

## BOARD OF ZONING APPEALS

### MINUTES

May 1, 2018

Members Present:     Lynne Thomas Roth                     Glynn Marsh  
                              John Bruns   Mayor O'Callaghan

#### City Staff Members

Present:                 John Applegate  
                              Denise Winemiller

Mrs. Thomas-Roth called the Board of Zoning Appeals meeting to order. Attendance was taken and all of the board members were present.

1.     Mrs. Thomas-Roth asked if there were any corrections or additions to the minutes from the April 3, 2018 meeting. There were no comments or corrections so Mr. Bruns moved that the minutes be accepted as prepared. Mayor O'Callaghan seconded the motion. All board members voted in favor of the motion. The minutes were adopted.

2.     18-02 - Application for a variance requested by Samuel Studebaker, 721 North Main Street, to move a proposed accessory building closer to the existing home, on a more level surface rather than the steeper location which would require a retaining wall and additional fill.

Mrs. Thomas-Roth said that this application was very thorough and she said it was done very well.

Mr. Applegate said that he had met with Mr. Studebaker on several occasions and he said he would give Mr. Studebaker the opportunity to address the board also. Mr. Applegate said that the application was done quite well and that they normally don't see one put together this well.

Mr. Applegate said this proposed building is considered an Accessory Use. In this case, it is a pole barn/garage and can only be placed in the rear yard.

Mr. Applegate talked about the definition of a variance, where a variance can only be granted for the height, set back requirements or distance from a property line, and that is all.

Mr. Applegate said years earlier, when Mr. Green was the city zoning inspector, Mr. Studebaker had looked at putting the barn in a different area but because of a location of a gas line, at that time, the work to erect a barn was not done.

Mr. Applegate explained that for the building to not be considered as an accessory building, it would have to be attached to the house and then it could be in the side yard and even partially in the front yard. In addition, Mr. Applegate said that Mr. Studebaker owned five acres and he could do a lot split and put the barn on the second lot. Since there would be no house on the new lot, the barn would not be considered as an accessory usage. Mr. Applegate said in the future, he could even reconnect the lots and it would be approved because it was a nonconforming use. Mr. Applegate suggested he place it far enough back on the lot so that a house could be built in the front, if he wanted that in the future for family members.

Mr. Applegate said it was his recommendation to Board of Zoning Appeals that they turn down this variance request because it does not meet the code.

Mr. Bruns wanted to go over what Mr. Applegate said, that a variance could be in a setback, height, and how close to the lot line but they can't give a variance for a structure to be put in a side yard because it is not allowed and that this matter is not a variable item.

Mr. Applegate said to be sure, he forwarded this to the law director and had him look at it and he agreed that this variance request could not be approved. Mr. Applegate said if they would grant the variance, the city could be sued and also, they would be setting a precedent to not follow the city's zoning code. He said they could not approve this because it did not meet the code.

There are still other options available to Mr. Studebaker. He said they had a similar issue with the Covered Wagon and they ended up attaching their additional

building to their main building.

Mr. Applegate said it was one of the best applications he had seen, was well thought out and Mrs. Thomas-Roth added that Mr. Studebaker made some very good arguments. Mayor O'Callaghan said he understood the reason for the request because the building would be difficult to build in the rear yard.

Mr. Studebaker said he appreciated their interpretation of the zoning code. He mentioned how steep the slope was in the yard, and that he had five acres and that the building would still be located behind the front face of the house. He said by locating it in the side yard, it would preserve more of the neighbor's view. He said he was worried about the foundation and slope and would prefer more stable ground. He did not know what would be involved with maintaining a building at the edge of a hill.

He also commented that there were several rows of spruce trees that would block the view of the barn and it would not be very noticeable.

Mr. Bruns said that he felt that it would not be a problem except that they were not allowed to do this. He said they had to listen to the legal advice provided from their law director.

They explained that his options were to attach the accessory building to the house with a cover or breezeway, or divide the lot. Mr. Studebaker was concerned about the cost and asked for recommendations for surveyors and Mr. Applegate said he would try to help with that.

Mr. Marsh asked if there was enough road frontage so the lot could be split and Mr. Applegate said yes, he had already checked into that.

Mrs. Thomas-Roth asked if there was any square footage restrictions and Mr. Applegate said no, but that he would set the building back so there would be room for another house on that lot, if they decided to do that in the future. Mr. Studebaker would be allowed to merge the lots again, and the building would be a pre-existing nonconforming use. Mr. Applegate said he had already consulted with the law director on that.

Mr. Marsh asked about if the garage would need paved access to the building and Mr. Applegate said yes, if there was a garage door. If there was a smaller door, like for a workshop, it would not need a driveway.

Mr. Bruns moved that the 18-02, request for a variance be denied because the request does not meet the requirements of a variance. Mrs. Thomas-Roth seconded the motion. All concurred and the variance request was denied.

Mrs. Thomas-Roth said she was sorry they were not able to approve his request.

Mr. Studebaker thanked the board for their time and their good will and said he understood their reasons for the refusal.

There was a brief discussion on rezoning the property and Mr. Applegate said that R-PUD zoning did offer more flexibility and Mr. Studebaker would not want to limit himself. He said sometimes it was difficult to change zoning back.

Mr. Studebaker said if he would pursue the splitting of the lot, since he already had the permit, could he go forward with the building. Mr. Applegate said he could pour the foundation but said he could not go any further than that.

He said to split the lot, it would not need to go before the planning commission. Mrs. Winemiller said the delay would be with Montgomery County and they could take up to 30 days.

There was more talk about a new survey and Mrs. Winemiller suggested Mr. Studebaker contact the original surveyor.

In response to Mr. Studebaker's question, Mr. Applegate said he could use his original permit for erecting the barn on the new lot if that is what he decided to do.

### 3. Open Agenda

There was nothing for the open agenda except everyone had been receiving compliments on the pear trees this year.

4. Mr. Bruns moved that the meeting be adjourned. Mayor O'Callaghan seconded the motion. All concurred and the Board of Zoning Appeals meeting was adjourned.

