

CITY OF NORTHVILLE
Board of Zoning Appeals
June 6, 2018 – 7:00 PM
City of Northville – Council Chambers
215 W. Main Street

I. CALL TO ORDER:

Chair Silvestri called the meeting to order at 7:00 p.m.

II. ROLL CALL:

Commissioners: Present: Michelle Aniol
John Callahan
Ryan McKindles
Patti Mullen
Dominic Silvestri
Donna Tinberg
Douglas Bingham (alternate)
Lou Ronayne (alternate)

Absent: David Marold (excused)

Also present: Sally Elmiger, Planning Consultant
Patrick Giesa, City Council

III. APPROVAL OF THE AGENDA:

Motion Aniol, support by McKindles, to approve the agenda as published.

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

IV. MINUTES OF PREVIOUS MEETING: May 2, 2018

Motion McKindles, support by Callahan, to approve the May 2, 2018 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 #18-05

VISTAL HOMES – ALDO STENTA

HILL STREET (Vacant Lot)

48-22-34-406-018

To consider a variance request on premises zoned R-1B, First Density Residential District, on a vacant lot at the northwest corner of Hill Street and the undeveloped portion of Horton Street, Northville, Michigan, 48167, parcel number 48-22-34-406-018. The applicant is seeking a variance to construct a new residence in the front yard setback along the Horton Street right-of-way. The variance needed along Horton Street is 18 feet from the requirements in Section 15.01.

Member McKindles re-called Case #18-05, which had been tabled at the May 2, 2018 meeting, and reviewed materials in the application packet. New documentation this evening included a memorandum from Planning Consultant Elmiger dated May 14, 2018, reviewing the history of Maplewood Park and Horton Street.

Aldo Stenta, 46870 Seven Mile Road, Northville MI was present on behalf of this application. Keith Brandt, Brandt Real Estate, was also present.

Chair Silvestri noted that this application had been tabled in order to get further information regarding the City's original intent regarding vacating Horton Street. Was there any deed language for any of the abutting properties, or any information in the City's minutes regarding the City's intent? Planning Consultant Elmiger had provided information regarding City Council minutes from November 24, 1969 – February 21, 1977. Was the applicant able to provide any further information?

Mr. Brandt said they had documentation that showed vacation of the alleyway between Novi Street and Horton Street. He distributed a copy of a Resolution Regarding Vacating of Alley from the Oakland County Register of Deeds Liber 4881, page 411 (1966), which provided a sample of a recorded document terminating the alleys between the lots and homes on Novi Road and what would have been lots on Horton Street. When lots were terminated it was typical that the alley was split 50/50 between the abutting properties. In this case half of the 16-foot-wide alley was deeded to the property on Novi and half was deeded to the property on Horton. Mr. Brandt said the next logical step would have been the vacation of Horton Street.

A second document, Liber 4909, page 39, provided an example of the owners of the development (Yerkes) deeding over their lot and the half alleyway they had received the month before to a new owner for \$1.00 consideration. This document was a single example of what had happened to the lots on the east side, placing them along the non-existent Horton Street.

Chair Silvestri summarized that the applicant's position was that this documentation showed the City's intent, i.e., since the City was vacating the alley, the next logical step would have been to terminate or vacate the potential road where tonight's subject property was located.

Mr. Brandt said he had planned on obtaining the minutes from the time period, but Planning Consultant Elmiger had already done that and provided that information to the Commission this

evening. Mr. Brandt felt Planning Consultant Elmiger's May 14, 2018 memorandum clearly laid out the City's intent to leave Horton Street undeveloped.

Mr. Stenta added that last week he had joined a group of Horton Street homeowners in a meeting with City Manager Sullivan. They were moving forward with presenting a petition to vacate Horton Street, and several of the homeowners had already signed. However, since the petition and vacating process could take several months, he would like to go forward with the variance request tonight.

Member Aniol asked why Mr. Brandt thought the next logical step after vacating the alley in 1966 would be to vacate Horton Street. Mr. Brandt said his conclusion was based on the time frame of what happened: the alley was vacated, and one month later the Yerkes deeded over the lots to the adjacent landowners. It didn't make sense to deed that land for \$1.00 if the parcels were going to be considered separate buildable lots.

Member Aniol noted that the Resolution Regarding Vacating of Alley (Liber 4881) indicated that the alley was vacated because the owners wanted it vacated. But the homeowners never returned to request vacation of Horton Street. Also, the Board did not have anything in writing concerning the current petition to vacate Horton Street.

Member Callahan asked if any member of the City signed the current petition. Member Aniol agreed that the City, as owner of the park that abutted the undeveloped Horton Street, might also be required to sign the petition to vacate. Planning Consultant Elmiger responded that this was a legal question, and ultimately the decision as to whether or not to vacate Horton Street would be made by City Council.

Member Aniol asked the applicant about the practical difficulty requirement for seeking this variance, specifically regarding the setback standards on Horton Street.

Mr. Stenta said the practical difficulty was: The lots had been switched from facing Horton Street to Hill Street, leading him to believe that the lots faced Hill Street and that it was not the intent of the City to enforce a front yard setback on the nonexistent Horton Street. By granting the re-orientation of the lots from Horton to Hill Street, without formally waiving the front yard setback on Horton, the City created a parcel that provided a very small building envelope.

In response to a question from Member Aniol, Planning Consultant Elmiger said she thought the lots were re-oriented toward Hill Street in the 1960s.

Member Aniol pointed out that the lot in question met ordinance standards for area and width. The question remained: what was the practical difficulty? Mr. Stenta reiterated that if the front yard setback on Horton Street were enforced, the orientation toward Hill Street did not make any sense. He pointed out that the property to the east had been allowed to build, without a variance, an addition that did not meet front yard setback requirements on Horton Street, because everyone thought Horton Street was vacated and would never be constructed.

Member Callahan said a house could be built on the existing parcel without a variance. The lot met ordinance requirements and was buildable. Member Tinberg agreed, noting that other homes in the City were located on even smaller lots. Mr. Stenta doubted a marketable home could be built on the lot if the setbacks were enforced.

Mr. Stenta said when he originally submitted plans for 2 homes facing Hill Street, it was never mentioned that the subject lot would have 2 front yard setbacks. If he had known, he would have asked to switch the properties back to their original orientation toward Horton Street. He only found out about the setback requirements after the first house was built, when Building Official Strong had told him he had done further research and a variance would be needed to build the home on the subject lot.

Member Tinberg pointed out that ignorance of the ordinance, by definition, was a self-created problem.

Chair Silvestri said the front yard setbacks along Horton Street had not been uniformly enforced.

Member Tinberg noted that recently a developer had come before the Planning Commission with plans to develop the northern portion of Horton Street, and if that went through they would need access to 3 lots. Mr. Stenta said that during the meeting with City Manager Sullivan that proposed development had been discussed. It would be to that developer's advantage for Horton Street to be vacated, especially if there could be a private drive to provide access to that development.

Chair Silvestri said that in May the BZA had wanted to discover the City's intent regarding Horton Street. While Mr. Stenta was adding context by discussing the meeting with City Manager Sullivan, the City Manager was not present this evening and the Board had nothing in writing regarding the City's current intent as to whether or not Horton Street should be vacated. Member Tinberg added that absent a clear statement of the City's intent, the assumption was that Horton Street was not vacated, and she believed the Board needed to act on the ordinance requirements as if the road would be developed.

Chair Silvestri thought the original intent of the City was to vacate Horton Street.

Member Tinberg said that that Planning Consultant Elmiger's memo stated that although there was an interest in vacating Horton Street in the 1970s, at that time the City Attorney advised that the City could not vacate the road for the purpose of creating parkland, and the idea died. It was impossible to assume that the intent after that was to vacate.

Member McKindles said he felt there had been an intent not to develop Horton Street, even if vacation was not advised. However, the possible development on the north end of the undeveloped portion of Horton Street did bear directly on tonight's discussion.

Member Tinberg said it was important not to infringe upon the rights of property owners along Novi Street, who would have buildable lots, and therefore an additional source of income, if a Horton Street connection went through.

Planning Consultant Elmiger agreed that the property owner who was planning to develop homes on the north portion of Horton Street would also have to sign a petition to vacate.

Member Callahan commented that if the road were vacated, all the parcels along Horton Street would be landlocked and rendered completely unbuildable.

Planning Consultant Elmiger explained that the affected property owners had the right to request vacation of Horton Street. However, it could not be assumed that all the owners wanted to vacate Horton Street until the petition was received.

Member Aniol reiterated that the lots facing undeveloped Horton Street were platted lots and were currently buildable. If Horton Street were vacated, those lots would not be buildable. Member Mullen felt sure the lots along Horton would not have been deeded to the properties facing Novi Road if they had been considered buildable. Those lots were deeded to the Novi Street residents based on the idea that Horton Street was never going to be developed.

Member Callahan asked what the deed restriction was that was referenced in the Yerkes transaction referred to earlier. Member Aniol said that based on the Oakland County document provided, that restriction referred to the vacation of the alley and the 16-foot utility easement there.

Mr. Brandt felt it was clear the City never wanted to develop Horton Street, but instead wanted to develop a park in the area. Mr. Stenta added that the tree survey they provided prior to constructing the home on the lot to the west clearly showed the proposed footprints of the 2 homes, along with their setbacks. At that time, no one in the City said they had to conform to the front yard setback on Horton Street.

Member Aniol agreed that that in the 1970's there was an intent to vacate Horton Street based on the hope of creating parkland. However, when the City Attorney pointed out that vacated public right of way could not be used for parkland, the City did not pursue the matter further, and there was no indication after that time as to what the City wanted to do.

Chair Silvestri said the BZA needed to make a decision on this case.

Mr. Stenta said the case was tabled in May in order to give the applicants and the City time to show the history of Maplewood Park and Horton Street, and this had been done. He asked that his variance request be granted.

Member Callahan said that he didn't think the applicant had shown that the variance requested was the minimum variance necessary. Under the ordinance, the applicant could not build the house he wanted to build, but a house could be built without requiring a variance.

Chair Silvestri said he was unsure whether the applicant could build a marketable home on the property without a variance. While Chair Silvestri himself lived in a 20-foot wide home on a 50-foot wide lot, he understood that was not what the market was looking for. The applicant would have re-oriented the lots if he had understood the restrictions that were in place. While ignorance of the ordinance was not considered a hardship, at the same time the applicant had submitted a site plan to the City in the form of a tree removal survey, with the footprint and setbacks indicated. If there was a setback issue that was going to be enforced, it should have been brought forward by the City at that time.

Chair Silvestri opened the public hearing.

John Buckland, 449 Hill Street, said that he had lived in the City since 1968, and at that time the City discussed creating a passive, undisturbed parkland in the area. He had purchased his home from a

City Council Member, and both that Council Member and the Mayor at that time had assured him that Horton Street would never be developed.

Mr. Buckland was concerned that if Horton Street were officially vacated, and the land divided 50/50 between abutting neighbors, Mr. Stenta would be able to build closer to his home than currently permitted.

Mark Vernacchia, 965 Novi Street, said he was one of the 3 property owners who had double lots. When they purchased their house in 1986 they were also told that the land around Horton Street was parkland and would not be developed. Now with the possible development to the north, it appeared there was a chance that Horton Street would go through. Their own research mirrored that of Planning Consultant Elmiger. They could put a house on the lot to their rear, but they had no intention of doing that, because they didn't want Horton Street developed.

Mr. Vernacchia summarized the meeting some of the neighbors had with City Manager Sullivan regarding putting a petition forward to vacate Horton Street.

Amy Weaver, 888 Horton, asked if access to the park would remain if Horton Street were vacated. Chair Silvestri said it appeared that the petition discussed this evening protected access to the park.

Kelsey Jenney, 953 Novi Street, said that when she purchased her home 5 years ago she did not know it was an option to develop Horton Street; she supported its vacation.

Member McKindles emphasized that if Horton Street were vacated, Mr. Stenta's side yard would move closer to Mr. Buckland's property. Planning Consultant Elmiger added that Mr. Stenta would have to conform to the side yard setback requirements of the R-1B zoning district, which would allow a building envelope to be constructed within 7 feet of a side yard lot line.

Chair Silvestri suggested that if the variance were granted as requested, the motion be conditioned on the building envelope remaining as shown and in the location as shown this evening.

MOTION McKindles, support by Ronayne, that request #18-05, submitted by Vistal Homes – Aldo Stenta, for the vacant lot on Hill Street known as 48-22-34-406-018, for a variance along the undeveloped portion of Horton Street of 18 feet from the requirements in Section 15.01, in order to construct a new residence in the front yard setback along the Horton street right-of-way BE GRANTED, conditioned upon:

- **The home will be built no closer than 7 feet from the existing lot line abutting Horton Street as shown this evening, whether or not Horton Street is vacated as some point in the future.**

Member Tinberg asked for further discussion regarding practical difficulty since this property could be developed without a variance. How was this situation not self-created by ignorance of the ordinance?

Chair Silvestri said he felt the practical difficulty and not self-created standards were met, especially because the ordinance was not uniformly enforced in the past. The applicant purchased the property after the reconfiguration of the lots, and the front yard setback along Horton Street had not been

enforced in the past. Further, there was some indication that the City had no intent to develop Horton further.

Member Callahan said this area was platted, with Horton going north of Hill Street. He felt that the applicant had demonstrated ignorance of the ordinance and therefore the problem was self-created.

Member McKindles thought there was a practical difficulty, in that historical context and testimony of adjacent property owners was that Horton Street was not intended to be developed. Also, the City's parkland added to the unique nature of the property. The right of way was not created by the applicant, and being subject to a setback on an undeveloped street in this particular situation was a practical difficulty.

Member Tinberg said that the lot being a corner lot did not make it unique, and neither was the fact that the property abutted an undeveloped road unique, because there were other similar situations in the City. Did an urban legend in the neighborhood that said Horton Street would never be developed meet the uniqueness standard?

Member Mullen said she also saw a practical difficulty, as the property was not obviously a corner, but rather Horton Street appeared abandoned. The front yard setback had been a surprise to the neighbors and everyone else.

In response to a request from Chair Silvestri, Member Aniol offered the following findings of fact:

- 1. Practical difficulty: The undeveloped roadway as the adjoining property created a practical difficulty.**
- 2. Substantial justice: Granting of the requested variance would do substantial justice to the applicant as well as to other property owners in the district. Also, while the Board could not decide whether or not Mr. Stenta had been given incorrect or untimely information from the Building Department, granting the variance would do substantial justice if that had occurred.**
- 3. Not self-created: The variance did not result from the applicant's actions. The undeveloped road was creating the practical difficulty in this case.**
- 4. This was the minimum variance necessary.**
- 5. The request would not have an impact on public safety or create a public nuisance.**

Member Tinberg said she was struggling with the finding of practical difficulty, as the property was buildable without a variance, although it would not meet the current potential client's preferences and might not generate the return on the investment that the applicant wanted. The situation was an inconvenience but was not insurmountable. Regarding being self-created, it was not incumbent on the Building Official to proactively tell a developer what the ordinance said. Conformance with the ordinance was the responsibility of the buyer and/or the builder.

Seeing that discussion had ended, Chair Silvestri called the vote.

Aniol	no
Callahan	no
McKindles	yes
Mullen	yes

Silvestri	yes
Tinberg	no
Ronayne	yes

Motion carried 4-3 (Aniol, Callahan, Tinberg opposed.)

VI. CASE #18-06

**TODD WISNESKI
996 GRACE**

To consider a variance request on premises zoned R-1B, First Density Residential District, located at 996 Grace Street, Northville, Michigan, 48167, parcel number 48-22-34-405-001. The applicant is seeking a variance to construct a new deck in the rear yard setback. The variance needed is 6.2 feet from the requirements in Section 18.11.10.

Member McKindles read the case.

Chair Silvestri disclosed that he was representing the prior owner of this property in a dispute between the current property owner and his client, and asked to be recused.

MOTION Tinberg, support by Aniol, to recuse Chair Silvestri from consideration of Case #18-06.

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

Member Mullen disclosed she had represented the seller and the buyer when this property was sold.

MOTION Callahan, support by Silvestri, to recuse Member Mullen from consideration of Case #18-06.

Voice vote: Ayes: 6. Nays: 1 (Ronayne). Motion carried 6-1.

Chair Silvestri and Member Mullen left the dais. Alternate Bingham joined the Board. Vice Chair McKindles assumed the Chair.

Vice-Chair McKindles reviewed the items and supporting documents in the application packet.

Todd Wisneski was present on behalf of this application. Owner Kari D. Kawakami was also present.

Mr. Wisneski explained that he and Ms. Kawakami had moved into the home at 996 Grace last August, and wanted to construct a deck on the rear property. When the deck contractor applied for a permit, they became aware they would need a variance due to the 25-foot setback requirement.

Vice Chair McKindles asked the applicant to address practical difficulty.

Regarding practical difficulty, Mr. Wisneski made the following points:

1. While the house took up 15% of the lot, or about half of what was permitted, it was oriented toward the rear of the lot, approximately 32 feet from the rear property line. The 25-foot required setback permitted them a 7-foot deep deck at the rear of the home.
2. The survey showed a stairwell going to the basement, which was a semi-walkout basement. From the southern side of the house to the southern side of the stairwell measured 15 feet, or the practical width of the deck. A deck that met ordinance standards would be 15' x 7', which was inadequate and restrictive.

Regarding substantial justice, Mr. Wisneski said when they bought the house they wanted to improve the driveway, which they researched before they bought the home. However, the other thing they planned was a new deck, and when they looked at the back of the house, the neighbor to the left had a deck that was built to the lot line. Across the street was another deck. It wasn't on his radar that a variance would be necessary. But when they moved forward to construct the deck they discovered the 25-foot setback restriction.

Mr. Wisneski also referred the Board to Planning Consultant Elmiger's May 17, 2018 analysis, and requested approval for the small variance requested in order to build the deck.

Vice Chair McKindles noted that the subject property was subject to 2 front yard setbacks.

Member Aniol asked if the house next door received a variance. Planning Consultant Elmiger said she couldn't find anything in the record. In response to a further question from Member Aniol, Planning Consultant Elmiger said she also couldn't find a variance for the garage attached to this structure. However, the garage was in place when the house had been renovated.

For the record, Vice Chair McKindles noted the applicant had presented a survey dated August 25, 2017.

Member Tinberg asked the applicant to address the requirement for the minimum variance needed. Mr. Wisneski said they were allowed 6.8 feet; they were requesting 13 feet. This would be the minimum space necessary to provide space for some basic furniture, including a table and chairs.

Vice Chair McKindles opened the public hearing.

Amy Weaver, 888 Horton, spoke in support of this application based on the quality work being done to the home and the unique topography of the lot.

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

MOTION Callahan, support by Aniol, that request #18-06, submitted by Todd Wisneski for the property at 996 Grace Street, for a 6.2 –foot variance from the requirements in Section 18.11.10 in order to construct a new deck in the rear yard setback BE GRANTED, based on the following findings of fact:

1. **Practical difficulties: there was exceptional topographic or environmental conditions or manmade constraints because the home was much further to rear of the lot than the front of the lot.**

2. **Granting the variance would do substantial justice to the applicant as well as the other property owners in the district.**
3. **The problem was not self-created, as the owner had not sold off portions of the lot that would have prevented the practical difficulty, built during pendency of an appeal, and the request is not based on ignorance of the ordinance.**
4. **The applicants were asking for the minimum variance necessary to accommodate basic furniture on a small deck.**
5. **The request would not have an impact on public safety or create a public nuisance.**

Vice Chair McKindles called the vote.

Aniol	yes
Bingham	yes
Callahan	yes
McKindles	yes
Tinberg	yes
Ronayne	yes

Motion carried unanimously.

Chair Silvestri and Member Mullen rejoined the Board.

VII. PUBLIC COMMENT: None.

VIII. DISCUSSION:

Due to the July 4 holiday, the next meeting would be July 11, 2018.

Chair Silvestri welcomed new member Donna Tinberg.

Training for all boards and commissions was being held tomorrow evening, June 7.
BZA training being held in conjunction with the City of Plymouth was scheduled for June 25.

Alternate Bingham commented that his term was ending, and this would be his last meeting as he was not going to ask to be reappointed. He thanked the Board for its professionalism during his time on the Board.

Member McKindles thanked Alternate Bingham for his service on the BZA, and prior to that, on City Council.

IX. ADJOURNMENT

MOTION Aniol, support by McKindles, to adjourn the meeting at 7:58 p.m.

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

Respectfully submitted,
Cheryl McGuire, Recording Secretary

Approved as published 09/05/2018