

MINUTES
BOARD OF ZONING APPEALS
April 12, 2016

The Wyoming Board of Zoning Appeals met on April 12, 2016 at 6:00 p.m. in the Council Chambers at the City Building. Mr. John Braun, Vice-Chair, called the meeting to order at 6:00 p.m. Attendance was as follows:

MEMBERS:

John Braun
Jennifer Eismeier
Charlie Jahnigen
Robert Kearns

OTHERS:

Terry Vanderman, Community Development Director
Megan Statt Blake, Assistant Community Development Director

Approval of January 12, 2016 Meeting Minutes

Ms. Eismeier moved to approve the minutes as revised. Mr. Jahnigen seconded the motion. All voted yes, the motion carried.

92 Chestnut Avenue, Case #2-16, Side Yard Setback

Mr. Vanderman provided the background for this case. An application was filed by Mr. Chris and Mrs. April Benken, the owners of the property at 92 Chestnut Avenue who are proposing to construct a two-story addition on the rear of their residence which is located on the north side of Chestnut Avenue. The home is located within the A, Single-Family Residence District and the setbacks are therefore prescribed by Section 1155.04 of the Code. The proposed addition will project rearward from the home and the owners are proposing to align it with the existing second story bedroom bump out maintaining a side yard setback of 10'. Section 1155.04 (b) of the Code requires second story elements of homes located within the A, Single Family Residence District to maintain a minimum side yard setback of 12'. Based on this conflict, the permit application was denied.

Mr. Chris Benken addressed the members. Mr. Benken explained that the neighbors at 90 Chestnut Avenue and 94 Chestnut Avenue have easements that allow their driveways to be located within his property boundaries. Mr. Benken explained that his home is one of the oldest homes in the neighborhood and elder residents have told him that the home originally sat on Springfield Pike and was subsequently moved down the street and placed in its current location. Apparently, many years after the home was placed on the lot, the County established the property lines which do not comply with the current Codified Ordinances.

Mr. Benken stated that the current second floor story is 11.3 feet from the eastern property line and the second story dormer bump out is 9.4 feet from the eastern property line. The existing home does not lie square within the property boundaries that were set. The requested variance amount is approximately 2 feet for the southern side of the addition and decreases to approximately 1.3 feet from the northern side of the addition as it relates to the second story setback. The first floor of the addition is in compliance at 10 feet +/- as the Code requires a setback of 7 feet for one story elements.

In order to create a break in the wall and not have a wall longer than 60 feet, which would increase the required setback, and in keeping with the historic aesthetics of the existing home, the Benken's are proposing to offset the addition in order to follow the existing second floor bump out. Additionally, by keeping the new wall of the addition in line with the existing plane of the home reduces the need to redirect plumbing and bathroom locations.

Mr. Kearns stated that he must recuse himself from this case as he is a friend of the applicant.

Ms. Eismeier asked Mr. Benken for clarification that the 2 feet that the addition would extend from the house was based on the location of the plumbing stack. Mr. Benken explained that the bump out is due to the existing dormer. She noted that the plans indicate that the second floor is in line with the dormer.

Mr. Jahnigen commented that the existing fence is not shown on the survey however on the first floor plan it shows the fence as 6'4" from the side of the home. Mr. Benken stated that the fence sits inside the property line. Mr. Jahnigen stated that if the new addition is to be 10 feet from the property line then the fence is either not drawn in the correct location or it is part of the construction plan to modify its location. Mr. Benken stated that in order to be neighborly he did not want to take down a 4' chain link fence that belonged to the neighbor and was on his property but instead he erected his privacy fence inside of the property line.

Mr. Braun asked Mr. Vanderman for clarification with regard to the length of the home exceeding 60' and asked him to expand on that Code. Mr. Vanderman stated that if the length of the side wall of a home exceeds 60' the setback must increase 1.5 inches for each foot over 60'.

Mr. Braun asked Mr. Benken if there will be any mature trees that will need to be removed to make way for the addition. Mr. Benken stated the he has recently lost a large white oak tree in the front yard and large ash tree in the tree lawn area. He then planted a 9 inch caliper locust tree in his front yard hoping to gain back the shade that these two large trees once provided. There is currently a rather large tree in the side yard leading to the rear yard, which is why his driveway is gravel in this area so as to protect the roots and provide good drainage of this particular tree. Mr. Benken indicated that no trees will need to be removed for the addition.

Mr. Braun commented that he drove past the house several times trying to envision the addition on the home. He indicated that he believes that the home seems unbalanced and that the proposed addition will be an improvement.

Mr. Benken stated that he has assisted in the building of many home additions as part of his extracurricular employment. The addition will be somewhat taller than the existing home and for a tall person; it will be nice to be able to stand full height in the shower. He believes that what he is proposing will be visually appealing from the street.

Mr. Braun commented on the feedback the members have received from the adjoining property owners who all appear to be in favor of the proposal. Mr. Benken stated that his next door neighbors that would be most affected by the proposed addition were out of town and were not able to provide their opinion on the case prior to the meeting. A letter indicating their support was distributed to the Members at the meeting.

There being no further questions or comments before the board, Mr. Jahnigen moved to approve the request for a variance as submitted. Ms. Eismeier seconded the motion. By roll call vote, 3-0, all voted yes, the motion carried.

1235 Springfield Pike, Case #3-16, Front Yard Setback, Side Yard Setback, Sign Variance

Mr. Vanderman provided the background for this case. An application was filed by Mr. Christopher Finney who is the owner of the property. Mr. Finney is seeking several variances to the Code for his anticipated project. The first variance requested is to the side yard setback requirement for a front porch. Mr. Finney is proposing to reconstruct the formerly removed porch roof and supporting columns on the remaining front porch slab and foundation. The construction will be located approximately 6'3" from the side lot line therefore failing to meet the minimum 7' setback mandated by Section 1155.04 (b) of the Code. The second variance being sought pertains to the construction of a second story addition above an existing one-story element on the rear of the home. The plans indicate that the construction will project upward in line with the existing first floor wall which is set back from the side property line 5'11". Section 1155.04 (b) mandates a minimum second story setback of 12'. The application also proposes the construction of a two-story accessory building (garage) to the rear of the home. The proposed location of the structure places the exterior wall of the building 4'10" from the side property line. Section 1183.06 (b) of the Code mandates a minimum side yard setback of 15' for two-story accessory buildings. The final variance being sought is for the temporary sign advertising the property for sale. As erected, it exceeds the maximum per side display area of 6 square feet permitted by Section 1331.04 (h) (1) A. (2) of the Code. The sign is approximately 16 square feet per side.

Mr. Jahnigen recused himself from this case due to professional conflicts of interest.

Mr. Finney thanked Ms. Statt Blake and Mr. Vanderman for helping him work through the application process. He is very excited to get started on this construction. He recently finished a

similar project in Hyde Park where the home sold in three days, adding to the tax base and bettering the community. Mr. Finney stated that the subject property is approximately 2,100 square feet on two floors and is possibly the oldest remaining free-standing home in the Wyoming community, save for log cabins that have been incorporated into other structures. The home was built in approximately 1860.

The home has a grand interior with approximately 11' ceilings on the first floor, and 9' ceilings on the second floor. It has five fireplace mantles presently in place including two carved marble fireplaces on the first floor. It has grand pocket doors between the living room and dining room. The floors are made of extinct wood and the home has a widow's walk which will be restored as well.

The property is residentially zoned centrally located among several businesses such as an auto repair shop, insurance agency, group home, medical offices, CPA office, and a restaurant, to name a few. The home will be renovated as a residence and sold as such. Mr. Finney stated that he believes that one of the reasons the property has sat undeveloped and unused for 8+ years is the difficulty of making either a commercial or residential use work at this location.

Mr. Finney stated that his sales company erected a commercially designed for sale or lease sign in the front yard in an attempt to determine if there would be any interest from a commercial standpoint. If someone would have expressed interest in the property as a commercial interest, he would have requested a change in zoning classification and proceeded with renovations. However, no interest was received and as such, the decision was made to move forward with a residentially based plan. Mr. Finney stated that he believes that the size of sign that the City allows in its Code is impairing the property from being properly marketed.

Mr. Finney stated that he is requesting that his application be modified to remove the proposed second story addition. One of the adjoining property owners expressed opposition to the addition and Mr. Finney stated he is not interested in getting into a disagreement with the neighbor. He felt that the neighbor was being short sighted in his opinion however this is not a battle he is wishing to be in. One of the bedrooms in the home will be made into a walk-in closet and bath and this should provide for adequate living space.

Mr. Finney stated that although a variance is not needed for the widows walk, a railing will be installed around it. The widows walk was an original feature to the home and he plans to restore it. However, there will be no access from inside the home into the widows walk. What one will see from Springfield Pike will be a grand front porch, the restored widows walk, and a fresh coat of paint; just these few changes alone will be noticed around June or July.

Mr. Finney commented that, with respect to the front porch, he is simply asking for a side yard variance solely for the purpose of restoring the front porch to the condition that existed when the house was built. Without this porch, the home will remain looking like the burned-out tenement

that it presently is. Mr. Finney stated that, with all due respect, the City's code does not make any sense if he cannot build back the porch that was there when the home was initially constructed; he believes the variance should be unnecessary.

Another unique situation of this property is the narrowness of the lot in that it is 50'x200'. He also owns an additional 50'x200' lot to the rear of the of the subject property as well. The width of the property hinders the construction of the detached garage, for example, to be situated on the property within the required setbacks of 15' from the side property line. As such, the proposed detached garage is 4'10" from the side property line.

Mr. Finney suggested that at some time in the past, there was a two bay horse shed or carriage house that sat on the property line without any setback and was demolished. One would access this building by traveling straight down the driveway. However given the setbacks required of the current Code, this makes a new detached garage inaccessible given the narrowness of the lot. The proposed two-story garage will provide needed covered parking spaces as well as necessary storage and recreation space for the occupant. The project, as a whole, will take the home from having a handicap with no storage areas and limited recreational space, to a desirable modern structure that a family in the twenty-first century can enjoy. The 50' wide lot with the restrictions of the Zoning Code simply does not allow the type of improvements needed for this modern utilization. Mr. Finney further explained that he would like for the Board to grant a variance for a two-story detached garage and then allow for the property owner to design and build the building that they desire. The design that the architect created is grand, rich, and inviting on the lot. Mr. Finney stated that he does not want to fight any battles with any of the neighbors. He would simply like the Board to approve what they will approve in terms of a building that will provide for cars and storage and he will relay to the buyer what they can have.

As for the proposed sign variance request, Mr. Finney explained that being in the middle of a commercial zone and on a fast-moving commercial street, the 6 square foot limitation on the face of a for sale sign is unreasonably small. He believes that a 12 square foot limitation on commercial signage is still unworkable in the location and too small to see. Smaller signs are a traffic hazard as they cannot be read from passing cars. Therefore, he is requesting a variance for a 16 square foot sign face.

Mr. Finney stated that he successfully argued a case before the US Supreme Court regarding a 4x4 yard sign. Mr. Finney stated that, in his opinion, the City's sign code is unreasonable and impairs the visibility of passers-by trying to read a small yard sign. He stated that he erected the for sale sign on the property prematurely as he attempted to explore whether anyone was interested in purchasing the property if it were commercially zoned. At the time he erected the large for-sale sign, he was not aware that it was in violation of the Code. It took some time for him to be able to remove the sign. As the posts are deeply planted into the soil, he did get the sign face removed as requested by the Community Development Department. He directed the Members to view the pictures in exhibit A-2 and A-3 of his variance application. He believes that the sign he initially

erected on the property is not too large and is not intrusive; the City's 2'x3' size restriction is not healthy, not reasonable, and it is not fair to the owner trying to sell the property.

Mr. Kearns asked for clarification that an adjoining property owner had objections to the proposed second story addition. Mr. Finney stated that someone expressed concern about the addition which is the same person that is in disagreement about the detached garage. Mr. Vanderman commented that he received an email from the Jensen's who are adjoining property owners who expressed their objections to the two-story addition and the accessory structure. Mr. Finney stated that he wants to be a good neighbor and make a nice development for the City and indicated that he will abide by the decision of the Board.

Mr. Kearns asked and Mr. Vanderman replied that the Jensen's own the vacant parcel to the north of 1235 Springfield Pike. The subject property consists of a 50x200 parcel on which the home sits and an adjacent 50x200 parcel to the rear (west). Mr. Vanderman had suggested that Mr. Finney contact Mr. Jensen and talk about the scope of the project however Mr. Finney indicated that he did not have an opportunity to do so prior to the hearing.

Ms. Eismeier asked for clarification with regard to the width of the front porch and in particular what is determining factor as to the proposed measurements. Mr. Finney stated that he would simply like to build back what was once already there. The pillars from the old porch are still in place and will be used again for the new porch. Mr. Finney expressed concern in that in order to maintain the historical integrity and design of this home that it does not seem rational to need to ask someone permission for a 1.5' variance.

Ms. Eismeier rephrased her question and asked if there is something that is predetermining what is being proposed in terms of the size of the front porch. Mr. Finney stated that the existing concrete porch appears to be original to the home and that he is proposing to rebuild it to the original dimensions. There are three stone or block pillars that held the posts for the old porch and they will remain as well. Mr. Finney explained that when he saw pictures of the old porch, he knew that was what he wanted to do. Additionally, there will be no railings installed on the new porch roof although there were railings on the original porch roof. Mr. Finney noted that there are markings on the brick where the porch used to be and he does not want those markings to be exposed. Ms. Eismeier noted that there are no railings on the porch shown on the drawings. Mr. Finney noted that railings were not drawn but they will be installed on the porch. The railing around the widows walk will match the railing on the front porch.

Ms. Eismeier asked Mr. Finney to comment on whether the 50x200 parcel behind the home at 1235 Springfield Pike will remain a separate parcel or will he consolidate them into one. Mr. Finney commented that the vacant parcel is rather hilly and narrow and may or may not be able to be developed but he would ultimately like to develop a home on the lot and sell it.

Ms. Eismeier asked Mr. Finney if he had explored other options for the location of the accessory structure that met the Zoning Code requirements. Mr. Finney commented that based on the current setback requirements and the width of the lot, no two-story accessory structure can be constructed within the Code requirements. Mr. Vanderman commented that if the accessory structure were one-story it would require a 5' side yard setback and noted that several options were explored. Mr. Finney added that he is aware that the second story of the accessory structure cannot contain a kitchen; he will be installing a bathroom and it will be considered recreation space rather than living space.

Ms. Eismeier commented that the proposed for sale signage is commercial in nature however the proposed renovations to the home are residential in nature. Mr. Finney stated that he has an adversarial view about signage in the Wyoming community and that he has litigated sign code cases all over the United States. The City believes that it is doing something good for the community and that it makes everyone feel good. However he believes that the City is wrong and is doing no one any favors. The City is making it more difficult for buyers and sellers. It does not make any sense to him and he is not trying to upset the Board with his comments. Mr. Finney stated that he does not believe that you can get any information about a property from a 2'x3' for sale sign.

Mr. Kearns stated that he believes Mr. Finney is wrong in that when the property was initially listed for sale by another realtor he got all the information he needed to know from the sign that was installed. He called the number on the sign to talk to the realtor and the previous owner. Mr. Finney stated that he respects Mr. Kearns' opinion.

Ms. Eismeier reiterated her concerns that a commercial for sale sign is being used on a residential property and she asked Mr. Finney what his target market is. Mr. Finney stated that he is trying to sell a residential home in what appears to be a commercial district. It is challenging to pull in and out of the driveway from Springfield Pike; however the home will be renovated as a residence and sold as a residence. It may be a difficult property to sell as a residence, in Mr. Finney's opinion.

Mr. Braun asked Mr. Vanderman if the current Master Plan makes any mention of this property or the future of this area. Mr. Vanderman stated that the existing Master Plan does not speak specifically to 1235 Springfield Pike or to the adjacent property to the north but does refer to the general area as the "North Pike" zone of potential change. He further indicated that there is a committee that is currently being formed to guide the development of the next 10 year plan.

Mr. Braun commented that he feels that Mr. Finney is playing the matter both ways in terms of commercial or residential uses. Mr. Finney stated that, when he bought the property, it had not been properly marketed or exposed to the marketplace and he wanted to see if there was any interest if it were marketed as a commercial property. Once the renovations begin, even without an offer, it will be a residential property. He believes that once the front porch is constructed and people see how nice it is there will be interest from a residential buyer. That is not to say that in

the future, that the property could not be used for a law office or light commercial use and if so, he would ask for a change of use to make that happen. However, the goal today is to market it as residential.

Mr. Braun commented that, in his opinion, Mr. Finney may have a challenge selling it as a residential property. Mr. Finney stated that he is keenly aware of the struggles that the property presents.

Mr. Braun asked if Mr. Finney had spoken to members of the Wyoming Historical Society about the history of the property. Mr. Finney stated that his architect contacted them in search of old photos of the property. Mr. Braun commented on the for-sale sign and stated that, in his opinion, he believes the sign should be facing the north-south direction instead of the way it was erected initially.

Mr. Braun commented that Mr. Finney is proposing to erect a 16 square foot sign, or 4'x4', and to him, that seems like a reasonable request as he studied the sizes of the various signs in the area with Santo's Auto Service at 24 square feet, the doctor's office to the south at 17.3 square feet, Ted Marty's office across the street at 18 square feet, and Sheldon Reder CPAs across the street at 21 square feet. This is an approximate average of 20.2 square feet which is larger than the 16 square feet being requested by the applicant. Mr. Braun stated that he is not generally in favor of large for sale signs; however this is a residence in a primarily mixed commercial use area. The request for a 16 square foot sign seems reasonable. However he would prefer that the sign be removed after a certain period of time if the house does not sell and suggested that perhaps a 2 year time limit might be appropriate. Mr. Finney stated that if the house is not sold in one year he will take the sign down. Mr. Braun commented that he may have less concerns if the Historical Society and/or the Historic Preservation Commission were afforded an opportunity to look at the proposal. Mr. Finney asked for clarification in that if Mr. Braun was referring to the front porch design. Mr. Braun further explained that he had concerns with the front porch, the proposed style of windows, and the widows walk.

Mr. Kearns stated that he is fairly certain that the widows walk still exists. Mr. Finney stated that from the inside of the house there is a trap door in the ceiling that serves the widows walk. He added that he does not believe that there is any reason to have a 16' flat roof with a mansard around it, if there were no access to that part of the roof. There are no old photos available of the house showing the widows walk, however the remodeling of the widows walk does not require a variance. Mr. Finney stated that it is his desire to reconstruct the front porch true to the original design of the home. A former owner replaced some, but not all, of the windows with ones that are not compatible with the existing structure. Mr. Finney stated that he cannot afford to replace all of the windows however approximately 2-3 of them will be replaced with wood windows to be more visually appealing.

Mr. Braun asked Mr. Vanderman to clarify what would happen if the Board were to grant a variance for the detached garage and the house does not sell. Mr. Vanderman explained that unless the Board provides a sunset clause in its motion the approval of a detached garage will remain. If a future homeowner were to request a permit for a detached garage as proposed, the garage that the Board approves this evening or something that is substantially compliant with the Code, could be erected.

Ms. Eismeier inquired that if the detached garage is approved if it was Mr. Finney's intention to construct it before or after the house is sold. Mr. Finney explained that the intention is to renovate the house and make money on it by selling or renting it out; the objective is a financial gain. If the house is sold before the garage is built, he would prefer that the new owner decide the style of the garage. If the house is not sold by the time the garage is built it will be built in accordance with the plans that have been submitted. He would prefer the garage be what the new owners want it to be. Mr. Finney stated that the home may sell right away however; he cannot envision a high-end Wyoming buyer buying this house without a garage. Ms. Eismeier stated that it would be her desire that if a detached garage, other than what has been submitted is built, that the Board review the new set of plans if a variance is needed. Mr. Finney stated that he will do that. Mr. Kearns stated that he is comfortable with that direction as well. Mr. Finney stated that he would like to have the improvements completed by July or August.

Mr. Braun stated that he is in favor of delaying a vote on a detached garage until someone buys the home and has a known design.

Mr. Vanderman commented that when the Board is ready to make a motion on the variance requests, he would suggest that each individual variance be approved individually.

There being no further questions or comments from the Board or the Applicant, Mr. Kearns moved to approve the request for variance to the side yard setback for the construction of a front porch. The construction will be located approximately 6'3" from the side lot line. Ms. Eismeier seconded the motion. By roll call vote, 3-0, with all voting yes, the motion carried.

The request for variance pertaining to the construction of a second story addition was withdrawn by the applicant. The addition will not be constructed at this time.

Ms. Eismeier moved to allow the applicant to table the request for variance for the construction of a two-story accessory building (garage) to allow for a potential homebuyer to choose a design for the garage. Mr. Kearns seconded the motion. By roll call vote, 3-0, with all voting yes, the motion carried.

Mr. Kearns moved to deny the request for variance to erect a temporary, 16 square foot sign advertising the property for sale. Ms. Eismeier seconded the motion. By roll call vote, 2-1, with Mr. Braun voting no, the motion to deny the request for variance carried.

Miscellaneous

Mr. Vanderman distributed the revised Board and Commission Member handbook and suggested that the Members read the packet and sign the acknowledgement form which will be forwarded to the City Manager.

Mr. Vanderman noted that the Board will meet on May 10, 2016 to hear and decide one case.

Adjourn

There being no further business before the Board, Ms. Eismeier moved to adjourn the meeting. Mr. Jahnigen seconded the meeting, by roll call vote 4-0; all voted yes, the motion carried. The meeting adjourned at 7:20 p.m.

Respectfully submitted,

Debby Martin, Executive Assistant

John Braun, Vice-Chair