimental to the surrounding neighborhood and contrary to the spirit and intent of the Ordinance" (Zoning Ordinance Section 9.6)" the zoning administrator stated.

Vern, the Zoning Administrator states the Variance Request is to expand a non-conforming structure.

Paul Drayer from McBride construction stated it is one lot with one Tax ID #. Thought this project was easy but found existing structure needed a variance for the overhang area. The Byrnes wanted to maintain the look of the existing house. Todd asked that in application it is now 6 7/8 and are asking for a 1 1/2 ft. Variance?

There were no comments from the audience so Ch. Lee closed the Public Hearing.

Ch. Lee stated that in his mind the North Side is no problem. We the ZBA are charged with eliminating or minimizing non-conforming uses. There is so much room to move it 1.6ft therefore would be an expansion of a non-conforming use and no variance would be needed and is permissible under Section 9.6. David stated that Ch. Lee point is valid and is an unnecessary variance request. Bart agreed with Ch. Lee and the ZBA could approve an expansion of a non-conforming and not a variance. It was decided by all to proceed with the Variance Request first.

FINDING OF FACTS:

The ZBA Board finds that:

1. The address of the non-conforming house is 04141 Windsor (ID # 15-010-700-012-00).
2. The non-conforming parcel is in the C-3, Village Commercial Zoning District.
3. Minimum lot area in the C-3 District is 6,600 sq. ft. and a minimum width of 66'.
4. The parcel is conforming at over 24,600 sq. ft. and a width of 87' at the front lot line.

5. The property is bordered by a restaurant on the northwest, a storage facility and the Post Office behind the property, and 5 homes (Village Resort) on the southeast.
6. The house in question is legal non-conforming because it was there when the property was zoned C-3.
7. Another house is also situated on the parcel.
8. Both residences were built prior to zoning.
9. The house under consideration for a variance and expansion of a non-conforming use was created in 2016 by connecting two houses. The ZBA authorized this connection.
10. The house has 6 bedrooms and small living spaces (3 bedrooms in each original cottage prior to connecting).
11. The addition is proposed to be 20' (toward the road) by 29' 8" (side to side), plus a new 8' X 4' entrance facing the road, with steps on all three open sides.
12. Setbacks for this C-3 parcel are a minimum of 25' from the front lot line, 10' sides and 25' rear.
13. The proposed addition will exceed the front, north side and rear yard setbacks. The foundation of the proposed addition would be inside the required 10' side yard setback, but any overhang more than 6 7/8" will encroach into the setback.
14. The proposed addition is planned to consist of a dining room, great room, pantry, dry bar, and a powder room.
15. A new health department permit may be needed due to the addition of a bathroom. This would be confirmed prior to issuance of a zoning permit if this expansion is granted by the ZBA.

Section 12.4 C Variance Criteria

The Zoning Board of Appeals shall have the power to authorize, upon appeal, specific variances from dimensional requirements. It shall be found by the Zoning Board of Appeals that any variance granted:

1. **The variance will be contrary to the public interest or to the spirit and intent of the Ordinance. All agreed**
2. **The variance does not permit the establishment within the zoning district of any use that is not permitted by right within the district. All agreed.**
3. **The granting of the variance will cause adverse effect to property in the vicinity or in the Zoning District or the Township. All agreed.**
4. **Does the variance relate only to property under control of the applicant? All Agreed.**

5. **Does the variance affect only property subject to exceptional or extraordinary circumstances or conditions that do not generally apply to other property or uses in the vicinity and have not resulted from any act of the applicant? NO. All agreed**
6. **The proposed project does not the above cited 5 criteria efrom Section 12.4 C for a variance. All agreed.**
7. **Granting the variance would not observe the Spirit of the Ordinance and provide for substantial justice. All Agreed.**

David stated that Due to the above Findings of Fact as stated above he moved to deny a setback variance for 0414 Windsor (ID#15-010-700-012-00. Bart seconded. ALL AYES - VARIANCE DENIED.

Section 9.6 - Expansion of Nonconforming Use

The Zoning Board of Appeals may permit expansion of a pre-existing nonconforming use, provided such expansion shall not be substantially detrimental to the surrounding neighborhood and contrary to the spirit and intent of the Ordinance.”

1. The proposed addition to a nonconforming structure will not be substantially detrimental to the surrounding neighborhood.
 - a) The Board finds that the proposed addition to the structure will be conforming. All agreed.
 - b) The Board finds that the addition will make the appearance of the structure in conformance with the district and area. All agreed.
 - c) The Board, therefore, finds the expansion will not be substantially detrimental to the surrounding neighborhood. All agreed.
- 2) The proposed addition will not be contrary to the spirit and intent of the zoning ordinance.
 - a) The Board hereby incorporates by reference its findings of fact contained in paragraphs 1. a) through 1. c) above.
 - b) The Board finds that Section 1.0 of the Zoning Ordinance specifies the purpose of the Zoning Ordinance, which provision is hereby incorporated herein by reference.
 - c) The Board finds that Section 6.6 A) of the Zoning Ordinance specifies the purpose of the C-3 Village Commercial Zoning District, which provision is hereby incorporated herein by reference.
 - d) The Board finds that allowing the conforming addition does “maintain social and economic stability, property values and general character and trend of Melrose Township development”.

- e) The Board, therefore, finds the proposed project will not be contrary to the spirit and intent of the zoning ordinance.
- 2. Based on the above findings of fact, the Board finds the standards to permit this expansion of a non-conforming use have been met

“Due to the findings of fact as stated above David moved to approve the expansion of a non-conforming structure in a conforming way at 04141 Windsor (ID # 15-010-700-012-00). Todd seconded. Motion Passed. ALL AYES.

The above two Motions were based on the Zoning Variance Application signed by both Cathy Byrnes (11-21-2021) and R McBride (11-22-2021), the Burns Cottage Site Plan and Location Survey Sheet C1.1, dated 12-2-21; and Sheet A2.1, A2.2 & A.1, dated 11-17-21.

The only correspondence received was a letter from Haggard's Plumbing and Heating in support of the applicant.

PLANNING COMMISSION: Bart reported there has been discussion on the Waterfront Overlay and the Tiny House situation. Vern added that he has been busy with Waterfront Overlays on property that exceed 150 ft of frontage.

Next Meeting is scheduled for Tues. Feb. 1 at 5:00 pm to approve the above minutes.

Recording Secretary: Bunny Marquardt_____Date:

ZBA Secretary: Todd Reeves_____Date: