

CITY OF NORTHVILLE
Board of Zoning Appeals
April 2, 2014 – 7:30 PM
City of Northville – Council Chambers
215 W. Main Street

1. CALL TO ORDER:

Chairman Stapleton called the meeting to order at 7:33 p.m.

2. ROLL CALL:

Commissioners: Present: Rolland Stapleton – Chairman
James Bress – Secretary
John Callahan – Alternate
Sue Hooper - Alternate
Bill Lokey
Ryan McKindles
Patti Mullen
Dominic Silvestri

Absent: none

Also present: Sally Elmiger, Planning Consultant

3. APPROVAL OF THE AGENDA:

Motion by Silvestri, support by Bress, to approve the agenda as published.

Voice vote: Ayes: All. Nays: None. Motion unanimously carried.

4. MINUTES OF PREVIOUS MEETING: MAR. 5, 2014

Motion by Callahan, support by Cooper, to approve the minutes of the March 5, 2014 meeting as published.

Voice vote: Ayes: All. Nays: None. Motion unanimously carried.

5. CASES TO BE HEARD – BY CASE:

- A. Case is called.
- B. Appellant presents case.
- C. Board questions & comments
- D. Public comments on the case
- E. A motion (usually to grant the variance) is made and seconded; discussed then voted upon; the results are announced by the Chair.

**Case # 13-05
MATTHEW & CAROLINE MOWERS
131 RAYSON
(Tabled-Returning)**

The applicant is seeking a variance for a pergola on premises zoned R-2, Second Density Residential District, parcel number 48-001-04-0652-004. The City of Northville's Building Official determined that a front-yard variance of nineteen and one-half (19.5) feet is needed from Section 15.01 of the Zoning Ordinance to allow the pergola in the front yard. As an alternative to the dimensional variance above, the applicant also requests a use variance to allow the pergola in the front yard

BZA Members sitting on the case were the same members who sat on the original hearing on December 4, 2013:

Bress, Callahan, Hooper, Lokey, Silvestri, Stapleton

Homeowners Matthew and Caroline Mowers, 131 Rayson, were present.

Zoning Appeals Secretary Bress read the case and described the location. He explained that the applicants were seeking a dimensional variance and were appealing a decision of the City's Building Official.

The appellant alleges that strict application of the provisions of the Zoning Ordinance will result in practical difficulties upon the owner, because of the unique physical characteristics or other extraordinary or exceptional conditions of the property. Seven criteria will be used to evaluate the variance request, as listed in Article 25, Section 25.04.b. The applicant must address these criteria in Item #6 of this application.

Regarding the use variance, the appellant alleges that the property cannot be reasonably used for any of the uses allowed within the current zoning district designation, and that the unique circumstances peculiar to the property results in exceptionally undue hardship upon the owner. Six criteria will be used to evaluate the variance request, as listed in Article 25, Section 25.04.c. The applicant must address these criteria in Item #6 of this application.

Also, the appellant alleges that an exception or interpretation on the Zoning Map is necessary to preserve and promote the character of the zoning district (Article 25, Section 25.04.d).

Mr. Bress said that the Board of Zoning Appeals had heard from the Appellant in previous meetings. Since the last meeting the BZA had received communications from 8 neighbors expressing support for tonight's request. The BZA members also had in their packet an affidavit from John P. Kelly relating his discussion with the Building Inspector, regarding whether the pergola was considered a structure or landscaping. This was important because setback requirements would apply to a structure but not to landscaping. According to the affidavit, the Building Inspector and Kelly agreed that since the pergola was not attached to the house it should be considered landscaping.

Initially this case was referred to the Planning Commission for guidance. However, the Planning Commission had declined to make a recommendation and had sent it back to the BZA.

Applicant Matthew Mowers said that they had withdrawn their request for a use variance at an earlier meeting; they were only seeking a dimensional variance. ZBA members had a copy of a written

document he had prepared, listing the 7 required factors and his response/comments regarding these, as well as emails neighbors had sent in support of the pergola.

Chair Stapleton asked Mr. Mowers to briefly summarize the issues.

Mr. Mowers said that one issue discussed at the December 4, 2013 meeting was the conversation between the contractor who built the pergola and Building Official Penn. The issue of whether this was a *self-created hardship* relied on that conversation. He directed the Commissioners' attention to the affidavit, submitted by a member of the State Bar, as a clear statement that there was a conversation with Building Official Penn and Mr. Mowers' contractor, resulting in the understanding that there was no need to seek a variance for the pergola. Trusting this information, they had constructed the pergola. If the Zoning Ordinance was now strictly applied and no variance granted, the result would be unfairly detrimental. Therefore the strict compliance with the 25 foot setback requirement on a corner lot (side yard and front yard) in this case was unduly burdensome, and thus met the standards of requirement 1: practical difficulties.

Allowing the pergola, an outdoor structure, to remain, would provide *substantial justice* to the Applicant and the surrounding neighborhood: requirement 2. Additionally the BZA had heard a number of cases in the last six months dealing with corner lots, with parts of actual homes built into the required setbacks, and the BZA had granted those requests. The pergola being discussed this evening was freestanding, separate from the house, could not be enclosed, and was not living space.

Discussion followed whether the pergola could ever be enclosed. In answer to a question from Chair Stapleton, Mr. Mowers said he believed the pergola had footings; his builder was not present tonight to verify that. Commissioner Callahan said that he had seen the structure and it did have footings. These footings appeared standard and would then probably go beneath the frost line. Mr. Stapleton said he was concerned that the building was frameable: footings, columns, roof. A future owner of the property could easily decide to close the structure in. Mr. Mowers said that he would be happy to accept a condition that the pergola never be enclosed.

Mr. Mowers returned to his discussion of the 7 requirements for the granting of a variance. Still speaking about substantial justice, he also referred to requirement 7, affirming that they were asking for the *minimum variance required*. While they were not sure they needed a 19-foot variance, since it was on the table they would not argue that point. However, they felt the pergola was set back at least 10 feet from the property line, and at the most it was set 14-15 feet into the setback. Nevertheless, the City had defined the variance need as 19 feet and they would accept that; under the City's measurements it was the minimum amount required.

Mr. Mowers said that granting this variance supported the intention of the Ordinance, which was to allow people to improve their property and increase property values, and enhance the appearance of the neighborhood. He said that the pergola was located at the beginning of the Cabbage Town area, with surrounding houses of substantial size. The pergola blended with its surroundings, was a tasteful structure, and was supported by his neighbors as an enhancement.

Regarding *public safety and welfare*, requirement 3, the pergola was set back 10 feet from the sidewalk, 18 feet from the curb. It was almost 50 feet from the corner of Rayson and Grace; no public safety or welfare issues were created. There was an environmental green screen between the pergola and the sidewalk.

Regarding requirement 4, the variance request was *not self-created*. Mr. Mowers repeated that they had relied on the opinion of the City's Building Official, and thus did not seek a variance when the pergola was constructed. They had acted on what they believed to be a good faith statement from the City.

The granting of this variance would not increase the hazard of fire or otherwise *endanger public safety or create a public nuisance*, requirement 5. The tasteful structure was set well back within the property lines. In fact, the pergola was almost in line with most of the front porches on Grace Street and was set well within the fenced area for which a variance was granted in 2001. No safety issues or nuisances were being created.

Regarding requirement 6, *relationship to adjacent land uses*, Mr. Mowers said the pergola was an "inviting difference." It set the Cabbage Town area apart from the neighboring commercial area on Center Street and the apartment complex on Hutton Street. The pergola blended with their home and their neighborhood, and was a good use with respect to what else was going on in the surrounding area. Additionally it was not unprecedented to have a pergola in the neighborhood; there was a pergola at 662 Grace in the side yard. In that instance it was not a corner lot and therefore was a little different than what was being requested this evening, but this did demonstrate that at least one pergola had already been constructed in the neighborhood.

Mr. Mowers affirmed again that the *minimum variance necessary* was being requested (requirement 7) as set by the City's Building Official, though they believed they actually needed a lesser variance. He asked for approval of the requested 19-foot dimensional variance.

Chair Stapleton returned the request to the Board for questions or comments. Hearing none, he asked for a motion.

Motion by Silvestri, support by Callahan, regarding BZA Case #14-05, to grant the request for a dimensional variance from Section 15.01 of the Zoning Ordinance of 19.5 feet for a pergola in the front yard, for the reasons outlined regarding the 7 factors required for the granting of said variance.

Chair Stapleton opened the meeting for public comments.

Joanne Bandoni-Menhart, 483 Grace Street, said that she supported the variance request. The pergola added a "gorgeous aesthetic" to the neighborhood and was of high quality.

Kurt Menhart, 483 Grace Street, said that he supported the variance request. He said that the pergola was set on a pad, and any enclosure added to the structure would not be able to withstand wind shear. In response, Chair Stapleton said his concern was that a future owner, unaware of structural concerns, would enclose the pergola whether or not it was a good idea structurally. He wanted to make sure the pergola was properly grounded.

Applicant Mowers said that he believed the pergola did have proper footings.

Hearing no further comments from the public, Chair Stapleton brought the motion back to the Board. Commissioner Bress suggested that a condition be added that the pergola never be enclosed. This was accepted by Mr. Silvestri and Mr. Callahan.

Condition: The pergola never be enclosed.

The Chair called the question, with a roll call vote:

Hooper	no
Callahan	yes
Bress	yes
Stapleton	no
Lokey	no
Silvestri	yes

The motion failed, 3-3.

In response to a question from Chair Stapleton, Planning Consultant Elmiger explained that the previous motion needed to be amended based on findings of fact, which should reference which standards did not meet the requirements for granting the variance.

Discussion followed regarding protocol and process, and the wording of an amending motion.

Chair Stapleton polled the Commissioners regarding whether they thought the 7 factors required for the granting of a dimensional variance were met, with the following results:

1. Practical difficulties: Yes: Callahan, Bress, Silvestri
No: Hooper, Lokey, Stapleton
2. Substantial justice: Yes: Callahan, Bress, Silvestri
No: Hooper, Lokey, Stapleton
3. Public safety and welfare: Yes: Callahan, Bress, Lokey, Silvestri
No: Hooper, Stapleton
4. Not self-created: Yes: Callahan, Bress, Silvestri
No: Hooper, Lokey, Stapleton
5. No safety hazard or nuisance: Yes: Hooper, Callahan, Bress, Lokey, Silvestri, Stapleton
No: none
6. Relationship to adjacent land uses: Yes: Hooper, Callahan, Bress, Lokey, Silvestri, Stapleton
No: none
7. Minimum variance necessary: Yes: Callahan, Bress, Silvestri
No: Hooper, Lokey, Stapleton

Consultant Elmiger further instructed that Section 24.04 read:

“The concurring vote of four (4) members of the Board shall be necessary to reverse any other requirements, decision, or determination of the Chief Enforcement Officer or to decide in favor of the applicant in any matter upon which it is authorized by this Ordinance to render a decision...”

Without the four concurring votes, the motion had failed, whether it was a tie or not.

After further discussion, the following amending motion was offered:

Motion by Lokey, support by Hooper, to amend the original motion regarding case #13-05, based on the polling of Board Members regarding the 7 criteria and discussion regarding findings of fact, to include that the findings of fact on the case did not meet all 7 criteria in the City of Northville Zoning Ordinance for a dimensional variance, in particular the applicant said that he only needed a 14-15 foot variance when a 19.5 foot variance was requested. Additional findings of

fact included: (1) the structure sits on a corner lot with permanent footings below the frost line and (2) the applicant presented an affidavit prepared by an attorney in support of his request.

The Chair called the question, with a roll call vote:

Hooper	yes
Callahan	no
Bress	yes
Stapleton	yes
Lokey	yes
Silvestri	no

The motion carried, 4-2.

Case # 14-03

**NORTHVILLE GARDNER LLC
481 SEVEN MILE ROAD
NORTHVILLE, MI. 48167**

The applicant is seeking a variance to construct a commercial building in the rear yard setback (parcel's north property line) on premises zoned GDC, General Commercial District, parcel number 48-004-02-0112-008. The City's Building Official has determined that a rear-yard variance of 10 feet is needed from Section 15.01 of the Zoning Ordinance to allow construction of the commercial building in the rear yard.

BZA members sitting on the case:

Bress, Callahan, Lokey, McKindles, Mullen, Silvestri, Stapleton

Jeff Snyder, property owner of 481 Seven Mile Road, was present, as was Dave Mielock, 114 Rayson, his representative.

Zoning Appeals Secretary Bress read the case and described the location. He explained that the Applicant was seeking a dimensional variance and was appealing a decision of the City's Building Official.

The appellant alleges that strict application of the provisions of the Zoning Ordinance will result in practical difficulties upon the owner, because of the unique physical characteristics or other extraordinary or exceptional conditions of the property. Seven criteria will be used to evaluate the variance request, as listed in Article 25, Section 25.04.b. The applicant must address these criteria in Item #6 of this application.

Two letters had been submitted regarding this case. David Andrusiack, owner of 424 and 440 Gardner, was opposed to the request. James M. Roth, of Good Time Party Store, was in support.

Dave Mielock, representing property owner Jeff Snyder, presented the request. He explained that the applicant was seeking a dimensional variance from the strict application of the rear yard setback requirement of 20 feet within the GCD Zoning District and the requirements set forth in Sections 11.04 and 15.01 of the City of Northville Zoning Ordinance.

Using the overhead projector, Mr. Mielock showed the location of the property on the northwest corner of South Main (Northville Rd) and Seven Mile Roads. The property directly to the northeast was a gas station. The parcel adjacent to that was zoned R1B, and was controlled by Consumers Energy. The rest of the directly adjacent properties to the north were all R1B, with one residence and one vacant lot, both with the same owner. To the west were the Good Time Party Store and an ice cream store. The property on the southwest corner of South Main and Seven Mile was now a successful fitness center.

Mr. Mielock explained that in November 2004, the gas station to the north received 2 variances: an 18-inch side yard variance and a 9-foot rear yard variance. Mr. Snyder owned 481 Seven Mile Road prior to those variances being granted. While those variances were a good thing for the gas station, they had unintended consequences for the site being discussed tonight. The gas station was actually right on the property line, and their downspouts and gutters overhung on Mr. Snyder's property.

The Master Plan for this area offered some form based policies and the Applicants wanted to conform to those policies. However, as they began to plan for a development here, they ran into a Building Code issue created by the variances previously granted to the gas station. Because of the proximity of the gas station building, and in order to conform to the 10 foot setback, the Applicant became burdened with having to fire rate the rear wall; was limited on fenestration; and thus his ability to lease the space was reduced. If the building footprint was moved to accommodate a 20 foot setback, significant square footage was lost. Thus the previous variances were causing an undue hardship on the Applicant, keeping him from fully developing his property.

Based on this situation, the Applicants had developed a site plan that oriented the building to be more in line with the Good Time Party Store. This configuration had the advantage of allowing the curb cut on South Main to remain and to move the curb cut on Seven Mile Road further west from the intersection, thus enhancing public safety, as the Master Plan envisioned.

Mr. Mielock went through the 7 criteria for granting a variance as outlined in his application. He reviewed the *practical difficulties, substantial justice, public safety and welfare, and not self-created* criteria.

Mr. Mielock especially called out criteria 5: *No safety hazard or nuisance*. He noted that the 20 foot setback, per Planning Consultant Wortman, was required in order to provide space for deliveries. However, this building was not required to have rear doors, and would not have any. No deliveries would ever be made to the rear of the building.

The 20-foot setback was also not required for emergency vehicles, and indeed Fire Chief Allen and Fire Marshall Westphal said that they would never send fire rescue personnel into a 20 foot rear yard setback area because this area was considered a "fall zone" in which the north wall of the building could collapse and endanger the lives of those within this zone.

Regarding criteria 6: *Relationship to adjacent land uses*, Mr. Mielock said that the proposed placement of the building was better for the residential neighbor, as the building wall would act as a screening wall, rather than have parking right next to a residential property.

Last, Mr. Mielock said that they were asking for the *minimum variance necessary*.

In response to a question from Commissioner Lokey, Mr. Mielock said the party store was about 13 feet from the property line. It was actually built at an angle, with the west end closer to the property line than

the east end. The Applicants had not tried to line up with the party store exactly as their greater interest was in providing correct placement of parking and access lanes.

Commissioner Silvestri asked why the west side was not used as the rear property line. Mr. Mielock replied that according to Planning Consultant Wortman, this corner lot had a Seven Mile Road address. This required their rear property line to be on the north side. In answer to a further question from Mr. Silvestri, Mr. Mielock said they would lose four parking spaces and approximately 800-1000 square feet of building footprint, if they had to conform to the 20-foot setback requirement.

Discussion followed regarding reducing the size of the building. Mr. Meilock pointed out that every landowner had the right to develop his property to the fullest advantage. He reiterated that this difficulty was caused by variances granted to the property to the north; it was not a self-created difficulty.

Mr. Meilock also noted the landscaping required by the form based Master Plan. All the parking would be screened and dense shrubs would be planted along the edges. Additionally, a landscaped plaza would be placed at the corner. While this would beautify the area, it also meant the property owner would incur more costs than usual. There would be approximately 24.5% landscaping.

Commissioner Bress asked about the 10-foot high wall on the northwestern property line noted on the site plan. Property owner Jeff Snyder, 508 Gardner Street, explained that they owned the residence and the adjacent vacant lot bordering the northwest property line. The wall was not actually 10 feet high; in some areas it was only 6 feet high. It had been constructed as a buffer when tonight's subject property was a used car lot.

Commissioner Bress asked about environmental issues. Mr. Snyder said he had owned the parcel since 2001. He had a complete Phase 1 environmental study done and there were no known environmental issues. All underground storage tanks had been removed.

Mr. Mielock emphasized that the variance request was because of a Building Code issue, not a Zoning issue.

Commissioner McKindles wondered if this was a Brownfield site. The environmental study should show this, though Brownfield funds had been exhausted.

The Applicants spoke to the advantages of their development going forward. They were improving landscaping drastically, and also improving drainage on the site. They would be providing new lighting, standardized throughout the entire corner. They were complying with Master Plan land forms and creating a premium entrance to the City of Northville and the South Main Corridor. Mr. Snyder was in the masonry business. This building would be constructed of top quality masonry materials and would screen noise from the street for the residence to the north. A "Welcome to Northville" sign would be installed.

Chair Stapleton indicated they were ready for a motion.

Motion by Bress, support by Callahan, regarding BZA Case # 14-03, to grant the request for a rear-yard variance of 10 feet, to allow construction of the commercial building in the rear yard.

The Chair invited discussion on the motion.

Mr. Andrusiack, owner of 424 and 440 Gardner, pointed out on the overhead schematic where his two properties were located. He supported the variance generally, though he wanted the record to reflect that the setback behind the party store was actually 15 feet. While he thought a 15 foot setback would be preferable for the current Applicant, he would support the variance as requested.

Kathy Good, 502 Gardner, spoke in support of the variance. Mr. Snyder had done a wonderful job with other developments, and it would be advantageous to have an attractive corner at this location.

Chair Stapleton brought the discussion back to the Board. Consultant Elmiger suggested the following findings of fact:

- **The property was on a corner and therefore subject to two front yard setbacks.**
- **The property was an unusual shape, and it was longer than it was wide.**
- **The property was adjacent to two commercial properties, a Consumers' Energy trunk line, a vacant residential property and an occupied residential property.**
- **The owner purchased this parcel before a variance was granted to the adjacent gas station that allowed the gas station to build on the property line.**

Commissioner McKindles added:

- **The adjacent property to the west has a setback of less than 20 feet.**

With the addition of the findings of fact, the Chair asked for a roll call vote:

McKindles: **yes**
Mullen **yes**
Callahan **yes**
Bress **yes**
Lokey **yes**
Silvestri **yes**
Stapleton **yes**

Motion Unanimously Carried.

6. PUBLIC COMMENTS: None

7. DISCUSSION:

Consultant Elmiger referred to the "INFORMATION" memo in the Board Members' packets regarding the Board of Zoning Appeals Checklists. These checklists had been discussed at the March 2014 BZA meeting. This discussion was reflected in the minutes and the consensus at the time was that the Board use these checklists. If everyone agreed with this, these checklists would be used starting with next month's BZA meeting. After discussion, the consensus of the Board was once again to use the checklists.

Ms. Elmiger also noted that during training, Board members had expressed an interest in reducing the number of criteria for a dimensional variance. The City Attorney agreed to look at simplifying the criteria. If he thought the criteria could be simplified, and still meet State Statute and Case Law, he would offer something for the Board to consider.

Commissioner McKindles suggested that the City Attorney consult with Chair Stapleton before presenting something to the Board. Mr. Stapleton concurred, saying that he wanted the Board to have input during the process and not just have something handed to them. Mr. McKindles said he would facilitate this.

Chair Stapleton invited further comments from the Board.

Commissioner Lokey said that this was his last night serving on the BZA. He expressed appreciation for the many years he had served in this capacity, thanked the members and consultants, and explained that he was going to be traveling with his family and wanted to keep his schedule open.

Commissioners discussed the process regarding Case #13-05. Some of the facts of the case were briefly reviewed. The Board was unsure regarding how an affidavit such as was presented tonight impacted potential Board decisions. Chair Stapleton said he would follow up with the City Manager regarding this issue. It was noted that Building Official Penn had not been present this evening.

It was the consensus of the Board that the protocol regarding findings of fact when a variance was denied needed to be clarified.

8. ADJOURNMENT:

Motion by Lokey, support by Silvestri, to adjourn the meeting at 9:36 p.m.

Voice vote: Ayes: All. Nays: None. Motion Unanimously Carried.

Respectfully submitted,

Cheryl McGuire, Recording Secretary
Approved as amended 06-04-2014