

# Board of Zoning Appeals

## September 10, 2015

**Members present:** Chairman, Phil Rooney; David Russell, Secretary; Sharon Rooney; Douglas Warren; George McAfee.

The meeting was called to order at 6:03 p.m. by Mr. Rooney. Mr. Rooney introduced the members to the audience and the general rules were reviewed.

**Case # 53731-BA-15 (2117 Juno Drive)** was introduced and Mr. Richard gave his review as follows: Filed by Matthew Long, agent for Findlay One LLC, the applicant is attempting to secure a variance to section 1162.05B as it relates to the development standards currently specified in Chapter 1126 of the City of Findlay Zoning Ordinance. The applicant is requesting the Board to allow the site to be reconstructed in its present state, as approved previously by the City Planning Commission under different development standards, if the site is ever damaged by more than 75% of its actual cash value, exclusive of the foundations.

Over the past several years, the Zoning Office has evaluated the subject property regarding its compliance to current requirements, as requested by lending institutions, title companies, and appraisers. This property was developed under a P.U.D that was later repealed with the adoption of the current zoning code and map. Upon review, it has been discovered that the current site does not meet today's development standards. As a result, the applicant is seeking a "preemptive" variance in case the site ever sustains a catastrophic event that destroys all or some of the apartment units by more than 75% of their actual cash value, not including the foundations.

The code states, "The Board shall hear appeals from any order, requirement, decision or determination made by the Zoning Administrator." It is in our opinion that this case does **not** fall under the authority of the Board, If the site sustains a qualifying event, THEN it should be presented to the Board of Zoning Appeals for a variance to reconstruct the site in its present state. As of this moment, no order, requirement, decision or determination has been made regarding this site because there has been to catastrophic event. We have only evaluated the site regarding its compliance to the current development standards.

Stephen Roepke, attorney with Eastman & Smith, 510 South Main Street, Findlay, Ohio, stated that the reason for the variance is so the site can be rebuilt for the purpose of refinancing. The City has changed the code and caused the site to be noncompliant. Fannie Mae and Freddie Mac requires the site have the ability to be reconstructed as it is today in the event of a catastrophe. He presented a packet from the City of Wooster and cited an identical situation. The Board of Zoning Appeals for that city granted a variance for a development that did not comply with current zoning standards. Under the current requirements, there would be about a 10% loss in density if the site had to be rebuilt today. This will have a significant economical impact.

Mrs. Rooney asked what would happen to the paperwork with the decision. Would it get attached to the subdivision regulations?

Mr. Roepke stated that it would be turned into the financial institution so the refinancing could be finalized.

Mr. Dan Calvin, attorney, 225 N. Market Street, Wooster Ohio said that by doing this, the financial institution will move forward.

Mr. Warren asked about the site plan. Why weren't current setbacks and proposed setbacks shown on a plan?

Mr. Rooney explained that this request is for one lot and they want it to development in the future as it is today if there is a qualifying damage.

Mr. Warren reviewed the appeals processes and options. He questioned why he wasn't in front of the City Planning Commission? They changed the zoning requirements (ultimately City Council).

There was more discussion on who has what authority regarding setbacks and development.

Mr. Warren does not think it belongs with the BZA.

Mr. Roepke stated that they could petition City Council to change the ordinance, but it would be a much more difficult and lengthy process. They want to go the simple and quick pathway to get the financing process completed. He stated the City has caused the problem.

Mrs. Rooney asked if the refinancing was required. No one had an answer to that question.

Mr. Warren asked Mr. Richard about the length of time on the variance. Does it only have a 24 month lifespan?

Mr. Richard stated that the lifespan is 60 days, in which the applicant has to obtain a permit. The permit is then good for a year and can be extended. The Purpose of the BZZ is to make a decision on a proposed development, not for something that may happen. The applicant is asking for the request to be open-ended.

Mr. McAfee asked if I had consulted asked the Law Director of his opinion on whether this case should be before the Board.

Mr. Richard stated that the Law Director does not believe it should be here as well as the Planning Department staff. This case was filed and you are being asked to decide if it should be before the Board. If the Board feels that it should, then it should proceed with a decision or action. The City does not believe this is the function of the Board of Zoning Appeals.

Mr. Roepke stated that the actions of the City of Findlay have put a property owner in peril since they cannot refinance under federal rules. There has to be a remedy for the peril that has been caused. The case in Wooster should be considered. He discussed some elements of that case were mentioned. Mr. Roepke stated that he would make a recommendation to the client that a 24 month time limit would be

agreed upon. Then, the issue could be revisited. In the meantime, the refinancing could proceed. It's nothing the client has done to cause the problem.

Mr. McAfee asked if stipulations could be placed on the variance.

Mr. Richard stated that the Board can place any condition on a variance that they choose.

There was discussion regarding the time limit and whether it was necessary. Would the financial institution know if there was such a condition?

Mr. Richard stated that he would be obligated to state that fact in a letter.

Mr. Ken Radke, 2564 Burberry Ct., was sworn in. He wanted to know what modifications were being planned if the site was rebuilt. He was concerned with two-story buildings. He was concerned that they would make up the 10% loss with two-story apartments.

Mr. Rooney indicated that the request is to rebuild the units as they are today. The site would have to be reviewed again by the CPC and a variance would have to be granted if the site was destroyed and was proposed to be rebuilt as it is today.

Mr. McAfee made a motion to grant the variance with a 24 month lifespan and an appeal to be made to the appropriate body (City Planning Commission).

Mrs. Rooney seconded the motion.

By a roll call vote: Mr. Russell- Abstain; Mr. Warren- Abstain; Mrs. Rooney- Aye; Mr. McAfee- Aye; Mr. Rooney- Abstain.

The vote results in a "no action". Mr. Richard stated that the case will automatically be heard next Thursday since no action was formally taken. He will consult with the Law Director to make sure of what the next step is.

Mr. Roepke asked since there were two "yes" votes, wouldn't that be enough to have the variance granted?

Mr. Richard stated that it takes a majority of the membership of the Board to make a decision, not a majority of the quorum.

**Case # 53831-BA-15 (210 W. Yates Avenue)** was called and was reviewed by Mr. Richard:

The applicant is seeking a variance from section 1161.01.1C2 of the City of Findlay Zoning Ordinance. This section prohibits accessory buildings from exceeding 900 square feet in area. The applicant has proposed a detached garage with 1,056 square feet of floor area.

The applicant removed a detached garage and has started construction of a 24 x 36 foot detached garage (864 square feet). He wants a roofed 8 X 24 foot porch on the building. The porch counts toward the total square footage of the building and causes the building to be over the maximum allowable area by 156 square feet.

This porch could be enclosed at anytime without the requirement of a zoning permit since the building line would already be established with the proposed covered area.

The owner has poured a foundation for the porch in anticipation of having the variance granted. If the request is denied, then he will install a patio area.

There is no hardship evident in this case.

Robert Van Atta Jr. and Lori Van Atta, applicants, were sworn in. Mr. Van Atta stated he wanted a covered area for grilling and maybe storing firewood. They have gotten approval from all of the neighbors. They have no intention of ever enclosing it.

Mr. McAfee made a motion to approve the variance, with the condition the permit be obtained within 60 days.

Mrs. Rooney seconded the motion.

The motion passed 5-0.

Mr. Rooney made a motion to approve the August 20, 2015 minutes.

Mrs. Rooney seconded the motion. The motion passed 5-0.

Mr. Richard reminded the Board that he will tell them what will come next for the first case that was heard tonight. Mr. McAfee cannot. Everyone else can attend on August 17, 2015.

There was more discussion about preemptive variance requests.

Mrs. Rooney made a motion to adjourn and it was seconded by Mr. Rooney.

The meeting was adjourned.

  
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Chairman

  
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Secretary