

HARRISONBURG BOARD OF ZONING APPEALS

The Harrisonburg Board of Zoning Appeals met in regular session in the City Council Chambers on Monday, October 7, 2019, in order to consider the following request which was duly posted. Members present were Matthew Phillippi, Glen Stoltzfus, Thomas Jenkins, Dany Fleming, and Gil Colman. Also present were Rachel Drescher, Zoning Administrator, Frank Hopkins, Zoning Inspector, and Wesley Russ, Assistant City Attorney.

Mr. Phillippi called the meeting to order at 4:04 PM. The first item of business was the variance request for 990 Summit Avenue from property owners Michael and Elizabeth Goertzen.

Mr. Hopkins read the following request:

The property at 990 Summit Avenue is a single-family detached dwelling located on a hill which slopes from the front property line to the rear property line. The overall drop from the front of the property to the rear is +/- 30 feet with a slope of +/- 21%. The applicant would like to create an addition on the north side of the house that includes a roof over the existing driveway and retaining wall. The proposed addition would not meet the side yard setback requirements for principal structures because this area of the driveway is, at the closest, 8.1 feet from the side property line on the north side of the property. Principal structures must be located a minimum of 10 feet from side property lines. The addition also conflicts with the required 30-foot front setback. In order to accommodate the desired addition, the applicant is seeking a variance of 1.9 feet from the required 10-foot setback of the side property line on the north side of the property and a variance of 7 feet from the required 30-foot front setback.

Chairman Phillippi asked if there any questions from the Board to staff regarding this request.

Mr. Colman: Do we know what the average setback is for the neighboring houses? Are there any that have setbacks less than this house?

Mr. Hopkins: We did some measurements, but we do not have surveys of the other properties. The measurements we found were slightly over 30 feet; however, without knowing the location of the property, they are probably similar to this property. They might be slightly under, but without those surveys, I do not know.

Mr. Jenkins: Looking at the photos, there is the brick wall, and it looks like there is another structure behind the brick wall. It might be a shed. Is that considered part of the main structure?

Mr. Hopkins: In the area where you can see the proposed addition is where that shed is. As it stands today, it is a bit inset from this wall, but the addition would make it uniform with the wall. The addition is intended to keep a straight façade with this wall. As it currently sits, it is a bit inset from that wall. It is probably in accordance with our regulations. It may just be a shed which would only require a five-foot setback and would not be part of the principal structure. The addition proposes that it would become a mudroom and therefore a part of the principal structure.

Mr. Jenkins: That brick wall is a support structure for the driveway.

Mr. Hopkins: As I understand it, yes.

Mr. Fleming: On the survey it says "property addition", is that the shed?

Mr. Hopkins: The proposed addition includes the area where the shed currently sits. I believe that they are planning to have that mudroom on what would be the second level from that shed. It would be on the roof of where that shed is now. It would be part of the principal structure.

Chairman Phillippi asked if there were any more questions from the Board to the staff. Hearing none, he opened the public hearing portion of the meeting at 4:09 PM. Chairman Phillippi informed those present that the BZA is a function of the Circuit Court. At that time, he swore in anyone wishing to speak regarding the request.

Mr. Sellers: I am Clint Sellers, attorney for the property owners, Michael and Elizabeth Goertzen. The Goertzens could not be here today because they were already scheduled to be out of town. Thank you for visiting the site and allowing us this opportunity to present this proposal. The building was built in 1969. The BZA and staff mentioned some measurements along the same street. It is my understanding and the measurements on the survey, submitted by the owners, do indicate that the main property itself is inside the 30-foot setback. We show the 28.1 feet already. At the time, requirements were not strictly observed.

We believe that the proposal is not out of character with the neighborhood. The shed itself is not part of the principal structure. The idea is to integrate these, including the roof, into the principal structure, as much as possible. In so doing make it look as cohesive as they can. That was the intent behind seeking this variance. In their opinion, there would be no negative impact on the character of the neighborhood or the neighbors. There would be a positive esthetic impact given the unique structure of the driveway with that existing rear wall. The posts for that roof would sit inside that wall. There will not be anything outside of the wall on the front, except for the roof overhang in both the front and side setbacks. The intention is to make the shed into an integrated mudroom that is part of the principal structure and goes back off of that roof.

There was a question earlier, asking if it is the intention to bring the mudroom in line with the roof, if this variance were to be granted. Presently, that is the intention because it would make for a more attractive structure along the edge, rather than have multiple lines. They want the structure to feel like one, not multiple structures together. They want to keep an eye toward the aesthetic and the character of the neighborhood.

The client's letter, under number one, shows one of the proposed drawings of the front elevation. They want that to match the face of the existing house, if possible. The intent is to match the siding style that is currently on the house, T1-11, with the base of this roof, so that it looks like it is part of the house.

It is not only something that is possible to do, but it is appropriate to do given the intent of the statutes and how the BZA evaluates these types of cases. Given the slope of the lot, it would not be practical or economically possible to develop in a similar fashion without this variance. It would involve building on the side and back on the downhill side in a way that would not work. The parking spaces are already there. This hardship is unique to this lot. It is not something that the owners knew about when they purchased the property in 2014. They did not buy it with the intent of changing the structure. This is something that came about when they were looking at ways to improve the existing property. Therefore, this remedy is appropriate and could not be obtained through another process. That is why they brought this request for the variance.

Mr. Stoltzfus: Is this the drawing that we have that we were looking at out on the site? Is that the final draft of how it will be built?

Mr. Sellers: I understand that, yes, what you are indicating there is the drawing next to the number one and Mr. Goertzen's letter. Yes, they have hired architects to prepare this. Subject to this approval and the construction permit, that is their intent.

Mr. Colman: What is the typical width of a garage or garage door?

Mr. Stoltzfus: A typical width for a two-car garage would be a sixteen-foot door.

Mr. Colman: If they were to put a garage there, where they need it to be, could it be 19.7 wide? If we take ten feet off the property line, it is 19.7.

Mr. Phillippi: They are asking for a variance of 1.9 feet, so you would add an additional 1.9 feet to total the ten-foot setback. That would allow 27.8 feet.

Mr. Colman: 29 feet is to the edge of the property. If you take ten for setback, they have 19.7 feet. A garage would fit there within the ten-foot setback.

Mr. Fleming: I am assuming that the reason is the existing wall.

Mr. Colman: My point is whether you can contain that structure. The overhang can go an extra two feet, which means you can have a column there, within that retaining wall and still have the entire area covered. You would have to work around the column, but if it was a garage you would have that element to deal with anyway.

Mr. Fleming: If it was 19 feet, that would be within the setback.

Mr. Colman: It seems to be more than enough.

Mr. Sellers: So that I understand and can answer, the width of the driveway...

Mr. Colman: The width of the driveway is 21.6 feet.

Mr. Stoltzfus: That goes to the outside of the wall.

Mr. Sellers: That is the outside of the wall on both sides of the driveway.

Mr. Colman: There is approximately a foot lost on each side.

Mr. Fleming: As it stands now, the depth of drive does not look like it would accommodate the cars. If they are backed up against the back wall, they stick out past the 30-foot mark.

Mr. Colman: I am not as concerned with the front as I am with the side setback.

Mr. Stoltzfus: With the column on the inside of the wall on both sides, and the brick is a minimum of eight to ten inches, we are looking at less than 19 feet. Twenty feet is the minimum that you can have for a garage, so that you can open doors inside.

- Mr. Colman: You would have 19 feet inside the walls. You were saying that the doors can be 16-feet wide for a double garage.
- Mr. Stoltzfus: A garage door can be 16 feet, but if that is the width of the garage inside, you would not be able to the doors.
- Mr. Colman: Would 19 feet be similar to a typical garage? Right now, they are able to open the doors. That is not changing, except at the entrance where they would have a column that is blocking about a foot or foot and a half. It would not block the doors if it is enclosed as a garage. The front will need that variance. I am not sure that it is need it on the side. You will lose a foot, or whatever the width of the column will be. It could be pushed in further, eliminating the need for the setback.
- Mr. Sellers: The addition goes back. There is a deck on the back. The addition is squared over the shed that is below.
- Mr. Fleming: Do we know if the shed is within the setbacks?
- Mr. Colman: The shed can be five feet from the property line, but, if you have an addition, that changes. They would have to hold to the ten-foot setback.
- Mr. Sellers: The proposed addition would result in a three tenths of one-foot incursion into the ten-foot setback.
- Mr. Phillippi: The corners are 9.3 and 9.7 feet from the setback. The variance that is being requested would cover that, as well.
- Mr. Colman: I question whether it is a hardship. It seems like they can work within what they have.
- Mr. Sellers: The scale of the property is very 1960s. Though it is possible to park two vehicles there, it is tight. We did not see how tight it was today because there was only one vehicle parked there. While, realistically, you would never open two doors at the same time within a garage or carport space, I do worry that having the posts inset from the wall would result a space that would be difficult to use. It might lead to a situation where you could not easily park a car on the left side. Because it is a carport style addition, the real issue is the roof. It does not have a wall to the front that is enclosed with doors or things that might be in other typical garages, so we can get by with less space. The Goertzen's request that we maximize the potential that is here within the limitations that exist, principally the walls.
- Mr. Colman: You can still encroach with the roof two feet into the setback. The roof would not be limited. It is where the perceived walls would be.
- Mr. Sellers: It would affect them when they park the car on the left.
- Mr. Phillippi closed the public portion of the hearing and opened the matter for discussion.
- Mr. Colman: My concern is that the post could be offset, as needed, for the wall to be further in. The reality is that the retaining wall is a de facto wall for the garage. If anything is going to be built, it

will be built there. If we approve the variance, we would have to consider the wall as a future wall. It would not make sense to have another wall a foot or two feet inside of that wall.

Mr. Stoltzfus: I am to understand that rather than giving them 8.1 feet, we would want to go for less than that? Is that what you are saying?

Mr. Colman: I do not know where the 8.1 is, but it should be to the face of the wall because that is where the wall will go up. If it ever goes up, it will be there.

Mr. Fleming: It would be a non-conforming wall as part of the structure.

Mr. Colman: My concern is that right now it is a carport. If they were to build up, then it would be in violation unless the wall is inside of the current wall. I think we need to consider that wall as a part of the structure, in which case it might be seven feet, not eight.

Mr. Stoltzfus: It would be 7.1 feet. That would be a more realistic variance to go for, if one were to be given.

Mr. Jenkins: Can we see the photo of that wall again, please? If someone were to build a wall of that nature today, how would that be perceived? Would it have to be ten feet from the edge of the property?

Mr. Colman: It is a retaining wall. It can be on the property line.

Mr. Phillippi: This comes into play because they want to put a roof over it. Once they put the roof over it is the same as enclosed space.

Mr. Stoltzfus: At the point of the bearing of that roof.

Mr. Colman: And it will be attached to the principal structure.

Mr. Phillippi: If it is attached to the principal structure, then it follows those guidelines. If it were an accessory structure, then the setback would be five feet.

Mr. Stoltzfus: With that being a brick wall, I am not sure that it can be used as a bearing wall for the rest of the structure. It would not be a bearing wall, even if that was enclosed, because of the way the roof is designed. They do not need it to be a bearing wall. They can build the wall there, but it is not holding any roof load because the roof load is going to be on the column and the beam that would go across.

Mr. Phillippi: I will remind the BZA that post-Cochran case law does not give us, as a quasi-judicial entity, the authority to grant the variance if the property can be utilized. This lot has a house on it that is being lived in, and the property can be utilized without the variance; therefore, it does not meet the criteria for a variance set out in case law.

Mr. Fleming: It does not pass the first test.

Mr. Colman: They could push the garage or the carport farther back. It would require some structural changes and it would be more expensive, but cost is not something that we take into

consideration. Part of the issues we are talking about here are convenience, not necessarily hardship.

Mr. Jenkins: If the applicant were to put up a portable roof carport, would they need a variance?

Mr. Phillippi: If it was detached, it would be an accessory structure and bound by the five-foot setback.

Ms. Drescher: We require accessory structures to also be in the rear yard, so we would take that half-way point through the house and back, which is determined to be the rear. Where they are proposing, even if it was detached, would not be permitted in that location.

Mr. Fleming: Is the current accessory structure non-conforming?

Mr. Colman: It is behind the halfway mark.

Mr. Hopkins: That is where you would likely be parking, if there was a detached carport. There is not an existing retaining wall that would allow the detached carport. It would have to be built, in the event that someone would try that scenario.

Mr. Fleming: Would this be built if one of the variances was not granted? If the side variance were not granted, but the front variance was granted, or vice versa?

Mr. Colman: If the front variance was granted, they could still build it.

Mr. Hopkins: I think the intent was to keep everything straight with that wall.

Mr. Jenkins: Has there been any feedback from the neighbors?

Mr. Hopkins: There was not. There was an inquiry, but they had no problem with the request.

Mr. Stoltzfus: I move to approve the variance request, as presented.

Mr. Fleming: I will second the motion.

Mr. Fleming: The property is currently used, as is. It is a hard reading of this. The guidance we have is the strict application of "unreasonably restrict" the utilization of the property. In this case it is being used as it is. A carport with the proposed dimensions would be nice, but it is not a necessity for the house.

Mr. Stoltzfus: If it would change the character of the neighborhood, I would look at it differently. With the wall already there, they are not building over to the neighbor's space, at all.

Mr. Fleming: I think if this were in a different part of the City, such as the central part of the City, we might view it differently. It does not meet the standard that was in Old Town or Sunset Heights.

Mr. Phillippi: I am not unsympathetic to this, as someone who has what used to be a two-car garage and is now a two-car driveway. I would not mind putting a roof over it myself. The guidance from Cochran where if the property is being used as its intended purpose, in this case residential, then there is no unreasonable hardship, with the strict enforcement of the zoning ordinance.

Mr. Jenkins: Would that brick wall be extended towards Summit Avenue?

Mr. Phillippi: The brick wall would stay as is.

Mr. Jenkins: I find that brick wall to be a structure already. I would not want to see something outside that brick wall, but I think that building within that brick wall space is reasonable.

WHEREAS: Mr. Phillippi called for a roll call vote: Mr. Colman: No; Mr. Fleming: No; Mr. Stoltzfus: Aye; Mr. Jenkins: No; Mr. Phillippi: No; and,

BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 4-1 to deny the variance request.

Mr. Jenkins: Can we make another motion to grant one variance and deny the other?

Mr. Phillippi: Another motion could be made.

Mr. Jenkins: I move to approve the request for a variance of 1.9 of the required 10-foot side setback and deny the 7-foot variance for the front setback.

Mr. Fleming: I second.

Mr. Colman: Could you elaborate on the motion?

Mr. Jenkins: Having the building come farther to the front, even though we are not talking about a wall at this point, but if they ever installed a garage door, that would change the feel of the property. I do not think that having that brick wall go up along the side changes the character of the neighborhood. Maintaining the front setback is more of an issue.

Mr. Stoltzfus: That would allow them to build from where the front of the house is now and go back.

Ms. Drescher: It would have to be 30 feet from the from the property line. The front of the house is 28 feet back.

Mr. Colman: Right now, the house is 28.1 feet back. They would have to start two feet back.

Mr. Jenkins: We could not make a motion to do it off the existing face?

Mr. Colman: We could amend the motion to start at the current building face of 28.1 feet. Otherwise it would look strange if it is set back two feet.

Mr. Jenkins: That would be my intent.

Mr. Phillippi: That would be a 1.9-foot variance from the front setback.

Mr. Fleming: That would leave the cars hanging out.

Mr. Jenkins: They would be still be able to build towards the back. It may be a higher cost, but they could.

Mr. Phillippi: The issue still remains about the hardship question. Based on the guidance, even if we granted the 1.9 variance from the front and side setbacks, we still have the hardship question that we have to consider.

Mr. Colman: If they do move back, then they will need the 10-foot side setback as the property widens towards the back.

Mr. Stoltzfus: They would have to start their garage at the back of the house. Everything would have to go behind the existing wall.

Mr. Colman: If we are saying that we are giving them a 1.9-foot variance, then they would not have to.

Mr. Stoltzfus: They could start wherever that 1.9 starts. If we are strictly going by the Cochran rule, we cannot give them the 1.9 feet other.

Mr. Fleming: We are doing our own design here. It would have to be a different proposal. What is the time-frame that they have?

Mr. Hopkins: One year.

Mr. Fleming: They would have one year to do a different proposal.

Mr. Phillippi: If we deny it here, if they come up with something else, they could reapply.

Mr. Colman: Again, they need to prove hardship. I agree that we are back at point number one, there is no hardship demonstrated or proven.

WHEREAS: Mr. Phillippi called for a roll call vote: Mr. Stoltzfus: No; Mr. Jenkins: Aye; Mr. Fleming: No; Mr. Colman: No; Mr. Phillippi: No; and,

BE IT, THEREFORE, RESOLVED: The Board voiced a decision of 4-1 to deny the variance request.

OLD BUSINESS:

NONE

NEW BUSINESS:

NONE

With no further business, the meeting adjourned at 4:48 PM.

____Chairman

Respectfully submitted,

____Vice-Chairman

Nyrma Soffel

Staff representative
