

**MINUTES OF A MEETING OF THE
AVON LAKE ZONING BOARD OF APPEALS
HELD FEBRUARY 26, 2020**

A regular meeting of the Avon Lake Zoning Board of Appeals was called to order on February 26, 2020 at 7:00 P.M. in Council Chambers with Chairman Hamister presiding.

ROLL CALL

Present for roll call were Mr. Hamister, Mr. Heine, Mr. Motz, Mr. Shook, Assistant Director of Law Graves, and Zoning Administrator Booher. , Mr. Updegraff absence was excused.

APPROVAL OF MINUTES

The minutes of December 11, 2019 were approved as amended.
The minutes of January 22, 2020 were approved as presented.

READING OF GENERAL COORESPONDENCE

None

COMMENTS FROM THE ASSISTANT DIRECTOR OF LAW

Assistant Law Director Graves addressed the members of the Board and audience, and generally described the procedures to be followed in the conduct of the meeting and number of member votes necessary for lawful Board action. He noted that it is the applicant's burden to establish what is called "practical difficulty," meaning that without the variance practical difficulties are created in making use of your property. If in fact you do get a variance, it is important that you keep in mind that your variance is granted based upon the evidence that you present before the Board this evening, which includes the testimony that you give and the exhibits you submit, or any representations that you make during the hearing. If you deviate from what you proposed or represented that you are going to do, whether in written word or written submissions, then there will be a problem and the City will take action to stop you from going forward. It is important that if you do make representations here, you make them knowing full well that you have to live up to them.

OATH ADMINISTERED

As provided in Article IV (5)(a)(4) of the Zoning Board Rules, an oath was administered by the Assistant Director of Law to all members of the audience speaking at this meeting.

CASE 20-003

REQUEST FOR A VARIANCE AT 32600 SPINNAKER DR GRANTED

Assistant Director of Law Graves stated that Code Section 1240.06 (d) ACCESSORY USE REGULATIONS – *Fence Regulations in Standard Single Family Subdivisions* states that the maximum height of a fence in a side yard is four feet and the maximum height of a fence in a front yard is three feet.

Mr. and Mrs. Samuel Vinch propose to install a 6 feet tall, solid wood fence in the rear yard along the western property line, which is conforming. Mr. Vinch proposes to continue this fence 9.5 feet into the side yard and then return to the house. An existing 6 ft solid wood fence was removed

and new landscaping and patios was installed last summer. They want to install a new 6 feet solid wood fence to protect the landscaping and their small dog from deer, coyote and fox that come in from the unsightly adjacent greenspace. The variance will allow them to place the fence around the patio and landscaping instead of going through it.

Their closest neighbors have no issue with the variance.

Mr. Shook moved to grant the variance. Mr. Heine seconded the motion.

Mr. Shook stated they are enhancing the appearance of the neighborhood. The green space located to the west is unsightly. There would be no effect on city services.

Mr. Heine pointed out that this is a peculiar lot in that the green space to the west will remain undeveloped. This is a minor variance and will have no impact on services.

Mr. Hamister stated that the applicants created their own problem when they removed the old fence and installed the landscaping but there are no close neighbors and this is not a major variance.

Mr. Motz agrees with Mr. Hamister.

AYES: Heine, Motz, Hamister, Shook NAYES: None ABSENT: Updegraff

CASE 20-004

REQUEST FOR A VARIANCE AT 32136 LAKE RD GRANTED WITH CONDITION

Assistant Director of Law Graves stated that Code Section 1240.06 (b) and (b)(1) ACCESSORY USE REGULATIONS – *Required Location, Area and Setback for Accessory Uses* states that an accessory building permitted in an R-1 District shall be located in the rear yard. Accessory buildings, including detached garages, are not permitted in the front yard.

Jill Brandt with Brandt Architecture, on behalf of Mr. & Mrs. Matt Litzler requests a variance to construct a 567 sq. ft. detached garage in the front yard of this property, on the east side of the lot. This is the most convenient and practical location for a detached garage. They need two variances, one for location and one for size.

The back yard has a very steep slope towards the lake. There are many other garages in the front yard of houses on the north side of Lake Rd because of deep front yards. Their house is set back 254 ft. from Lake Road.

There are fewer trees with an open area on the east side of the property. Locating the detached garage on the west side would block the view of a house with unique and historical architecture. It would also necessitate the garage being located further from the house and would almost be on the property line.

The homeowners would be able to construct an attached garage in the relatively same location without a variance but feel that a detached garage would help maintain a view of the lake for neighbors across the street and from the roadway.

If the garage was 500 sq. ft. it would meet the code and only one variance would be required to locate the detached on the east side of the lot.

Mr. Heine moved to grant the variance with the condition that the detached garage be only 500 sq. ft in area. Mr. Shook seconded the motion.

Mr. Heine stated this is a unique property on the north side of Lake Road and locating the detached garage on the east side of the property will have the least effect on the neighborhood. This is a minor variance give the length of the property and is in keeping with the neighborhood. There would be no effect on services.

Mr. Shook concurred with Mr. Heine.

Mr. Hamister stated this is the best solution in keeping the lake view from the roadway.

AYES: Heine, Motz, Hamister, Shook NAYES: None ABSENT: Updegraff

CASE 20-005

REQUEST FOR A VARIANCE AT 129 AVON BELDEN RD DENIED

Assistant Director of Law Graves stated that Code Section 1240.07 *Home Occupations* does permit the operation of a cottage food bakery only in a dwelling and provided all of the factors in this code section are met.

The applicants propose to use this property for a use that is not a permitted use nor a conditional use in the R-1 District. The purpose of the home occupation code section is to set forth regulations which control the establishment and operation of home occupations. The intent of these regulations is to control the nonresidential use of a residential dwelling unit so that the nonresidential use is limited to an accessory use, and does not in any manner whatsoever disrupt or alter the residential character of the neighborhood in which it is located. Compliance with the regulations should result in all home occupations being located and conducted in such a manner that their existence is not detectable in any manner from the outside of the dwelling unit.

Applicable requirements in this section are:

(c) The business activity including the storage of equipment, supplies or any apparatus used in the home occupation, **shall be conducted entirely within the dwelling unit and no use of a garage, an accessory building or an outdoor area shall be permitted.**

(d) A home occupation may be conducted in any area of the dwelling including the basement provided such home occupation shall occupy no more than one room in the dwelling unit or an area equal to twenty percent (20%) of the area of the main floor of the dwelling unit, whichever is greater. The area of an attached garage shall not be included when calculating the area of the main floor of the dwelling unit.

(e) Any activity, material, goods, or equipment indicative of the proposed use shall be carried on, utilized or stored within the dwelling unit and shall not be visible from any public way or adjacent property.

Mr. & Mrs. Benjamin Stilwell propose to operate a bakery out of their detached garage. For a home bakery it is necessary to meet both Department of Agriculture's health code and Avon Lake's zoning codes.

They have a dog in the home and no basement therefore the Department of Agriculture prevents them from having the home bakery business in their house. That leaves the existing detached garage as an area for the home bakery which is specifically excluded in the code for residential business use. They would modify the garage to accommodate two vehicles and the home bakery business.

Mr. Heine moved to deny the variance. Mr. Shook seconded the motion.

Mr. Heine stated there is a much stricter standard to meet for a use variance. He respects their ambition but they do not meet the criteria for a use variance.

Mr. Shook agrees with Mr. Heine's statement.

Mr. Hamister stated that not all standards were met for a use variance.

Mr. Motz stated that the situation would not be safe and does not meet code.

AYES: Heine, Motz, Hamister, Shook NAYES: None ABSENT: Updegraff

CASE 20-006
REQUEST FOR AN APPEAL DENIED

Assistant Director of Law Graves stated that Code Section 1212.03 (131) defines:

ZONING LOT TYPES: Terminology used in this Planning and Zoning Code with reference to corner lots, interior lots and through lots is as follows (See Figure 3):

- A. CORNER LOT: A lot abutting on two streets at their intersection where the angle of such intersection is not more than 135 degrees.
- B. INTERIOR LOT: A lot with only one frontage on a street.
- C. THROUGH LOT: A lot other than a corner lot with frontage on more than one street. Through lots abutting two streets may be referred to as double frontage lots.

Corner Lots abut two streets. A Through Lot has frontage on more than one street and are referred to as double frontage lots. A Corner Lot has frontage on more than one street, and it can be determined that a corner lot can be referred to as double frontage lots in the same manner as a through lot. Interior lots have one frontage on a street.

For at least forty years, the City has consistently applied and interpreted the Avon Lake Planning & Zoning Code to address a corner lot as having a primary and a secondary front yard.

If the Zoning Administrator's interpretation is not supported, the interpretation of the code will be changed for ALL corner lots within the city. Corner lots will be treated as interior lots, permitting a home to be constructed within 4 feet of the right of way in R-1B District and 10 feet from the right of way in R-1 Districts and a shed 0 feet from the right of way in R-1B Districts and 3 feet from the right of way in R-1 Districts. In the alternative, the applicant is requesting a variance for her property.

Rachel Matgouranis has filed an appeal to the Zoning Board of Appeals of the determination by the Zoning Administrator that the ordinances of the City of Avon Lake consider a corner lot as having a primary and secondary front yard.

Ms. Matgouranis stated that the grounds for this appeal is that the decision was essentially based on an unwritten policy that was not properly codified in the code and was in fact contrary to the plain meaning of the terms of the code itself.

The purpose of codifying zoning policies is so that residents of the City have a clear set of regulations for making important decisions such as purchasing a home. She relied on the code allowing her to install a fence that would allow her to let her large dog out in the yard and keep the dog contained.

She is an attorney with extensive education and training in interpreting legal statutes and codes. Even with her experience she was unable to discern the policy of not permitting a 4ft. chain link fence in the side yard of a corner lot.

If it is the Zoning Administrator's intention to enforce a secondary front yard for corner lots then that needs to be clearly stated to residents through the code. The code needs to be changed to clarify the distinction between a side yard and a side yard being classified as a secondary front yard for corner lots.

Mr. Graves stated that Code Section 1212.03 (121) defines front yards and 1212.03 defines corner lots having frontage on two streets.

Mr. Hamister moved to deny the appeal. Mr. Motz seconded the motion.

Mr. Hamister stated the code allows that a corner lot has two frontages, one on each street.

Mr. Motz said it would be a bad decision to change from corner lots being referred to as having two frontages.

AYES: Heine, Motz, Hamister, Shook NAYES: None ABSENT: Updegraff

CASE 20-007

REQUEST FOR A VARIANCE AT 331 DELLWOOD RD GRANTED WITH CONDITION

Assistant Director of Law Graves stated that Code Section 1240.06 (d) ACCESSORY USE REGULATIONS – *Fence Regulations in Standard Single Family Subdivisions* states that the maximum height of a fence in a front yard is 3 feet. Chain-link fencing is only permitted in a side yard or a rear yard.

Rachel Matgouranis proposes to install a 4 ft. chain-link fence around the rear yard that will extend into the secondary front yard. She needs to be able to let her dog out into a fenced yard from her side door. The variance is to extend the fence only to the side door and the size of her dog requires a fence higher than 3 feet to keep the dog contained.

The request for the fence to be 14 feet from the house is for appearance and to make the rear yard area larger for the dog to have room to run.

Many variances have been granted to give access to the back yard from a side door to let a dog out. The variances usually granted the minimum needed to do this. The minimum needed in this case is not 14 feet from the house but to the outside edge of the side service walk to the side door.

Mr. Hamister moved to grant the variance with the condition that the 4 ft. chain link fence be no more than 1 foot from the service walk to the side door located on the south side of the property. Mr. Motz seconded the motion.

Mr. Hamister stated that it is very common to grant a variance to give access to a rear yard for a dog.

Mr. Motz agreed with Mr. Hamister.

AYES: Heine, Motz, Hamister, Shook NAYES: None ABSENT: Updegraff

COMMENTS FROM THE AUDIENCE

None

COMMENTS FROM BOARD MEMBERS

None

ADJOURN

Mr. Motz moved to adjourn the meeting at 9:05 P.M. Mr. Hamister seconded the motion.

AYES: Heine, Motz, Hamister, Shook NAYES: None ABSENT: Updegraff

Zoning Board of Appeals
Chairman Hamister

Recording Secretary
Dawn L. Phelps