

BOARD OF ZONING APPEALS

MINUTES OF THE MEETING OF SEPTEMBER 14, 2009

MEMBERS PRESENT: James Belew, Chairperson
Don Judd, Vice Chairperson
Hyun Joong Kim
Sara Henry

MEMBERS ABSENT: Tim Bailey

OTHERS PRESENT: Fred Gebhardt, 403 S. Elm, Pittsburg
Brian Renn, 319 S. Broadway, Pittsburg
Ruth Lemon, 110 E. Carlton, Pittsburg
Todd Kennemer, Assistant Director of Public Works

The Pittsburg Board of Zoning Appeals met on Monday, September 14, 2009, at 5:15 p.m., in the Municipal Courtroom of the Law Enforcement Center, 201 North Pine. Chairperson Don Judd called the meeting to order at 5:15 p.m. with four (4) members present.

The first order of business was the approval of the minutes of the meeting of April 6, 2009. In this regard, Sara Henry moved, seconded by Jim Belew, that the minutes be approved as submitted. Motion carried unanimously.

A PUBLIC HEARING was held, as advertised, to consider the following:

Case No. 09-02 - A request submitted by Fred Gebhardt for a 5 foot variance in side yard setback and a 336 square foot variance in allowable square footage for an accessory structure to allow for the construction of a garage located at 403 S. Elm.

Chairperson Don Judd opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. Mr. Gebhardt stated that he lives in the house at 403 S. Elm. He purchased 405 S. Elm, demolished the old house, and made that property a part of his yard. He now wants to demolish the old garage which is too small [located at the southeast corner of 405] and replace it with a new 2-car garage with room for a work shop. He said the garage itself is a little over 1000 square feet but his wife wants a small covered porch added onto the front of it which brings the square footage to 1236. Mr. Gebhardt then presented pictures of the property and the existing garage.

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Todd Kennemer stated the property is 2 adjoining lots a little larger than 1/3 of an acre in total size and that the existing garage is located approximately 2 to 3 feet from both the side lot line and about 5 feet from the rear lot line. The applicant's site plan shows the new garage to be 20 feet from the rear lot line and 5 feet from the side lot line. There is ample room to construct the replacement garage which measures 30' x 34' (plus porch).

The property is zoned RP-3 Planned Medium Density Residential. This district calls for a 10 foot side yard setback. Although it is zoned multi-family, the predominant land use in the immediate area of this property is single-family residential. Single family districts allow a 5 foot side yard setback. The request for the side yard variance is so the applicant does not have to remove 2 mature trees.

There being no further input from the public, the **PUBLIC HEARING** was closed and the Board members discussed the issues amongst themselves and considered the following findings of fact:

1. Are there conditions which exist in respect to the property or structure being considered which are different from other properties or building in the neighborhood.

The maximum allowable accessory building square footage of 900 square feet applies to all residential parcels. Residential lots of 5,600 square feet (0.13 acres in size) and lots 5 acres in size are equally limited to 900 square feet of accessory buildings. These lots are just larger than 1/3 of an acre. If they were individual lots under separate ownership, each one would be allowed 900 square feet of accessory buildings.

2. Has such conditions or circumstances being created by the action or actions of the owner or applicant.

Yes. Owner wants to build larger than 900 square feet and closer to the line than 10 feet.

3. Are there special conditions or circumstances such that the strict literal interpretation of the provisions of the Zoning Ordinance will constitute unnecessary hardship upon the property owner.

Applying the same 900 square foot limitation on all lots, regardless of their size, is not practical in this case. These are ample sized city lots and we discourage removal of mature trees where possible.

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4. Will the granting of a permit for the variance requested adversely affect the rights of adjacent property owners or residents.

No. Other neighbors on similar lots in the surrounding area have been granted similar variances.

5. Will the granting of the variance requested confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures, or buildings in the same district.

The 900 square foot limitation is obsolete and impractical. Other property owners may apply for the same variance. Plans are for the maximum 900 square foot limitation to be replaced with maximum lot coverage formula in the revised zoning regulations. Granting the side yard setback will have no detrimental effect; a 5 foot setback is no different than single-family district requirements.

6. Will the granting of the variance requested adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

No.

7. The granting of the variance requested be opposed to the general spirit and intent of the Zoning Ordinance.

No.

8. Is the variance being requested the minimum variance that would accomplish this purpose.

Yes.

Based on these factors, Jim Belew moved, seconded by Sara Henry, that the variance be **granted** as requested. Motion carried unanimously.

A **PUBLIC HEARING** was held, as advertised, to consider the following:

Case No. 09-03 - A request submitted by Brian Renn for an 82 foot variance in required driveway width to allow a driveway entrance of 142 feet located at 319 S. Broadway.

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Chairperson Don Judd opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. Brian Renn began his request by stating that the driveway is already in place. He stated that at the site plan review he originally wanted to have an 80 foot driveway, but the Planning and Zoning Commission pointed out that the drive had to be re-designed to come into compliance with City specifications [of 60 foot maximum width]. Mr. Renn then stated that once the building was constructed it was obvious that the 60 foot and 80 foot driveways would not work so he poured the driveway at 142 foot as it is today. Mr. Renn said that Mr. Kennemer told him the driveway was in violation of the City regulations and that he had to remove 82 feet of the drive or he must get a variance approved to allow the drive to remain intact as is.

Todd Kennemer stated that Mr. Renn moved his auto glass business from W. 4th Street to this location. This location is zoned CP-4 Planned Central Business District and is at the far southern edge of the CP-4 zoning district.

In January 2008, the Planning and Zoning Commission reviewed the site plan for this property based on the plans that were submitted. Unanimous approval to build was granted "with the condition the parking and driveway be changed in accordance with regulations".

There being no further input from the public, the **PUBLIC HEARING** was closed and the Board members discussed the issues amongst themselves and considered the following findings of fact:

1. Are there conditions which exist in respect to the property or structure being considered which are different from other properties or building in the neighborhood.

The nature of the business is automobile service oriented and does need room for maneuvering vehicles. The driveway is on a side street and there are other businesses in the area with "extra wide" driveways. The existing "extra wide" driveways in the area are relics from past auto service oriented businesses no longer in existence. They were in place before parked cars backing into traffic became a safety issue.

The depth of the lot does not allow a second driveway from the side street to conform to driveway separation requirements, and the slope and embankment at the rear of the lot does not allow a second driveway to access the alley.

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2. Has such conditions or circumstances being created by the action or actions of the owner or applicant.

Yes.

3. Are there special conditions or circumstances such that the strict literal interpretation of the provisions of the Zoning Ordinance will constitute unnecessary hardship upon the property owner.

The business could use the extra space for maneuvering vehicles, and the driveway is located on a side street so traffic from the glass shop is not backing directly into traffic on a major thoroughfare (like the other businesses on Broadway in the CP-4 zoning district). Any unnecessary hardship will have been "self inflicted".

4. Will the granting of a permit for the variance requested adversely affect the rights of adjacent property owners or residents.

The extra 82 feet does consume approximately 4 parking spaces in the CP-4 district. The subject property was a vacant lot, and there appears to be approximately 3 to 4 old abandoned gas station sites in the immediate area. The gas station sites, including the property directly south of the subject property, have existing "extra wide" driveways, so there was not a lot of parking activity on the side street where the new driveway is located.

5. Will the granting of the variance requested confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures, or buildings in the same district.

All commercial driveways are allowed the same maximum width. Anyone can apply for a variance if they want a wider driveway. Applying for a variance does not always mean the applicant will be granted one. Each case is handled on an individual basis.

6. Will the granting of the variance requested adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.

No, provided the far west edge of the driveway entrance must be at least 25 feet from the extended curb line of Broadway. Mr. Kennemer said he measured the site and confirmed there is 25 feet between the extended curb line of Broadway and the western edge of the drive.

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7. The granting of the variance requested be opposed to the general spirit and intent of the Zoning Ordinance.

No.

8. Is the variance being requested the minimum variance that would accomplish this purpose.

Yes.

Based on these factors, Jim Belew moved, seconded by Sara Henry, that the variance be **granted**. Motion carried unanimously.

There will be no October 5, 2009 meeting, as no applications have been filed. The next regularly scheduled meeting is November 2, 2009.

There being no further business to discuss, Sara Henry moved, seconded by Jim Belew that the meeting adjourn. Motion carried unanimously and the meeting adjourned at 6:00 p.m.

Respectfully submitted,



Todd Kennemer
Assistant Director of Public Works