

BOARD OF ZONING APPEALS

MINUTES OF THE MEETING OF MAY 6, 2013

MEMBERS PRESENT: Don Judd, Chairperson
Joseph Caskey
Sara Henry
Timothy Kundiger

MEMBERS ABSENT: Hyun Joong Kim

OTHERS PRESENT: Bruce Dallman, 602 Thomas
ArVilla Hubbard, 2705 Knollview
Sherry Roberts, 608 Thomas
Randy Roberts, 608 Thomas
Cliff Morris, 2611 Knollview
Tim Rhodes, 2701 Knollview
Samantha Rhode, 2701 Knollview
Robert Musgrave, 601 Thomas
Susan Drenik, 606 Thomas
Patrick Curran, 603 Thomas
Vernon Morton, 1306 Randall Drive
Bill Beasley, Director of Public Works
Natalie Taylor, Administrative Assistant, Public Works

The Pittsburg Board of Zoning Appeals met on Monday, May 6, 2012, at 5:15 p.m., in the Municipal Court Room of the Law Enforcement Center located at 201 N 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 approval of the minutes of the meeting of April 1, 2013. In this regard, Sara Henry moved, seconded by Joseph McCaskey, that the minutes be approved as submitted. Motion carried unanimously.

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

Case No. 13-07- A request submitted by Vernon Morton to consider a request for a 10 foot variance in front yard setback to permit a 25 foot wide home to be placed 20 feet from the property line along Rose Harris at 722 W Forest.

**BOARD OF ZONING APPEALS
MINUTES OF MAY 6, 2013
PAGE TWO**

Chairperson Don Judd opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. In this regard, Vernon Morton indicated he was present to speak on behalf of this request and provided the following information. Mr. Morton wanted permission to build a home 10 feet closer to the property line than current ordinances allow. Mr. Morton says that it is necessary to obtain the variance to build on the lot otherwise lot is unusable. A fifty foot lot with a thirty foot setback would not be able to fit a twenty five foot home as Mr. Morton plans to build. Mr. Morton adds that the same variance had been granted to him when he built on the North side of the street and he is now requesting the same variance for the South side, this would also allow for the neighborhood to have uniformity in the sense of how the houses sit on the lots.

Sara Henry asked if the trees would remain on the lot.

Mr. Morton noted that trees would be removed from the property as to not obstruct the view of drivers in the intersection.

Don Judd asked if residential parking would be off the road.

Mr. Morton says that after talking to Mr. Beasley it was decided that the city would extend Rose Harris Street to the south to meet the alley way and he (Mr. Morton) would provide the gravel to rake the alley way with.

Sara Henry asked if a garage would also be built on the property.

Mr. Morton responded by stating that no garage would be built.

Sara Henry asked if there were already existing houses on the South side of the street.

Mr. Morton responded by stating there are two houses built but they are bit further south than he is planning to build now.

There being no one present to speak in opposition to the request, Chairperson Don Judd closed the **PUBLIC HEARING** for the request. The Board then considered the following factors:

**BOARD OF ZONING APPEALS
MINUTES OF MAY 6, 2013
PAGE THREE**

- 1. Are there conditions which exist in respect to the property or structure being considered which are different from other properties or buildings in the neighborhood, i.e. small lot size, unusual grade, easements, right-of-ways, etc.?**

No, this is a corner lot located area which is zoned R-1C.

- 2. Has such condition or circumstance being created by action or actions of the property owner or the applicant?**

Yes, the owner wishes to construct a new house and place it in a location on a property that would require a variance for the amount of setback, per the zoning manual.

- 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 represented in the application?**

Yes, the owner will be required to a build a smaller structure on the property which would not go along with the general spirit of the neighborhood.

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

No.

- 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?**

Yes, it will give him permission to go against the Zoning Board Manual and other properties may ask for this type of variance. Note that the property across the street was granted the same variance.

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

No.

**BOARD OF ZONING APPEALS
MINUTES OF MAY 6, 2013
PAGE FOUR**

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

No, however the current Zoning Ordinance requires properties to have a thirty foot setback.

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

Yes, the variance will allow for a house to be built, which is twenty five foot in width, on the lot.

Sara Henry states that she does not believe it would cause any problems to allow a lesser setback. Further discussion decides that a shorter set back would not obstruct the view of traffic or cause any safety concerns.

The Board of Zoning Appeals considered all eight (8) factors involved. Based on these factors, Tim Kundiger moved, seconded by Joseph Caskey, to **approve** this request as submitted. Motion carried unanimously.

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

Case No. 13-08- A request submitted by Robert Musgrave to consider a request for a 300 square foot variance to permit a 2,700 square foot accessory structure to be placed on the property located at 601 Thomas.

Chairperson Don Judd opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. In this regard, Mr. Musgrave indicated that he was present to speak on behalf of his own request and provided the following information. Mr. Musgrave states that is planning to build a garage in is yard and his plans are for the garage to be larger than the house on the property. Mr. Musgrave notes that he plans to match the exterior of the garage to that of the house on the property and he will also have landscaping done around the garage. His plans are for the property to look very nice and blend in well with the neighborhood. Mr. Musgrave says that prior to purchasing the home he inquired about building the large garage on the property and that he was told he do that with no issues. Mr. Musgrave says that between buying his home a year ago and the time he was ready to construct the garage that the ordinance had been changed. Mr. Musgrave also notes that he has already begun the ground work but bringing in a load of dirt and erecting poles on the property. Troy Graham then takes the floor to explain the purpose of the request for the variance.

**BOARD OF ZONING APPEALS
MINUTES OF MAY 6, 2013
PAGE FIVE**

Bill Beasley took the floor to explain that Mr. Musgrave must have been incorrectly informed when he was told he could build a structure on the property larger than his home. An ordinance stating that no accessory structure larger than the main structure on the property will be permitted to be built without receiving a variance.

Don Judd opened the floor to anybody willing to speak against the petition.

Bruce Dallman, 602 Thomas, spoke against the petition. He wanted to address two issues. The first being that he felt the new structure would lower the property value of for the whole neighborhood. Mr. Dallman had a realtor assess the property and the realtor's professional opinion is that the value of immediate properties near the new structure would 'no doubt' be lowered. Mr. Dallman addressed a second issue stating that he felt a large metal building of the size Mr. Musgrave is planning to build would not be appropriate for a residential area.

Tim Kundiger shared his professional real estate opinion on the matter. That is that he doesn't think the structure would detour potential new home buyers from buying in the neighborhood.

Tim Rhodes of 2701 Knollview also spoke against the petition. Mr. Rhodes shared that if the structure at 601 Thomas existing when he purchased his property he would not have purchased the home that he did behind 601 Thomas. Mr. Rhodes main concern was that a large metal building did not fit into the neighborhood.

Sara Henry asks if Mr. Musgrave thinks he can resell one day after building the structure.

Mr. Musgrave states that he plans for the structure to improve the value of his property.

ArVilla Hubbard of 2705 Knollview addressed drainage issues in the neighborhood that she felt would be even worse once the structure was erected in the area. Ms. Hubbard references the Wilson Water Study that shows how many millions of gallons of water flow through the neighborhood during times of rain fall, so much so that the Hildebrandt ditch had to be dug to direct the water in the area. Ms. Hubbard was very concerned that the large structure would displace the water in Mr. Musgrave's yard causing it to run through her yard, as well as other neighbors, ruining their lawns and causing damage to their foundations. Ms. Hubbard states that she objects to the building being erected because no permit has been pulled for the project.

**BOARD OF ZONING APPEALS
MINUTES OF MAY 6, 2013
PAGE SIX**

Sam Hubbard, son of ArVilla Hubbard, raised questions regarding guidelines for notifying neighbors if a permitted construction project is preparing to take place. Troy Graham told him that his beliefs were incorrect and he informed Mr. Hubbard of the truth surrounding the issue.

Cliff Morris, 2611 Knollview, had questions regarding the nature of the structure. Mr. Morris's first question was in regards to Mr. Musgrave's plans for the exterior of the structure. Mr. Musgrave notes that he intends to have the exterior of the structure match that of the home on the property. Mr. Morris also asks what the purpose of the structure is. Mr. Musgrave explains the garage is being built to house his classic car collection. Mr. Morris also raised the point that six months of the year, when the trees are without leaves, his view looking out from his property will be solely Mr. Musgrave's garage.

Donn Judd asks if anyone else is present to speak in opposition of the case. With nobody present to speak against the case Mr. Judd closes the public portion of the hearing and opens discussion amongst board members.

The board identified the property on a map showing an aerial view of the neighborhood. Upon review the board established the path way that the water runs in the event of excessive rain.

Mr. Caskey asked how necessary it is to add the additional 300 square feet. Ms. Henry reminds us that the additional 300 square feet is the only reason Mr. Musgrave even came before the board, if the structure were 2,700 square feet like the house on the property the hearing would not even be necessary. Mr. Musgrave explains that to scale down his plans at this time would be a financial burden being as the engineer would need to redesign the plans and he would need to restart the beginning stages of his construction (dirt work and pole erecting). Mr. Musgrave admits to begging construction prior to receiving a permit for the work being done.

Troy Graham goes through the checklist of questions asked before a decision is made in any case.

- 1. Are there conditions which exist in respect to the property or structure being considered which are different from other properties or buildings in the neighborhood, i.e. small lot size, unusual grade, easements, right-of-ways, etc.?**

No, the property is located at the end of a cul-de-sac of an area that is zoned by R-1B single family residential.

**BOARD OF ZONING APPEALS
MINUTES OF MAY 6, 2013
PAGE SEVEN**

- 2. Has such condition or circumstance being created by action or actions of the property owner or the applicant?**

Yes, the owner wishes to construct a new accessory structure that is larger than the primary structure on the property which would require a variance for the amount of total square 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 represented in the application?**

No, the owner could construct a smaller accessory structure on his property.

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

No.

- 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?**

Yes, other property owners may also make the request for the same variance.

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

No.

- 7. Will the granting of the variance requested be opposed to the general spirit and intent of the Zoning Ordinance?**

Yes, in a residentially zoned area an accessory structure is not supposed to be up to larger than the primary structure on the property. Construction of an accessory structure larger than the residence would make it the primary structure on the lot.

- 8. Is the variance being requested the minimum variance that will accomplish this purpose?**

Yes, the variance will allow for the structure to be 300 square feet larger than the main structure on the property.

**BOARD OF ZONING APPEALS
MINUTES OF MAY 6, 2013
PAGE EIGHT**

Questions were raised during group discussion that made sure the issue of water drainage would be addressed in the building permit for the project. Troy Graham reminds the board that the purpose of the hearing is to approve or disapprove the size of the building, not to address water drainage issues in the neighborhood.

Mr. Beasley acknowledges the fact that a lot of water flows through the neighborhood and that it is true the City dug a ditch along Random Acres to help alleviate the problem. Mr. Beasley said it is true that any structure built without a pervious surface is going to move the water faster and collect it. Before the water saturates you are creating a previous surface. The City does not look at whether the residential structures will be affected by an increase in run-off of water. Mr. Beasley said the City will look to make sure that the building is within the drainage easement and that he is not impairing drainage. There is no mechanism in any City Ordinances that would stop anyone from constructing a home due to drainage issues.

Ms. Henry states that the responsibility of the committee is to either approve or disapprove a variance based on what information has been presented and that's all that they can. They feel sorry for the residents affected by the water problem but it not of a concern of the committee.

The Board considered all eight (8) factors involved. Based on these factors, Ms. Henry moves to approve the variance of 300 square feet to be allowed as a part of Mr. Musgrave structure. Nobody motioned to second the approval.

Mr. Kundiger motioned to deny the 300 square foot variance for Mr. Musgrave based on the amount of opposition presented. Motion to deny was seconded by Mr. Caskey.

The board moved to **deny** the variance to Mr. Musgrave on a 3-1 vote. Don Judd, Joseph Caskey and Tim Kundiger all voted in favor of the denial. Sara Henry voted against. The motion carried.

With no new or old business to discuss Don Judd motioned to adjourn the meeting.

Respectfully submitted,



Troy Graham
Assistant Director, Public Works