



**BOARD OF ZONING APPEALS
MINUTES OF THE PROCEEDINGS OF THE PUBLIC HEARING
OCTOBER 27, 2015**

The hearing was called to order at 7:30 P.M. by Chairman Jones

PRESENT: Board Members Matthew Jones, Brad Lamb, Bryan Baesel, Jeff
Neverman, Robert Swisher

ALSO PRESENT: Law Director John Wheeler and Clerk of Commissions Nicolette Sackman

SELECTED CORRESPONDENCE

2015-25 DiIorio

10/22/15 correspondence from Michael Quinn, 28637 Laughlin – no objections

2015-27 Welo

10/22/15 correspondence from Andrew & Shirley Gabre, 28255 Bassett Rd. – no objections

DOCKETS

Docket 2015-25

Applicant: Kelly J. DiIorio

Premises: 28685 Laughlin, PP#212-27-063

Requesting to install a parking area 19” back from the front lot line, at variance with 1221.11(b)(1)(F) which requires parking areas to be 20’ from the front lot line, a 17’ 5” setback variance.

Mr. Tony DiIorio and Mrs. Kelly DiIorio were both sworn in by Mr. Wheeler. They explained they had contacted a contractor in March or April to install a parking pad adjacent to their existing driveway. The contractor did not begin the work until July and the code regarding driveways had changed. What they are proposing to do and framed out was permitted before the code change. They were informed that a variance will be needed for their proposal. The parking pad will run next to the existing driveway so when a vehicle is parked on the pad it will face the direction of their house. If they moved the pad back and design it so vehicles would park facing the neighbor’s house and yard it would be more impactful on the neighborhood and they would have to remove a mature tree, landscape and part of a sprinkler system. They also reviewed the proposal with their neighbor who prefers their proposal over pushing the pad back so a vehicle would park facing the neighbor’s house, which is permitted by code.

Director of Planning Jim Bedell, sworn in by Mr. Wheeler, was asked to review the new parking ordinance and the proposal. Mr. Bedell advised the ordinance was created to address comments received by city staff where there could potentially be too much concrete in a front yard or where someone might want to convert their entire front yard into a parking lot. This ordinance was

adopted as a way to manage driveways and the amount of concrete in a front yard and the unobstructed site zone. Due to the unobstructed site zone a 20' setback was selected for a parking pad. Mr. Bedell explained he did visit the property, took measurements and provided a memo to the board. Only a portion of the proposed parking pad requires a variance as portions of the pad are permitted per code. This proposed location would not be as detrimental to the neighborhood as laying it out per code requirements. The existing tree and landscape provide buffer to the neighbor and vehicle headlights would not be facing the neighbor's windows.

Members discussed the pad has a flared entrance to pull into the parking pad and the proposal meets the intent of the code. When asked, it was noted by the applicant that the parking pad will only be used for a vehicle and not the storage of a boat or RV, which they do not own. Mr. Wheeler advised there are regulations in place regarding storage of boats or RVs, which this pad cannot be used for.

Ms. Jessica Kim, 28709 Laughlin, sworn in by Mr. Wheeler, explained she was in favor of the request in the configuration proposed and not what the code would allow as that would put a vehicle on the pad facing her house. She would like to see the tree retained as it provides buffer and would not want to see a vehicle parked in an east/west fashion.

After a careful review of the plans and testimony of the Applicant, the Board finds that:

1. Applicant's property is located at 28685 Laughlin Lane in a residential district;
2. Applicant wishes to construct a concrete off street parking space six feet back from the sidewalk and Applicant requires a variance in order to construct the parking space and would agree to a condition that the pad will not be expanded or altered;
3. The Code requires concrete off street parking spaces to be twenty feet back from the front lot line per WCO section 1221.11(b)(1)(F);
4. The ordinance regulating the placement of parking pads changed after the Applicant planned the construction of the parking area;
5. The Applicant states that its practical difficulty is that the change in regulation occurred after planning and commencing construction of the parking pad;
6. The Applicant states that the pad will be angled so that only a small portion of the pad will be in proximity to the front lot line;
7. The Applicant states that moving the pad back would necessitate the removal of a mature tree and would affect the pleasing and aesthetic nature of Applicant's landscaping as the tree is currently a buffer between Applicant's house and the neighbor's house;
8. The Board finds that the Applicant has presented a practical difficulty, that the property is unique in that placing the pad back twenty feet from the front lot line would destroy the buffering between Applicant's home and the neighbor's home;
9. The Board finds that the request for a variance for construction of a concrete off street parking space six feet from the front lot line would not be a substantial detriment to the adjoining properties and that the spirit of the zoning code would not be violated by the granting of the variance with the condition that the pad will not be increased or altered.

Motion: Mr. Basel moved, seconded by Mr. Swisher to approve a 17' 5" setback variance with the condition that the variance is limited to the dimensions as stated in the submission and shall not be increased.

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher
Nays: None, motion carried

Docket 2015-26

Applicant: Joseph & Terry Schoenberger

Premises: 27895 Berringer Run, PP#212-25-070

Requesting to install a deck 13' 2" off the rear property line, at variance with 1211.09 which states a minimum 30' rear yard setback is required; a 16' 10" rear setback variance.

Mrs. Terry Schoenberger and Mr. Brian Knauer (contractor from the Pattie Group) were both sworn in by Mr. Wheeler. Mrs. Schoenberger explained they are requesting a variance to construct a deck off the rear of her house. The back yard is only 36' deep and they are required to have a 30' setback, which would only leave 6' for a deck, which is small. The rear of their property abuts the board of education's property where a retention basin and wooded area exists. It is not behind any homes or buildings. This was previously the area of the soccer fields before the new school building and retention pond. Mrs. Schoenberger noted there is a lot of standing water in her rear yard so a deck was preferred for entertaining and use. She had spoken the members of the school board and the area behind her house was to be landscaped but was not. She has added much to areas within the woods and has cleaned up that area.

Mr. Knauer explained a patio is permitted in the same location without a permit but due to the grade of the property, water, and yard drain at the rear of the yard is not a good option for this property. The best solution for use is a deck, which is raised but requires a variance. He reiterated that none of the neighbors would be negatively impacted and behind the applicant's house are woods and retention pond as reviewed by the applicant.

Members discussed that a patio in the same footprint would be permitted, this would not negatively impact the neighborhood, and a deck is a better option to a patio due to the grade of the property.

After a careful review of the plans and testimony of the Applicant, the Board finds that:

1. Applicant's property is located at 27895 Berringer Run in a residential district;
2. Applicant wishes to install a deck thirteen feet two inches off the rear property line;
3. The Code requires that a minimum rear yard setback off the rear property line per WCO section 1211.09 shall be thirty feet ;
4. The residence has a small backyard which had abutted athletic fields owned and maintained by the Westlake School District; the school district has constructed a retention basin on its property and removed the athletic fields;
5. The Applicant states that its practical difficulty is that while the school district maintained the athletic fields adjacent to her small irregular backyard there was no need for a deck but the construction of the retention basin and the failure of the school district to landscape its property as promised prevents Applicant from using the backyard other than by a deck or patio;
6. The Board finds that the Applicant has presented a practical difficulty, that the property is unique in that the backyard is unusually small and irregular and now is adjacent to the school district's retention basin;
7. The Board finds that the request for a variance for construction of a deck thirteen feet two

inches of the rear yard property line would not be a substantial detriment to the property or adjoining properties and that the spirit of the zoning code would not be violated by the granting of the variance as requested.

Motion: Mr. Basel moved, seconded by Mr. Swisher to approve a 16' 10" rear setback variance.

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Docket 2015-27

Applicant: Thomas Welo

Premises: 28375 Bassett Rd., PP#216-31-022

Requesting to install a 6' 6" deep porch onto the front of his home, at variance with 1211.22 (c) which states building features may project into required front and side yards of a dwelling, but shall not project more than 4' into the front yard setback, a 2' 6" front yard setback variance. Additionally, Mr. Welo would like to install 2' deep (by 4' wide) set of stairs off this porch which will require a 4' 6" setback variance.

Mr. Thomas Welo, sworn in by Mr. Wheeler, explained he would like to construct a new covered porch on the front of his house. There is an existing walking path up to the front door. The porch would extend off the house to the path. He could construct a 4' deep porch but something a little deeper works better and would not impact the neighborhood. It would only be 2'6" deeper than what he had.

Members discussed the length of the porch along the front of the house, which will not be the entire length of the house and there will be space on both ends of the house. It was questioned if the 50' house setback was the setback at the time the house was built, which Mr. Welo wasn't sure but thought there may be a larger setback as when he measured it with Mr. Wilder (Westlake Building Inspector) it measured 56'6". He was not sure who drew the original house drawing showing the 50' setback. It was noted the right of way in this location may or may not be at the edge of the sidewalk.

After a careful review of the plans and testimony of the Applicant, the Board finds that:

1. Applicant's property is located at 28375 Bassett Road in a residential district;
2. Applicant wishes to install a front porch which will be six feet six inches deep onto the front of his home which will require a two foot six inch front yard setback variance; further the Applicant wishes to install a two foot deep set of stairs off the porch which requires a four foot six inch setback variance;
3. The Code requires that building features may project into required front and side yards of a dwelling but shall not project more than four feet into the front yard setback per WCO section 1221.22(c);
4. The residence had had an existing walkway that extended beyond the requested extension when the house was constructed years ago;
5. The Applicant states that its practical difficulty is that the old front entry steps will be replaced within the walkway originally constructed with the house and to conform with the house the covered front porch and steps will set atop a portion of what had been the walkway;

6. The Board finds that the Applicant has presented a practical difficulty, that the property is unique in the covered front porch and replacement steps would necessarily be within the required setback if placed approximately where the old walkway was located;
7. The Board finds that the requests for variances for construction of a covered front porch and steps within the setback would not be a substantial detriment to the property or adjoining properties and that the spirit of the zoning code would not be violated by the granting of the variances as requested.

Motion: Mr. Swisher moved, seconded by Mr. Neverman to approve a 2' 6" front yard setback variance for the porch.

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Motion: Mr. Swisher moved, seconded by Mr. Neverman to approve a 4' 6" front yard setback variance for the porch steps.

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Docket 2015-28

Applicant: Mr. and Mrs. Neal and Noha Assad

Premises: 24333 Stonehedge Dr., PP#214-14-058

Requesting to install a recreational court in the side yard of a non-estate sized lot located 9'6" off the rear lot line, at variance with 1211.20 and 1211.33 (b) which states recreational courts shall be located on estate sized parcels in the rear yard only and setback 50' from the rear lot line; a variance to allow a recreational court on a non-estate size lot size in the side yard and a 40'6" rear yard setback.

Mr. and Mrs. Assad were both sworn in by Mr. Wheeler. Mrs. Assad explained they wish to install a 23' x 25' concrete pad adjacent to their driveway for their kids to play basketball on. She explained the history of the proposal. In September she pulled a permit for a new "U" shaped driveway. The pad for the basketball court is on the right side in the side yard which is very wide as they have a corner lot with a unique almost triangular shape. The pad will be located next to the fence. Mrs. Assad was uncertain why she needed a variance. When she went to obtain her permit she was directed by City Engineer Bob Kelly to see Planning Director Jim Bedell. Mr. Bedell and Mr. Reid Wilder came to her house and reviewed the proposal and approved the pad. When she returned to the engineering department to get her permit she states she was told by Mr. Kelly that it was denied and he didn't think Mr. Bedell would have approved the pad. She noted she previously received a variance for a shed and questioned how a concrete pad for a shed was different than the concrete pad she is proposing. They decided to put the shed in a different location after review as it would be more visible in this location than the location they ended up placing it in. They spent the money to have trees removed and purchased the basketball hoop/pole but are now being told they need a variance for their request. The pad is ready to be poured and they paid the contractor for the work. Mr. Assad noted they do not need more room for parking vehicles as they have a driveway and a "U" shaped drive where they can park multiple vehicles if needed and this pad will be used to play basketball. They are not sure

why Mr. Kelly denied the permit.

Chairman Jones explained that the variance for the shed was for a shed and not this proposal which is something different. Mr. Wheeler thought the original permit request that he discussed with the Assads was for a parking pad connected to their driveway. He questioned if the proposal is not to park vehicles on the pad and only use the pad to play basketball, which Mr. Assad stated was correct.

Mr. Bedell explained the planning department does not review requests for recreational courts and has been reviewing some driveway requests for the engineering department as a result of the new parking ordinance. He went to the property with Mr. Wilder and reviewed the pad as a parking pad, which is permitted at this size and location as two vehicle could fit on the pad per the ordinance. He clarified that based on the permit application Mr. Kelly denied the permit for a basketball court which is regulated as a recreational court per the code.

Discussion ensued on the proposal with members of the board stating the proposal is not for a regulation size basketball court and how is this different than many of the houses in Westlake that have a parking pad with a basketball pole/hoop at the end of the driveway, on the garage or on the side of the driveway. Those are not considered recreational courts so why is this being looked at as a recreational court. They thought a recreational court would be for something like a full size tennis or basketball court in someone's yard, not a small pad with a basketball hoop. They felt this was no different than a parking pad with a basketball hoop at the end of it that exists many places in the city. In the future the pad could be used to park vehicles on as it is adjacent to the driveway. If it is a parking pad then a variance is not needed as it complies with the code for a parking pad. Mr. Neverman did not have a problem with the request but questioned if they approve it as a recreational court would they be setting precedence for future cases and had concerns with that. If it is a parking pad then why is the request before the commission. Members supported the request as presented in this case but discussed if it is a parking pad or a recreational court. Members did not feel this was a recreational court but did want to give the applicant a variance for some sort of resolution.

After a careful review of the plans and testimony of the Applicant, the Board finds that:

1. Applicant's property is located at 24333 Stonehedge Drive in a residential district;
2. Applicant wishes to install a concrete recreational court in the side yard of a non-estate lot which will be located nine feet six inches off the rear lot line, a variance of forty feet six inches;
3. The Code requires that recreational courts shall be located on estate sized parcels in the rear yard only and setback fifty feet from the rear lot line per WCO sections 1211.20 and 1211.33(b);
4. The residence has a small backyard but a large side yard with no neighboring homes next to it and is adjacent to a paved driveway; further, Applicant states that it had sought a permit to construct a concrete pad which is permitted and removed trees and excavated the area for construction of the pad; further, Applicant states that the intended purpose is for a basketball court although the pad could be constructed as a parking pad;
5. The Applicant states that its practical difficulty is that the paved area is intended to be used as a basketball court which is not permitted but could be used and constructed as a parking area without variances;

6. The Board finds that the Applicant has presented a practical difficulty, that the area can be constructed as a parking pad as proposed without variances and that the proposed construction is for an area that can be used as a recreation court or as a parking pad and that the Applicant has stated that the intended use is as a recreational court;
7. The Board finds that the requests for variances for construction of a recreational court in a non-estate lot located nine feet six inches of the rear yard property line would not be a substantial detriment to the property or adjoining properties and that the spirit of the zoning code would not be violated by the granting of the variances as requested.

Motion: Mr. Lamb moved, seconded by Mr. Swisher to approve a variance to allow a recreational court on a non-estate size lot size in the side yard as presented.

ROLL CALL:

Yeas: Lamb, Basel, Jones, Swisher

Nays: Neverman, motion carried

Motion: Mr. Lamb moved, seconded by Mr. Swisher to approve a variance to approve a 40'6" rear yard setback as presented.

ROLL CALL:

Yeas: Lamb, Basel, Jones, Swisher

Nays: Neverman, motion carried

MISCELLANEOUS

None

APPROVAL OF MINUTES

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the minutes of September 29, 2015

ROLL CALL:

Yeas: Lamb, Jones, Neverman, Basel, Swisher

Nays: None, motion carried

FINDINGS OF FACTS

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the findings of fact for Docket 2015-19 Bernhard

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the findings of fact for Docket 2015-20 Brandstetter

ROLL CALL:

Yeas: Lamb, Basel, Neverman, Swisher

Abstain: Jones

Nays: None, motion carried

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the findings of fact for Docket 2015-16 Todd

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the findings of fact for Docket 2015-21 Steinberg

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the findings of fact for Docket 2015-22 Gabre

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the findings of fact for Docket 2015-23 Sacco

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

Motion: Mr. Neverman moved, seconded by Mr. Lamb to approve the findings of fact for Docket 2015-24 Greszler

ROLL CALL:

Yeas: Lamb, Basel, Jones, Neverman, Swisher

Nays: None, motion carried

ADJOURNMENT

Chairman Jones adjourned the meeting at 8:24 P.M.

Matt Jones, Chairman

Nicolette Sackman, Clerk of Commissions

Approved: _____