

ZONING BOARD OF APPEALS MINUTES 07-20-2017



MEETING HELD IN THE CITY COMMISSION CHAMBERS THIRD FLOOR, 225 E PORTAGE AVENUE AT 5:30 PM ON THURSDAY, JULY 20, 2017

Pending approval by the Zoning Board of Appeals

1. **Call to Order:**

The Zoning Board of Appeals meeting was called to order by Jeremy Gagnon at 5:33 p.m.

2. **Roll Call of Board Members:**

Roll call was taken to reflect the following quorum:

Present: Jeremy Gagnon (Chair)
Bob Casey (Vice-Chair)
Beverly McCready (Secretary)
Gary Dean
Dan Campbell
Steve Twardy

Absent: Ken Dunton

Staff Present: Kelly Freeman (Community Development Director) and Melanie McBride (Community Development Office Coordinator)

Public Present: Raymond McKerchie
Sue McKerchie
Klem Kelgar
Marcia Woods
Dustin Wilcox

3. **Excuse absent board members:**

It was moved by Steve Twardy and supported by Dan Campbell to excuse absent board members. The motion passed unanimously.

4. **Acceptance of the Minutes of the Zoning Board of Appeals meeting held on June 15, 2017:**

Additions or deletions: There were none.

It was moved by Bob Casey and supported by Gary Dean to accept the Zoning Board of Appeals Meeting Minutes of June 15, 2017. The motion passed unanimously.

Next, Jeremy Gagnon outlined the procedure for the variance. He explained that first City

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Staff will present the background information and then the applicant will have an opportunity to provide additional information and explain why he or she feels that the variance is warranted. Next, he said that comment is opened up to the public. If anyone from the public wishes to address the Board, he asked that they state their name and address for the record, and direct their comments to the Chair. After all the members of the public have spoken, the matter comes before the Zoning Board for discussion. He added that members of the Board may ask City staff or the applicant any questions at that time.

5. Wilcox request for a two foot setback variance for a driveway:

A request by Dawn and Dustin Wilcox for a two-foot variance to construct a driveway within one foot of a side property line where Section 10-1.1703(7) of the City's Zoning Ordinance requires a minimum setback of not less than three feet. Said property is located at 216 Arlington Street.

Mr. Freeman started a power point presentation showing the subject property on an aerial map. The property is 30' wide by 84' deep located on the north side of Arlington Street to the west of Governor Osborn Blvd, and hosts a single family dwelling with no accessory structures. The applicants who recently purchased the property would like to construct a driveway along the east side of the dwelling. Presently there is no off street parking available for this property. The driveway would be 9' wide and 45' long and accommodate two vehicles. The agenda was published with information that came from the applicant. After staff conducted their own measurements the setback would be 2' - 6", with the minimum setback being 3'.

Mr. Freeman provided a hardship analysis of the property. The subject property is zoned B-2, and single family residential is not a conforming use, so for comparative reasons R-1 zoning was used as the standards of review. The property is 30' in width, which is 20' narrower than the R-1 district minimum of 50'. Widths along Arlington Street vary from 25' to 70'. This property is not the narrowest lot on the street, but is among the narrowest. The property has a depth of 84'. The depth of lots along Arlington range from 60' to 170', and have frontage on either Ridge Street or Spruce Street. The shape of the property is a parallelogram in which the corners do not meet at a 90 degree angle. The odd angle artificially "narrows" the parcel. The parcel is platted at 30' width, which is effectively 27.5' due to the angle. If the parcel were a rectangle with 90 degree corners the proposed driveway would not need a variance. Only because of the shape is a variance necessary. The minimum area required in the R-1 district is 5,000 square foot. This property is 2,520 square foot, which is just over half of the district minimum. Depth and area are not hardships for this property. Width alone is not a hardship, but when combined with the shape of the property it creates a hardship by effectively preventing the construction of any off-street parking. The climate here in the winter causes issues relating to parking. During the winter months the street parking ban is in effect. There are no topographic features that create a hardship. The subject property is relatively flat with no areas negatively impacted by slope. There were a few extraordinary and exceptional circumstances in relation to this property. The neighborhood is higher in density than most, similar to the Little Italy part of town. The property was developed prior to automobile ownership being common. Off-street parking is nearly a necessity due to the winter climate, and street parking restrictions during the winter months.

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Mr. Freeman received one letter and three phone calls in regard to public comment. The letter of objection from the owner of 214 Arlington Street was included in the packet. The letter expresses concerns about the accuracy of the survey conducted on the property. Mr. Freeman has found no concerns in regard to the survey. They feel the driveway being there will decrease their quality of life due to the activity generated by the driveway. The property owner is also concerned that it will decrease their property value. One phone call from the owner of 215 Ridge Street, adjacent to the north, called to object due to concerns that vehicles would be parked closer to her home. That measurement is approximately 80'. Mr. Freeman received two calls in support of the application, one call from the property owner at 218 Arlington Street, which is adjacent to the west, and Sault Printing called from 314 Osborn Blvd. Mr. Freeman's recommendation is to conditionally approve the requested variance requiring the driveway to be constructed so as not to drain onto an adjacent property.

Jeremy Gagnon opened the floor for public comment.

Dustin Wilcox explained that he was unaware a variance would be needed to construct a driveway to the property he purchased. He thought it would be as simple as doing a curb cut.

Sue McKerchie, of 214 Arlington Street, explained that she is the sister-in-law of the owner who wrote the letter objecting to the driveway. He does not want the driveway put in, but he would possibly be open to a shared driveway. They do not want people to park along the side of the yard, but in the back yard.

Jeremy Gagnon closed public comment and opened up board discussion.

Bob Casey commented that for safety purposes a turn-around would be helpful so that cars are not backing out onto Arlington Street, with heavy traffic and high snowbanks during the winter months. Bob asked Mr. Wilcox if it was in his future plans to construct a turn-around or parking pad in the back.

Dustin Wilcox explained that he is willing to do whatever it takes to put a driveway in. He would be willing to put gravel into the back for a parking space.

Bob Casey further explained that if Mr. Wilcox is already going back 45' it makes sense to put parking in the back to satisfy the neighbor's concerns. Mr. Casey asked Mr. Freeman if the board could make a condition like that.

Mr. Freeman responded that the Zoning Board has the authority to add additional conditions to the recommendation.

Steve Twardy asked if this property is a single family home or if there will be apartments in the home.

Dustin Wilcox responded that it will remain single family.

Beverly asked if there is in fact a shared driveway between 216 and 218 Arlington Street as the letter from the owner of 214 Arlington states.

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Dustin Wilcox stated that there was nothing referring to a shared driveway in the purchase agreement. In looking down the street, it looks that all the driveways are to the right (east) side of the houses.

Mr. Freeman concurred that the driveway on the west side is completely contained in the property of 218 Arlington Street.

Dustin Wilcox added that when looking down the street, it looks like all the driveways are to the right (east) side of the houses.

Gary Dean commented that this is a very common layout to other neighborhoods in town.

Beverly McCready asked if the deck off the east side of the property will interfere with the driveway construction.

Dustin Wilcox commented that the 3 foot deck will be removed if parking will be in the back of the property.

Steve Twardy asked what type of construction is planned for the proposed driveway.

Dustin Wilcox explained that his plan is to pour concrete.

Jeremy addressed the residents of 214 Arlington Street, asking about the fence located on the survey that was over the property line.

Sue McKerchie commented that the fence was removed.

Jeremy Gagnon commented that getting a car off of the street is a good thing. He wishes all cars had the ability to get off the street. It makes it difficult to see and difficult for snowplowing in the winter.

Raymond McKerchie commented that if Dustin Wilcox can put a driveway in, what would stop him from putting up a fence.

Steve Twardy responded that the property is owned fully by Dustin Wilcox, so he doesn't understand the question.

Jeremy Gagnon clarified that Mr. McKerchie can put a fence up along his property line and it will not interfere with the driveway due to the fact it will be fully contained within Mr. Wilcox's property.

Mr. Freeman added that it will be approximately 2.5' away from Mr. McKerchie's property line.

Jeremy Gagnon added that he could have installed an 8' driveway and avoided the variance process all together. He then asked Mr. Freeman if driveways are regulated by the city.

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Mr. Freeman commented that they use the standard width of a parking space to determine driveways, but it is not specifically noted that is the minimum width of a driveway.

It was moved by Dan Campbell, and supported by Gary Dean, to grant the variance as requested, subject to Mr. Freeman's conditions. The motion passed unanimously.

Roll Call vote:

Jeremy Gagnon (Chair)	Yes
Bob Casey (Vice Chair)	Yes
Beverly McCready (Secretary)	Yes
Gary Dean	Yes
Dan Campbell	Yes
Steve Twardy	Yes

6. Kelgar 8 foot setback variance for deck:

A request was received from Klem Kelgar for an eight-foot variance to permit a recently constructed front deck to extend to within 12 feet of the property line where Section 10-1.1600 requires a minimum setback of 20 feet. Said property is located at 405 Emmett Street.

Mr. Freeman started his power point presentation showing an aerial map of the subject location. The subject property is a single family residence with an attached garage on a 120' wide by 126.5' deep lot. In March of 2015 the city became aware of a 10' by 20' deck had been constructed on the property without a permit. The city attempted to make contact by mail, and ultimately elicited a response this year. Mr. Freeman showed two photos of the deck in relationship to its surroundings. The variance requested from 10-1.1600 is to retain the deck as constructed with a setback of approximately 12 feet. The minimum setback requirement is 20 feet. Mr. Freeman provided a hardship analysis of the property. The property is 120' in width, which is 70' wider than the R-1 district minimum of 50'. The depth of 126.5' is average for the block. The property has a typical shape and is above average in relationship to size. There were no concerning topographical features, with the property being relatively flat. The only noteworthy aspect of the property is that it is comparatively larger than the surrounding properties. Mr. Freeman provided some additional considerations for the board, unrelated to hardship. The front property line is 17' from the paved edge of Emmett Street to there is a lot of visual space, which mitigates the visual impact because the deck is 29' from the road edge. The adjoining properties are a considerable distance away from the deck at approximately 60'. The neighbor to the west cannot see the deck due to the attached garage.

Mr. Freeman received one phone call in regard to public comment. The property owner across the street called to support the variance request. Mr. Freeman's recommendation is to deny the request due to being unable to determine a hardship.

Jeremy Gagnon asked Klem Kelgar if he had anything to add.

Klem Kelgar did not have anything to add.

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Bob Casey asked if the board were to deny the request, would the applicant be required to remove the deck.

Mr. Freeman responded that the deck would have to be removed.

Bob Casey wanted clarification on the deck's location in relationship to the garage.

Mr. Freeman responded that due to the angle of the photograph it looks like the garage sticks out further than the deck, but in fact the deck is a few feet further than the garage. Based upon the location of the house, the zoning requirements would only allow a 2' wide deck off of the front.

Jeremy Gagnon asked if the applicant could put back a deck the same size as the previous deck.

Mr. Freeman responded that the Building Department would work with the applicant to do that, but the previous deck was much narrower than what has been built now.

Jeremy Gagnon clarified that regardless he would have needed some form of a variance anyway for a deck.

Mr. Freeman confirmed, and informed the board the Mr. Kelgar has been in discussions with the Building Inspector and the deck is very well built.

Bob Casey commented that he has no issue in regards to this deck.

Steve Twardy asked if the trees block the view of the deck along the eastern property line.

Klem Kelgar commented that there are a few trees and shrubs that obscure that side.

Gary Dean commented that the deck is a beautiful addition. His concern was that two years passed between the deck being built and the variance request being made.

Mr. Freeman explained that the letter was sent to Klem Kelgar's father-in-law, who is the owner of the property. Klem Kelgar never received the first letter. Mr. Freeman added that when Mr. Kelgar received the second letter and became aware of the situation he responded favorably. Mr. Freeman also clarified that there was a significant gap between the mailings of the first and second letter.

Beverly McCready added that she drove by the property and the garage screens the deck quite well.

After discussing a motion, Jeremy opened the floor for public comment, before the motion could be voted on.

Marcia Woods, of 408 Emmett Street, commented that the deck fits in well with the neighborhood. It looks normal when looking down Emmett Street. She also added that he has done a wonderful job updating his property.

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It was moved by Beverly McCready and supported by Bob Casey to approve the variance as requested.

Roll Call vote:

Jeremy Gagnon (Chair)	Yes
Bob Casey (Vice-Chair)	Yes
Beverly McCready (Secretary)	Yes
Gary Dean	Yes
Dan Campbell	Yes
Steve Twardy	Yes

7. Public Comment:

There was none.

8. Other Matters Presented to the Board or Staff:

Gary Dean asked for a status update regarding the Family Dollar Property.

Mr. Freeman explained that instead of constructing the fencing requirements, as required by the Zoning Board of Appeals variance conditions, Mr. Atto has submitted a site plan to add 10 parking spaces to the Family Dollar parking lot, therefore removing the need for a variance.

Steve Twardy asked why Mr. Atto is able to do that.

Mr. Freeman explained that when the Zoning Board of Appeals grants a variance they can attach conditions to it. If the variance is no longer necessary then the conditions disappear with it.

9. Adjournment:

Jeremy Gagnon requested the meeting be adjourned at 6:05 p.m. The motion carried.

Respectfully submitted,

Jeremy Gagnon, Chair
Zoning Board of Appeals