

CITY OF NORTHVILLE
Board of Zoning Appeals
October 5, 2016 – 7:30 PM
City of Northville – Council Chambers
215 W. Main Street

I. CALL TO ORDER:

Vice Chair McKindles called the meeting to order at 7:30 p.m.

II. ROLL CALL:

Commissioners: Present: Michelle Aniol
John Callahan
David Marold
Ryan McKindles
Patti Mullen
Jay Wendt
Lou Ronayne - alternate

Absent: Dominic Silvestri - excused

Also present: Sally Elmiger, Planning Consultant
1 resident

III. APPROVAL OF THE AGENDA:

Motion Aniol, support by Mullen, to approve the agenda as published

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

IV. MINUTES OF PREVIOUS MEETING: August 3, 2016

Motion Aniol, support by Marold, to approve the August 3, 2016 meeting minutes as published.

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

V. 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.

VI. CASE #16-07
DEJAN MITKOVSKI
723 CARPENTER

The applicant is seeking a variance to construct a new covered porch in the front-yard setback on premises zoned R-1B, First Density Residential District, parcel number 48-22-34-456-016. The City's Building Official has determined that a front-yard variance of 1.6 feet is needed from Section 15.01 of the Zoning Ordinance to allow construction of the porch in the front yard.

Secretary Callahan read the case. The dimensional variance requested was in order to construct a covered front porch on the subject site. The applicants had provided the following comments in their application:

- *Due to location of existing house foundation the proposed porch cannot be moved back to meet the required front setback.*
- *Without this request front porch can only be 3' deep, rendering it impractical.*

The applicants were proposing the front porch as part of an overall remodel of the existing structure. A schematic of the proposed addition along with a front elevation were included with the application.

Planning Consultant Elmiger explained that the applicants had originally requested a 3-foot variance. However, front yard setback calculations included in the Members' packets showed that only a 1.6-foot variance was needed for the proposed 6-foot covered porch.

John Jakupi, 7851 Whittingham, West Bloomfield, was present as the residential designer of this project. Candace Mitkovski, 723 Carpenter Street, Northville, was also present.

Mr. Jakupi said this home had been added onto in a piecemeal fashion. The Mitkovski's had purchased the property with the idea of creating a home to raise their family. They wanted to invest in the home and in Northville. The proposed design required a porch to be in context with the rest of the neighborhood and the architecture of the house. With the location of the foundation where it was, they felt the porch could be 6 feet deep, making it a more practical use and a nicer porch in front of the house rather than the 4.3 or 4.4-foot porch that would be allowed by ordinance.

Member Aniol asked the dimensions of the finished porch. Mr. Jakupi said the porch would be 6 feet from the foundation to the edge of the porch, and would be 20 feet long. There would be steps that went down from the porch to grade. There was an existing porch/stoop with posts and a roof that measured about 4 feet deep by 6 feet wide. This would be removed.

Member Callahan asked if the existing front porch was adequate to access the front door of the residence. Mr. Jakupi said it was adequate for that purpose.

Member Aniol reviewed the requirement for demonstrating practical difficulty, including showing exceptional or extraordinary circumstances or conditions applying to the property that did not apply generally to other properties in the same Zoning District or in the general vicinity. The problem could not be self-created.

Mr. Jakupi said the footings were in place, and had not been placed there by the applicant. It was a pre-existing condition. In order for the remodeled home to be in context with the rest of the area, a porch as proposed was needed. Also, the current porch had no railings.

Vice Chair McKindles asked if the current porch resulted in congestion at the front door area. Mr. Jakupi said it did.

Member Callahan asked if railings couldn't be added to the existing porch. Mr. Jakupi said railings could be added. However, they were remodeling the entire house, including moving the entrance of the home from the side to the middle, so the existing porch would not work with the new design of the home.

Member Callahan asked if a porch could be constructed that met ordinance requirements, i.e., that was 4.4 feet deep. Mr. Jakupi said this could be done, though it wouldn't be much of a porch. The 2100 square foot home was being enlarged to 3600 square feet, and the larger porch would be more in scale with the increased size of the home.

Member Callahan asked if the resulting structure would be substantially larger than the others on Carpenter Street. Mr. Jakupi said it would be larger than those homes immediately adjacent, but there were homes that size in the vicinity.

Member Wendt asked if the proposed porch would project out further than anything else on the block.

Member Mullen asked the average setback of the nearby homes. Planning Consultant Elmiger said the averaged setback was 28.8'. There were homes with less setback and other homes had more.

Mr. Jakupi said they would not be the house closest to the street.

Alternate Ronayne said he had visited the site. The house two properties away was closer to the street than the proposed porch. He did not see the request as out of line for the neighborhood.

Member Mullen said she thought the existing foundation's location constituted a hardship in this case.

Member Aniol confirmed that the setback for the house at 727 Carpenter was 31.8 feet.

Vice Chair McKindles opened the public hearing.

John Swallow, 727 Carpenter Street, Northville MI spoke in support of this variance request. His was the first property north of the subject site and he felt the proposed remodel, including the porch, would lift the values of other homes on the street.

Seeing that no one else came forward to speak, Vice Chair McKindles closed the public hearing.

Member Aniol said that while she found the proposed update of the property beautiful, she was concerned that the problem was self-created.

Member Mullen said that she found the existing location of the foundation constituted a practical difficulty.

Member Callahan said he felt a porch could be constructed within the required setback, without a variance and the applicants had said as much. The majority of Northville homes did not have covered porches.

Vice Chair McKindles said that the proposed porch would be consistent with the rest of the street. If they did not have the porch, the home would then be inconsistent with the rest of the street.

Member Marold said the request would need to meet the five criteria for granting a variance.

Member Aniol asked why the ordinance required that a foot be added to the front yard setback after the front yard setbacks were averaged. Planning Consultant Elmiger said the idea behind this formula was to ensure that a new home was not in front of an existing home to block light and air. The actual outcome was dependent on what the placement was of the home next door.

Member Aniol pointed out that the setback would have been 27.8 feet without the added foot.

Member Marold said that the house with the larger porch would benefit the neighborhood. He felt the variance requested was minimal.

In response to a question from Member Aniol, Member Wendt said the Planning Commission had to observe the precise letter of the ordinance. Also, as a planner on the Planning Commission, his goal was to keep the City as it was now and to protect its unique character. People who wanted relief from the ordinance had to come to the BZA.

Member Mullen said she also felt the variance requested was minimal. It seemed to her that every request received by the BZA involved some degree of self-creation, yet it was appropriate to grant some variances.

Planning Consultant Elmiger reminded the Board that they needed to relate their discussion to the five required criteria. In response to a question from Member Mullen, Planning Consultant Elmiger said the Board could find that the hardship was not self-created because of the location of the existing foundation. On the other hand, the Board could decide that the applicants could construct a 4-foot deep porch, thus meeting the required setback, and deny the request. The Board could also grant a lesser variance than requested. This was the decision before the Board.

In response to a question from Member Aniol, Planning Consultant Elmiger said the setback requirement for the R-1B District was 25 feet. However, the ordinance also stated that the setback had to be determined by averaging the front yard setbacks within 200 feet of the subject site, and the averaging could not include properties across the street.

Member Marold pointed out the proximity of the park, which had no setbacks to average. Granting the 1.6-foot variance would not impact any houses to the south, because of the park. It would not impact the house next door, as that house was already set back quite a distance.

Mr. Jakupi said that 753 Carpenter was set 10 feet closer to the street than the foundation of the home on the subject site. The setback of the existing foundation was 33.2 feet, and was the furthest back from the street out of all the homes used for averaging. The proposed remodel would result in a two-story structure up to the foundation line, and the porch would be one story. He emphasized that the request was a reasonable one.

Member Marold said the BZA still had to follow the variance criteria.

Member Callahan pointed out that there were many porches in Northville that did not allow room for seating.

In response to a question from Member Aniol, Planning Consultant Elmiger said the regulation regarding setbacks was in Schedule 15.01, with the averaging footnote being #16.

Member Aniol said she felt there was an *extraordinary circumstance* in that the home met the 25-foot setback in the R-1B District. If the variance were granted, the structure would still meet the 25-foot setback requirement. The extraordinary circumstance was the added averaging that had to be done; therefore the setback requirement was weighted against the applicant in this neighborhood. The only way to balance the property with its neighbors was to grant the requested variance.

It was pointed out that the variance criteria sheets delivered to the Board for this evening's meeting were for a use variance. Therefore the variance criteria listed in the Carlisle/Wortman review letter dated September 7, 2016 should be used.

Vice Chair McKindles suggested the following findings of fact.

1. The applicant had shown that there were practical difficulties in that there were exceptional or extraordinary circumstances, specifically because the existing foundation did not allow for the porch to be added within the required setback. Also, extraordinary circumstances included the added averaging that had to be done for the setback in this case, resulting in a setback requirement that was weighted against the applicant in this neighborhood. The only way to balance the property with its neighbors was to grant the requested variance.
2. The applicant had shown that the requested variance would do substantial justice to the applicant as well as to other property owners in the district. The closest neighbor had spoken in favor of the variance, and the resulting porch would not be inconsistent with other porches and properties in the neighborhood.
3. The applicant had shown that the problem was not self-created, as the foundation existed before they purchased the home.
4. The variance requested was the minimum variance necessary. Additionally, granting the variance would still leave an ample setback for this home.
5. The Board of Zoning Appeals found that the request would not have an impact on public safety or create a public nuisance.

MOTION Mullen, support by Marold, to approve the findings of fact as listed.

Vice Chair McKindles asked for a roll call vote:

Aniol	yes
Callahan	no
Marold	yes
McKindles	yes
Mullen	yes
Wendt	yes
Ronayne	yes

Therefore the motion carried 6-1 (Callahan opposed)

MOTION Mullen, support by Wendt, to grant a front-yard variance of 1.6 feet from Section 15.01 of the Zoning Ordinance as requested.

Vice Chair McKindles asked for a roll call vote.

Aniol	yes
Callahan	no
Marold	yes
McKindles	yes

Mullen yes
Wendt yes
Ronayne yes

Therefore the motion carried 6-1 (Callahan opposed)

VII. PUBLIC COMMENTS:

None.

VII. DISCUSSION:

By-Laws

Planning Consultant Elmiger referred the Commission to the document: *By-Laws of the City of Northville Board of Zoning Appeals, draft September 27, 2016*. The By-Laws outlined the “rules of order or procedures” that the BZA was to follow when holding meetings, considering requests, and making decisions. The By-Laws were not an ordinance, but the Board of Zoning Appeals must formally adopt them, and City Council must approve them.

Planning Consultant Elmiger said that the City Manager and City Clerk had reviewed the draft document for consistency with the City Charter and City procedures.

Vice Chair McKindles asked if the attendance policy outlined in Section 5.4 included excused absences. The section read:

Members of the BZA who are absent from three (3) consecutive BZA meetings or four (4) meetings held within the calendar year may be subject to review and/or removal from the BZA by action of the City Council.

Planning Consultant Elmiger said that even if absences were excused, missing 3 consecutive meetings was a lot of absences and perhaps a member missing that many meetings might not best serve the Board. However, the section did not say “shall be subject to review,” but rather, “may be subject to review.” The language gave discretion in dealing with significant absences.

Planning Consultant Elmiger pointed out Section 7.11, which read:

BZA meetings shall adjourn no later than 10:00 p.m., unless the BZA members present decide by a majority vote to continue past this time. New agenda items shall not be taken up after 9:30 p.m., unless the BZA members present decide by a majority vote to continue with one or more agenda items after than time.

Planning Consultant Elmiger said that variance requests were received and noticed, including in the newspapers, with long lead times and at considerable expense. However, if it was decided to postpone a case to a date certain, the case did not have to be re-noticed.

Vice Chair McKindles referred to Section 7.9 – *Conflict of Interest*. Paragraph b) read:

The BZA member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant’s company.

Vice Chair McKindles noted that in a City as small as Northville, many people had financial or business relationships with the applicant.

Member Wendt said it was important for Board Members to tell the Chair in advance if they had a conflict of interest. The Chair should – by roll-call vote – find out if the majority of the Commission agreed that a Member should be recused. If a Member were recused and left the dais, but chose to stay in the room, they should not speak during the hearing of the case.

Planning Consultant Elmiger said she would ask the City Clerk to add a note to the email notice of meetings about notifying the Chair if there were a potential conflict of interest.

The consensus of the Board was to avoid even a perception of a conflict of interest. Therefore the following clarifying language was suggested as a change to paragraph b):

The BZA member has a business or financial interest in the property involved in the request or has a business or financial relationship with the applicant, or a financial interest in the applicant's company or in the company representing the applicant.

The following change to paragraph c) was also suggested:

The BZA member owns or has a financial interest in ~~the~~ a neighboring property.

It came out in discussion that if the address of an application placed a Board Member within the notification radius, the Member should disclose this at the meeting and it could be decided at that time whether there was a conflict of interest.

Planning Consultant Elmiger said she would revise the By-Laws based on tonight's decision and would bring the amended document to the next meeting.

Analysis Examples

Planning Consultant Elmiger directed the Board's attention to examples of variance analyses as provided to other communities by Carlisle/Wortman. In those examples, the variance requests were analyzed according to the variance criteria, and included a recommendation from the Planning Consultant regarding the case.

Planning Consultant Elmiger emphasized that the final decision as to whether or not to grant a variance was the Board's.

The consensus of the Commission was to request those types of analyses for future variance requests. Planning Consultant Elmiger said she would pass on this request to the City Manager, and she would plan on completing such an evaluation for next month's variance request.

IX. ADJOURNMENT:

Motion Marold, support by Aniol, to adjourn the meeting at 8:47 p.m.

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

Respectfully submitted,

Cheryl McGuire, Recording Secretary

Approved as published 11/2/16

