

BOARD OF ZONING APPEALS - Minutes of January 26, 2021

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Roll Call: Philip Laurien, Dave Chrulski, Bob Voltz, Guy LeBlanc, Dan Phillips

Attendees: Bill DiFucci, Building Inspector

NOTE: OFFICIAL ACTION REQUIRES 3 AFFIRMATIVE VOTES. See COV 1264.02(b); Therefore, *Motions will be stated in the positive (e.g., To Grant... / To Waive... / To Determine...); and a member=s >Yes= vote means Agree and a >No= vote means Disagree.

Gwen Fisher called the meeting of January 26, 2021 to order.

CHAIRMAN/VICE CHAIRMAN:

D. Chrulski MOVED, G. LeBlanc seconded to nominate Dan Phillips as Chairman for 2021. Roll Call Vote 5 YEAS. **MOTION CARRIED**.

G. LeBlanc MOVED; D. Phillips seconded to nominate Bob Voltz as Vice Chairman for 2021. Roll Call Vote 5 YEAS. **MOTION CARRIED**.

APPROVAL OF MEETING MINUTES:

B. Voltz MOVED, G. LeBlanc seconded to approve the meeting minutes of December 1, 2020. Roll Call Vote 4 YEAS, 1 ABSTENTION (Phillips). **MOTION CARRIED**.

An *Oath* of truthfulness was administered to those in attendance who planned to speak during these proceedings. *Dan Phillips* described how meetings are conducted, explained the avenue of recourse available when a variance request or appeal might be denied, and gave a reminder that it takes 3 affirmative votes for an action (motion*) to pass.

OLD BUSINESS: None

NEW BUSINESS:

[RL-1] 5436 Portage Drive - Applicant: Stuart Glauberman (Side Yard Setback)

Applicable City code section(s) cited:

1270.10 (e) (2) (C) – Side yards not less than 10 percent of lot width (4.4') proposed = 3' 3-3/4" – variance request – 1' 1/4"

Stuart Glauberman said at last months meeting the goal was to request a side yard variance and a front yard variance and the front yard variance was tabled, and the recommendation was for them to get a survey and to determine whether they would

need a front yard variance based on the other homes that were on the same street. They did the survey, and he understands they do not need a variance for this portion of the project from the City. They are asking the board for a side yard variance based on more information.

Neil Akers marked out the area on the house and last month they had requested about 1' 8" and now because they have the property line between their neighbors which is on a diagonal and it ranges from 1' ½" at the end of the structure they would like to add for storage. He said when the architect drew up the plans, he drew a square box, but the property is on an angle and they had the property resurveyed and the house is sitting square to the right of way, but it has a larger parcel of property on the left south side. At this point they had everything measured and at the very back of the storage area they are 1/2" off the setback line which is 4.4' and he provided a drawing to the board that shows the back edge of the property which is 4' ¼". At the front of the storage area, they are 9 ½" encroaching on the side yard setback and if you come all the way to the front of the porch, they are exactly 1' off that setback. They are 3' ¾" off the property line and they should have been 4' ¼". D. Phillips said the first time they came before the board they asked for a 1' 8" variance and now they are asking for a 1' ¼" variance. N. Akers said this is correct because they had the property resurveyed and if you are standing in the neighbor's driveway and look at the new addition, this is what you would see.

B. DiFucci said he has a drawing stamped from a surveyor showing the established setback on that side of the street and there is a property closer from what they are proposing, so it allows them to match the existing setback.

B. Voltz noted for the record that the 4.4' is because the requirement is 10 percent of the lot width and that is why it's not a greater side yard setback. B. DiFucci confirmed this is correct.

D. Phillips recalled reading in the minutes from last month the board asked if they would reach out to the neighbors to see about their concerns, and noted the board received an email from Lee Howley saying he had no issues with this proposal.

Lee Howley added that he feels unfortunately this has created some tension in the neighborhood and everybody has good intentions on both setbacks, but his view being a property owner on the north side of Glauberman's and a property owner on the east side – that they are not inconsistent with whatever else is on Cherry Lane. Over the years there has been obviously encroachments in terms of setbacks, but they have been tasteful, and therefore they have zoning and reviews to try to accommodate situations. Therefore, he has no objection and hopes this can move on for everybody.

B. Voltz asked for clarification – between the stated request it says the 3' ¾", but the drawing is not the same dimensions – it is 1" difference but he wanted to make sure

they are clear on what is being requested. N. Akers said he should be at the front edge of the porch – the side yard setback is off the property line itself and it will be 3' 3¼". The proposal is 3' 4¾" and they are asking for a 1' variance.

Roland van Rijn asked if the variance for the front is taken care of. D. Phillips said it does not need a variance. R. van Rijn went back in history because he felt there was a discrepancy. He said when the Garish house was built to the south Neil Akers used a formula because there was really no history prior to this house on setbacks because it is on the river and it is a skinny lot; meaning no depth. He said they used the Poulson house, which is gone, and the setback was about 11' and they used the Hille house which the setback was about 22 ½'. If you add them up and divide them by two this was going to be the setback for the Garish house which turned out to be 17.1'. He said the Glauberman's house could use the same formula using the Garish house on the south side and the Hille house in relationship to the Glauberman house, so you have a setback for the Hille's which is 22 ½' and the setback for the Garish house is 17.1', and the combined value is 39.6' – divided by two sets it back to 19.8', which is a huge difference and from an aesthetics point of view this is something that should be looked at. He said there is about a 35-degree angle view obstruction looking to the northeast out of the Hille house corner, which is their dining room, so there is an obstruction. He does not think anybody has looked at how these setbacks were established and as a resident across the street, they are letting the cat out of the bag time after time and they should stop it. It is clear abuse of moving a resident closer to the street – obstructing the view for anybody on Portage Drive.

D. Phillips said the board must go by what is presented to them and the building inspector informs the board on the variance request. Roland van Rijn did not believe the building inspector had the information right because nobody has discussed how the variance was established on the Garish house, which was the predecessor on this project. G. LeBlanc did not believe this was relevant because if they are not exceeding the existing setback on the street this is their guidance. Roland said they are going past the existing setback. G. LeBlanc said according to the survey this does not show that. Roland told them to respect zoning laws. B. DiFucci responded by saying there is no formula that is spoke of in the code and they cannot derive a setback from a formula. The code says they are allowed to use the established minimum front yard – this minimum front yard is established on that side of the street via the survey presented to the city by a professional surveyor. There is a yard established on that side of the street and it is 11' 9", so the front yard variance is not required because they are proposing 14' 8", which meets what is written in city code. Roland said they are apparently talking about the Bettcher house. B. DiFucci said correct. Roland said this is no longer valid because that street is gone – it is now part of a driveway. This lot does not exist the way it is drawn up and it is based on old data. B. DiFucci said the house is still an established yard that was in play on that side of the street. That house does not align with anything on south Portage Street – it aligns with Cherry – the front yards are established on the

Cherry Lane side. Roland said according to Mr. Bettcher that house is based on the old foundation of the Poulson lot. B. DiFucci said this may be, but it reinforces the fact that it is established.

Gretchen Loper representing the Architectural Committee in the Lagoons said they stated their concerns at the last meeting, and they have their own setbacks in the Lagoons, and they will study and reconsider when the Glauberman's submit their plans to the Architectural Committee and they will pass their recommendations onto the Lagoons Board of Directors.

G. LeBlanc MOVED, P. Laurien seconded to approve the side yard variance request of 1' ¼". Roll Call Vote 5 YEAS. **MOTION CARRIED**.

[B-3] Adam Wilson, 4811 Liberty Avenue (Allow Storage Use)

1270.13 (b) permitted and conditional uses (see list); proposed = storage – variance request to allow storage use

Adam Wilson of 3560 Cooper Foster Park Road, Vermilion explained his intent is to utilize the building at 4811 Liberty Avenue by turning it into an interior climate-controlled storage unit. D. Phillips asked if this location is the old Alco building. A. Wilson confirmed as such. D. Phillips asked if he would have units built inside the building and what are they planning on storing inside the building. A. Wilson said they will start off with large items such as boats, cars, and campers. Eventually, the business plan down the road is to put in smaller units inside. He said places such as Cube Smart and U-Haul's are nice bright buildings and they have several types of storage in their businesses, and they have interior access so you can pull your car, trailer, or truck in to unload in the warmth and securely store your items in your locker which is climate controlled. He is looking by mid-next year if everything goes through to add these individual storage units inside. D. Phillips asked where the access point will be located to pull in boats, cars, and campers. A. Wilson said there is an existing door in the back, and they have looked at where they can put another door. As they see it, a new approximately 14' x 14' overhead door would be utilized at the southwest corner of the building – just behind the garden center area that is there now.

D. Phillips asked the building inspector if there were any requirements, they would need to follow for storing boats, car, and campers that have gasoline. B. DiFucci said this will be handled by the building code and the applicant will need to go for a change of use for the building. His first step is to get the zoning use from the BZA to show that it is of a like use. He then can proceed in generating stamped drawings for an official change of use for the building. Because it is a change of use, he will be required to bring that building to current code for his new proposed use.

G. LeBlanc asked if they were going to address correspondence they received today. G. Fisher noted the correspondence was received late today, so it is up the board if they want to address it. D. Phillips read the letter submitted by email to the clerk from Homer S. Taft as follows:

Gwen –

I noted last night that there is a storage facility on the agenda for Zoning Board of Appeals tonight. I do not know if I will be able to attend, and whether you can still share written comments.

I do not believe storage unit facilities constitute a "similar" use to a business zoning for allowed "conditional" use under our Zoning Code. This becomes especially true where the Zoning Code makes specific provision for storage of personal property and places it generally in the Industrial categories.

I also would ask that the Zoning Board of Appeals consider that yesterday a citizen's group of a few dozen, represented by Betsy Wakefield, Bill McCourt, Vito Cammarata, Elaine Carlin, and I, have provided a proposed Ordinance banning Storage Unit Facilities for vote in November. We requested last night a moratorium on storage facilities be placed by Council (so called temporary red tag) until the voters decide this issue in November.

While I think there are many beneficial uses for the former Alco store, and want to see that area thrive and be occupied, proceeding with storage units at this moment might not be the wisest option. In fact, the Wall Street Journal recently ran an article that supermarket size and "big box" in line stores generally are becoming a hot commodity in real estate even during, and perhaps because of, COVID. The owner may find better opportunities, though that is their ultimate decision to the extent they seek permitted uses. I do not think individual storage units are one of those under our Zoning Code.

G. LeBlanc thought they should entertain the notion of tabling this request until it goes before City Council. However, on the other hand, the code is what it is today, and the application is in front of them.

D. Phillips said somebody very wise pointed out to him this afternoon that they must look at what is in front of them and not what is in the future, and they should look at what is on the agenda as its own separate unity.

P. Laurien commented by stating that if they are looking at the B-3 Highway Commercial District, some of the permitted uses are the same uses that are being proposed for indoor storage, such as: New Automobile Sales, Used Automobile Sales, Boat and Marine Sales, Food Lockers, and Garden and Nursery Centers. This use will provide a use for a building that has been vacant for at least 8 or 9 years. If

there was a use that was dying to go into this location, he thinks it would have been found in this period. He does not see this as an inappropriate use at all. Everyone of these permitted uses that generate far more traffic than a storage locker or internal use for boats, marine storage, or personal items are intermittent traffic trips. There is plenty of parking and it is off street, and you cannot see, hear it, or smell it, so see no evil, hear no evil, or speak no evil. He thinks this is an appropriate use and he strongly feels the board should approve this.

D. Phillips said this is a good point and noted the board reviews everything on its own merit and while he understands the letter they received, this is something they are asking to put on the ballot in November, which is 10 months from now and he does not think this is fair of them to ask somebody to wait around before the board decides.

B. DiFucci agreed and said this is in the board's hands and this particular use already exists in the zoning district, so therefore it is before the board for their official approval.

Adam Wilson said with regards to the Homer Taft letter, he understands City Council denied a storage unit being built down the road, but this is more of an exterior type of storage unit and they are not appealing to the eye. However, he understands they do not want this type of unit downtown, but this is a building, and nothing will change with the façade of the building, or the feel of the plaza. Also, this is something that is inside, and he is not going for exterior storage as he does not want to put a ton of boats in front of the plaza as he does not think it is productive for the plaza, just as it is not productive for Vermilion to have all these boats right in downtown at Freeman-Eckley and Crow Lumber. This is space that should be utilized better for the community. There are existing businesses and Lagoon Marine is directly behind him that has boat storage inside and outside, and Harbourtown Marine stores boats outside at the plaza – in the parking lot, in the front and out back. They are not looking to do anything like this. They are looking to do interior in a safe secure storage for the community. Residents living close by can walk up and get their bikes or jet skis out of storage rather than going to another community to pick them up. He indicated the building has been sitting there for 10 years and he knows the plaza owners are hoping to get income generated from it as they pay big taxes on this building and they lose a lot. He thinks the storage unit is a start for this unit and down the road he would like to section some things off and put retail space around the side and in front of the building that will benefit the community. He does not necessarily want to stick with this storage concept with the future of the building. This is a steppingstone to utilize the space and bringing an income to him and taxes to the community, and further developing into something the community can utilize. Right now, with 44,000 square feet – there are not many businesses that will come in and use this building. Even Alco downsized the building by putting walls up. He said when you walked into Alco you only could see half of the building size because it was walled off that Alco never

utilized. He said it is like a Walmart sized space and Walmart is not coming to Vermilion, so to begin somewhere and doing something with it is a benefit. He thanked the board for their time and hoped they would make a good decision.

B. Voltz asked A. Wilson if he was the owner of the building. A. Wilson said South Shore Plaza is the owner and this unit is a separate property from the rest of the plaza. B. Voltz said if he piggybacks and borrows some comments from the Mayor, then yes, they would like to have something that would generate more traffic and maybe more outsiders and income, but he understands what he is asking for. He asked how access will be controlled and will there be limited hours or will it be open 24 hours without anyone knowing what is being stored there. A. Wilson explained there will be a locking system, surveillance system for the entire exterior and interior of the building, and there will be remote locks in place that he can control and see from a platform from his computer. He will be able to see who accesses the unit and what time they access it. He said everything will be controlled. There will be 24-hour access, but there will be a list of items on what can be stored in an agreement. The surveillance systems will be recorded and checked, so there are controls that will be in place.

D. Phillips MOVED, P. Laurien seconded to approve the variance to allow *interior* storage use at 4811 Liberty Avenue Roll Call Vote 4 YEAS, 1 NAY (Chrulski). **MOTION CARRIED**.

Adjournment:

D. Phillips adjourned the meeting after no further business was entertained.

2020 MEETINGS:

Next: Tuesday, February 23, 2021 @ 7:00 p.m. via Zoom

Transcribed by Gwen Fisher, Certified Municipal Clerk