

MINUTES

CITY OF WOOSTER BOARD OF BUILDING & ZONING APPEALS

July 2, 2020

I. MEETING CALLED TO ORDER AND ROLL CALL

Stewart Fitz Gibbon, Chairman of the Board of Building and Zoning Appeals, called the meeting to order. Board members Stewart Fitz Gibbon, Brad Gowins, Doug MacMillan, Gregg McIlvaine, Mark Reynolds, and Ken Suchan were present at the meeting. Andrew Dutton, Planning and Zoning Manager, was present representing the City of Wooster.

II. APPROVAL OF MINUTES

Gregg McIlvaine made a motion to approve the June 4, 2020 regular meeting minutes. Ken Suchan seconded the motion. The motion passed unanimously 6-0.

III. PUBLIC HEARINGS

Application #BZA-20-12.

Clemens Halene requested an area variance from Planning and Zoning Code Section 1113.01(e)(19)(B.) (ii. and iii.) to allow a rooster and chickens in an unenclosed yard at 647 Northwestern Avenue in an R-1 (Suburban Single-Family Residential) zoning district.

Gregg McIlvaine made a motion to move review of the application to the end of the meeting. Brad Gowins seconded the motion. The motion passed unanimously 6-0.

Application #BZA-20-13.

Louis Czibor requested an area variance from Planning and Zoning Code Section 1115.03(a) to allow an addition within required side yard setbacks and to exceed maximum lot coverage requirements at 635 North Buckeye Street in an R-2 (Single-Family Residential) zoning district.

Louis Czibor, 635 North Buckeye Street, stated that he wanted to add a bedroom to the back of his home. Mr. Czibor explained that his request was previously approved by the Board, but had expired. He continued that the application was the same as the previous plan, with the exception that a metal roof would be installed instead of shingles. Mr. Czibor stated that he had letters from both neighbors supporting approval of the application.

Gregg McIlvaine asked what the setback was from the property line. Mr. Czibor stated that there was about one foot between the houses. He stated the setback was established when the houses were built.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application. No one from the public was present to comment on the application.

Brad Gowins made a motion to approve application BZA-20-13, as presented. Doug MacMillan seconded the motion.

Brad Gowins voted yes and stated that he voted yes last time, agreed with the approval and believed the application fit with the spirit and intent of the code.

Mark Reynolds voted yes and cited reasons stated by the Board. He noted the narrowness of the property the stated that the proposed variance was the best use for the lot.

Gregg McIlvaine voted yes and stated that the proposal was close, but noted that the application was previously approved and had the neighbors' approval.

Doug MacMillan voted yes and cited reasons stated by the Board.

Ken Suchan voted yes and cited reasons stated by the Board.

Stewart Fitz Gibbon voted yes and cited reasons stated by the Board. He also indicated that the addition was consistent with the site's current configuration.

The motion passed unanimously, 6-0.

Application #BZA-20-15.

Roger Kobilarcsik requested an area variance from Planning and Zoning Code Section 1117.01(k)(2) to allow a waste receptacle within the rear setback and Section 1123.05(b)(6)(C.) to allow parking rows longer than permitted without an island on the north side of East South Street with parcel numbers 64-01549.001 and 64-01000.000 in the C-4 (Central Business) zoning district.

Roger Kobilarcsik, 538 North Market Street, stated that the proposal was for two variances concerning a parking lot on East South Street. Mr. Kobilarcsik explained that the variances were for the waste receptacle to be located within the 5 foot rear setback and to allow fewer islands within the parking lot. He stated that the variances would optimize the number of spaces for the parking lot. Mr. Dutton stated that the total interior landscaping area exceeded the amount required.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application. No one from the public was present to comment on the application.

Ken Suchan made a motion to approve application BZA-20-15 as presented. Gregg McIlvaine seconded the motion.

Ken Suchan voted yes and stated that the specific dimensions of the lot precluded the project from meeting the exact requirements of the code. He also noted there was more landscaping than required.

Gregg McIlvaine voted yes and cited reasons stated by the Board.

Mark Reynolds voted yes and stated that the parking lot would be an improvement to the area and noted the existing nature of the lot.

Brad Gowins voted yes and referenced the area variance review criteria. He also noted that other lots in the downtown area had been given similar variances given the size and shape of the parking lots.

Doug MacMillan voted yes and cited reasons by the Board. He also stated that the landscaping exceeding what was required.

Stewart Fitz Gibbon voted yes and cited reasons stated by the Board. He further noted that parking was needed downtown.

The motion passed unanimously, 6-0.

Application #BZA-20-16.

Barbara and Tom Yoder requested an area variance from Planning and Zoning Code Section 1113.01(e)(19)(B.) (ii. and iii.) to allow a rooster and Section 1113.01(e)(8)(D.) (i.) to allow chicken wire fencing at 1352 East Wayne Avenue in an R-1 (Suburban Single-Family Residential) zoning district.

Barbara Yoder, 1352 East Wayne Avenue, stated that the lot was large and she hoped that they could have chickens. Mrs. Yoder explained that she approached two adjacent neighbors and both neighbors were in favor of the chickens. She continued that all of the chickens were initially thought to be hens, but one turned out to be a rooster.

Mrs. Yoder explained that the neighbors were fine with them keeping the rooster. Mrs. Yoder continued that in April 2020, she received a letter from the city that having a rooster inside the city was a zoning violation and she realized they were not in compliance.

Mrs. Yoder explained that the proposal was to reduce the rooster's noise by installing a no crow collar. She continued that the collar was a velcro strap around the rooster's neck, which kept the rooster from fully inflating its air sacs to push out sound.

Mrs. Yoder stated that a chicken coop with chicken wire fencing was constructed to contain the chickens in the back yard. Mrs. Yoder continued that the property was wooded, the fence was minimally visible and the character of the area was maintained. Mrs. Yoder stated that none of the fencing was in the front yard.

Mrs. Yoder stated that 6 households express concerns about the rooster and 5 households supported the rooster. She explained that she was not aware of what the objections were, because there was nothing stated on the petition.

Stewart Fitz Gibbon indicated that one of the objections to the variance stated that the rooster crowed at daybreak. Mr. Fitz Gibbon explained that even with the collar, the noise level at 5:30 am would be considered a nuisance.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application.

Corienne Miller, 1336 East Wayne Avenue, stated that she lived directly beside the Yoder's and her family had no problem with the rooster, chickens or fencing. She noted that the only way the fencing or the coop was visible was from her driveway.

Patricia Beichler, 1422 Ramblewood Drive, stated she was in favor of the variance per a phone call on 6/30/20.

Hayne Shilling, 1386 Diller Drive, stated no objection to the variance per a Phone call on 7/1/20.

JoAnne Baker, Ramblewood Drive, stated she worked third shift, had not heard the rooster and it had not bothered her per a phone call on 7/1/20.

Lynne DePaulo, 1444 Ramblewood Drive, stated that following through comments on YouTube:

I oppose allowing any roosters within the city limits. I appreciate the efforts the Yoders are trying to do to limit their rooster's crowing.

I do not feel the no crow collar is a good option. I do not have an issue with their fencing.

Our bedrooms back up to the ravine and their rooster is in their backyard. Sound travels.

My question would be - although the rooster has contained his crowing with the collar, what is to prevent the Yoders from removing the collar once the variance is approved?

I believe the no rooster clause was put into the zoning for a reason

Brad Gowins made a motion to split the variance into two to separate requests for BZA-20-16. Doug MacMillan seconded the motion. The motion passed unanimously, 6-0.

Ken Suchan move to adjourn to Executive Session. Brad Gowins seconded the motion. The motion passes unanimously, 6-0.

Ken Suchan moved to come out of Executive Session. Doug MacMillan seconded the motion. The motion passed unanimously, 6-0.

Brad Gowins made a motion to approve application BZA-20-16 part 1, regarding a rooster, as presented. Gregg McIlvaine seconded the motion.

Brad Gowins voted no and stated that he did not feel that a strong enough case was made when looking at the review criteria. He indicated that he believed a strict interpretation of the code was appropriate.

Ken Suchan voted no and stated that he believed the code had specific requirements removing roosters from the raising of chickens. He continued that there was no compelling evidence presented.

Mark Reynolds voted no and stated that the spirit of the zoning requirements was very straight forward.

Doug MacMillan voted no and cited reasons stated by the Board. He noted that neighbors were against the variance, specifically allowing the rooster.

Gregg McIlvaine voted no and cited reasons stated by the Board. He noted that it was rare to see a variance with so much opposition from the neighbors.

Stewart Fitz Gibbon voted no and stated that the Board appreciated the circumstances and appreciated the efforts to try to mitigate the chickens. He also indicated that the Board rarely received a significant level of opposition. Mr. Fitz Gibbon noted that noise complaints were

difficult because they were in the ears of the beholder. He also stated that the code was very clear regarding the prohibition of roosters within the City limits.

The motion was denied unanimously, 6-0.

Brad Gowins made a motion to approve application BZA-20-16 part 2, regarding a chicken wire fence, as presented. Doug MacMillan seconded the motion.

Brad Gowins voted yes and stated that the fencing would be suitable given the size of the lot and where the chickens were located.

Ken Suchan voted yes and stated that the fencing was located in the rear of the lot, which was not visible.

Mark Reynolds voted no and stated that the chicken wire was only permitted with a split rail fence. He continued that he believed the fence should be in compliance code with and should not set a precedent.

Doug MacMillan voted no and stated that, though it was well hidden, he had concerns that someone could move in and believe it would be an option to install. He noted that a split rail fence would work better.

Gregg McIlvaine voted no and stated that the applicant never explained why they could not put up a split rail fence, which would meet the code.

Stewart Fitz Gibbon voted no and stated that the code allowed for a variety of fencing alternatives. He indicated that in the absence of a compelling argument to allow the fence, the Board needed to stick with the code.

The motion was denied 4-2.

Application #BZA-20-12.

Clemens Halene requested an area variance from Planning and Zoning Code Section 1113.01(e)(19)(B.) (ii. and iii.) to allow a rooster and chickens in an unenclosed yard at 647 Northwestern Avenue in an R-1 (Suburban Single-Family Residential) zoning district.

Helga Halene, 647 Northwestern Avenue, stated that the proposal was for pet chickens that had roamed freely for 2 years with no issues. Mrs. Halene explained that there were cats that roamed the neighborhood. She stated that the chickens walked on other neighbors' property, but the chickens mainly stay on her property. Mrs. Halene stated she had a chicken coop that the chickens stayed in from dusk until dawn. Mrs. Halene explained that the property had a wooded area where the chickens enjoy spending a lot of the time. Mrs. Halene stated that the earliest the chickens would be out of the coop was 7 am.

Mr. Fitz-Gibbon asked if there was any consideration to install fencing. Mrs. Halene explained that the property was nice without a fence and allowed the chickens to roam. Mrs. Halene continued that a fence was not necessary because the chickens enjoyed roaming freely. Mrs. Halene stated that the chickens were entertaining and people enjoy seeing them.

Mr. Fitz Gibbon asked if anyone from the public would like to address the Board regarding the application.

Shannon Delaney 616 West Bowman Street, stated that following through comments on YouTube:

I am in favor of the variance. I believe a rooster should be allowed because of the acreage he holds.

Neighbor of Clemens Halene. In favor of the variance to allow the rooster because of his large acreage he owns. Honestly I enjoy the sound

Steve Kern, 610 Northwestern Avenue, stated that following through comments on YouTube:

We are neighbors of the Halene's. I agree with Shaun and affirm to tell the truth.

I affirm that they do stay on their property now that they are used to area. The rooster has never bothered us by his noise.

The Halene's have a large plot of land that allows for this.

Christine Rufener, owner of 575 and 581 Northwestern Avenue, stated that following through comments on YouTube:

I own 575 & 581 Northwestern Ave. and am opposed to allowing chickens in the neighborhood. Unenclosed chickens present a nuisance to everyone, including safety of children. My property is within 200 feet.

Chickens scratch everything in sight. They will destroy flowerbeds, gardens and more. roosters are usually mean & attack humans.

I have a lot of experience with chickens & am concerned about the safety of everyone nearby & their properties.

There is a code in place for a reason. Hens in addition to roosters can be quite loud. It can be a beautiful sound in the country, but not in the city!!

Mrs. Helene stated that chicken enjoyed scratching and was their nature. She continued that the chickens had not gone to other neighboring flower beds.

Brad Gowins made a motion to approve application BZA-20-12 as presented. Ken Suchan seconded the motion.

Brad Gowins voted no and stated that the code should be followed in regards to prohibiting roosters and unenclosed chickens within the City limits. He explained that the code was in place to set a standard.

Ken Suchan voted no and stated that the code was very specific about excluding roosters from the raising of poultry. He stated that the idea of not fencing and having free-range poultry reminded him of having free-range dogs running throughout the city.

Gregg McIlvaine voted no and stated that the applicant had a very nice city lot, however, the lot was in the city. He noted that the Board had to consider that the neighbors were affected by the applicant's rooster and chickens.

Doug MacMillan voted no and cited reasons stated by the Board. He indicated that the fencing requirement was in place for a reason and allowing a rooster was a precedent that the Board did not want to start.

Mark Reynolds voted no and cited reasons stated by the Board. He further stated that the code was straightforward and the applicant gave no compelling reasons to set a precedent.

Stewart Fitz Gibbon voted no and cited reasons stated by the Board. He continued that there were no unique circumstances that justified making an exception and setting a precedent. The motion was denied 0-6.

IV. ADJOURNMENT

Gregg McIlvaine made a motion to adjourn. Brad Gowins seconded the motion. The motion passed unanimously, 6-0.

Stewart Fitz Gibbon, Board of Building and Zoning Appeals Chairman

Carla Jessie, Administrative Assistant