

# BOARD OF ZONING APPEALS

## MINUTES OF THE MEETING OF APRIL 7, 2008

**MEMBERS PRESENT:** James Belew, Chairperson  
Don Judd, Vice Chairperson  
Tim Bailey  
Hyun Joong Kim

**OTHERS PRESENT:** Allen Jameson, 105 West 11<sup>th</sup> Street, Pittsburg  
Bob Gilmore, 521 West Martin, Pittsburg  
Susie Steele, address unknown  
Wanda Delmez, 608 West Martin, Pittsburg  
Marsha Wallace, 1019 East 580<sup>th</sup> Avenue, Pittsburg  
Wayne Storm, 602 South Walnut, Pittsburg  
Charles Killingsworth, 520 West Martin, Pittsburg  
Karen Baker, 524 West Martin, Pittsburg  
Ruth Lemon, 110 East Carlton, Pittsburg  
Todd Kennemer, Assistant Director of Public Works

The Pittsburg Board of Zoning Appeals met on Monday, April 7, 2008, at 5:15 p.m., in the City Hall Commission Room. Vice Chairperson James Belew 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 February 4, 2008.** In this regard, Tim Bailey moved, seconded by Don Judd, that the minutes be approved as submitted. Motion carried unanimously.

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

Case No. 08-03 - A request submitted by Kevan Schupbach for a 725 square foot variance in minimum lot size located at 601 West Martin.

Chairperson James Belew opened the **PUBLIC HEARING** by stating the request and then asked the applicant to comment on behalf of said request. In this regard, Allen Jameson indicated he was present on behalf of Mr. Schupbach who could not be present because of work and then provided the following information regarding the request. The house that was previously located on this lot became dilapidated and had to be removed. Mr. Schupbach wants to build another house on the lot for resale. The current lot size regulations provide that the lot is too small to build a home on, so that is the reason for the variance request. Mr. Schupbach intends to construct a 2-story, 3-bedroom, 2-bath home on the lot with a 2-car attached garage. If the variance is not granted, the lot will remain vacant.

**BOARD OF ZONING APPEALS  
MINUTES OF APRIL 7, 2008  
PAGE TWO**

Todd Kennemer stated that when Lake View Addition was platted in 1901, Lot 6 was platted as a 75' x 160' (12,000 sq. ft.) lot. In 1962, the City of Pittsburg adopted zoning regulations and in these regulations, Lot 6 was zoned R-2 Two-Family Residential. The R-2 district allowed single family dwellings and two-family dwellings on lots no smaller than 5,500 square feet in size. In 1978, the owner sold a 10' x 80' strip of Lot 6 to the owner of Lot 7, and split the remainder of Lot 6 into two separate parcels. For purposes of this summary, they shall be called Lot 6A measuring 4,875 square feet in size and Lot 6B measuring 6,325 square feet in size. The subject property is Lot 6A. In 1978, the City was still under the zoning regulations adopted in 1962. These regulations stated the minimum lot size in the R-2 zoning district was 5,500 square feet. Lot 6A did not meet the minimum lot size requirements when it was split in 1978. It has been an illegally created non-conforming lot for 30 years. There was a structure on the subject property. Since the structure was constructed with asbestos siding, it is assumed the structure was existing pre-1978 when the lot was split. It is also assumed there was no work of any kind performed on the structure since 1978, as there are no records of any permits being issued on this property. Due to neglect of previous owners, the structure was declared dilapidated and demolished in 2006.

Mr. Kennemer also stated that when the applicant approached the City he had looked at the map and instructed him to apply for a 725 square foot variance. However, he stated he looked at the map wrong and later found that he had originally thought the property was zoned R-1C when in fact it was zoned R-1B. As a result, a larger variance of 2,125 square feet would need to be granted for the applicant to build on the lot. Mr. Kennemer stated this could not be done at tonight's meeting because the Board could not grant a variance for more than what was requested. Mr. Schupbach would be required to file another application for the 2,125 square foot variance, a notice placed in the newspaper and the property owners notified within 200 feet of the property. The required setbacks for R-1B are: 30 feet front yard, 5 feet side yard and 20 feet rear yard. However, in the older parts of town, the setback was determined by the setbacks of the existing structures. If over 40% of the existing structures set closer to the right-of-way, the setback would be determined accordingly.

There being no one present to speak in favor of the request, those persons wishing to speak in opposition to the request were given the opportunity to comment as follows:

Bob Gilmore, 521 West Martin, stated he owns several pieces of property in the surrounding area. He is opposed to the request indicating that most of the area consisted of 7,000 square foot lots. Also, the requirements for the R-1B zoning district require structures to be a minimum of 1,200 square feet on a 4,800 square foot lot.

**BOARD OF ZONING APPEALS  
MINUTES OF APRIL 7, 2008  
PAGE THREE**

Mr. Gilmore stated he was not opposed to a new house being constructed, it would just be hard to meet the requirements for R-1B zoning and make it fit in with the other houses in the neighborhood.

Wayne Storm, 602 South Walnut, stated he agreed with all the comments made by Mr. Gilmore.

Marsha Wallace stated she owned the property catty-corner from the subject property and also agreed with the comments made by Mr. Gilmore.

Wanda Delmez, 608 West Martin, stated she was located across the street and also agreed with the comments made by Mr. Gilmore.

Susie Steele stated she owned the property across the street at the corner of Chestnut and Martin and also agreed with the comments made by Mr. Gilmore.

Chuck Killingsworth, 520 West Martin, stated he purchased his property about a year ago and has spent the last year fixing it up and felt by allowing a house to be constructed on such a small lot could devalue surrounding properties.

Mr. Kennemer stated a letter was also received from Eugene Hartwell, 527 West Martin, expressing opposition to the request, as the lot was too small and could decrease the value of surrounding properties.

Chairperson James Belew closed the **PUBLIC HEARING** for the request. The Board of Zoning Appeals then considered the following findings of fact:

1. There are conditions which exist in respect to the property or structure being considered which are different from other properties or building in the neighborhood. The original lot from which the subject property was created was platted as a 12,000 square foot lot in 1901. The subject property does not meet the current standards for minimum lot size; current standards were adopted in 1991. The subject property did not meet the standards for minimum lot size when it was created by a lot split in 1978; the applicable standards in 1978 was the Pittsburg Zoning Ordinance (Ord. No. G-0035) adopted in September 1962.

**BOARD OF ZONING APPEALS  
MINUTES OF APRIL 7, 2008  
PAGE FOUR**

2. The conditions or circumstances have not been created by action of the owner or applicant. This is a self-imposed hardship created by the owner of the lot at the time it was split in 1978. The applicant did not create the problem; he is the 4<sup>th</sup> owner since the lot was created. The lot has been an illegal non-conforming lot since its creation. The passage of time or the selling of the property does not eliminate this status, regardless of the present owner.
3. There are 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. Without a variance the subject lot is unbuildable.
4. The granting of a permit for the variance requested will not adversely affect the rights of adjacent property owners or residents. None of the surrounding property owners are losing any uses currently allowed on their property.
5. The granting of the variance requested would confer on the applicant any special privilege that is denied by the Zoning Ordinance to other lands, structures, or buildings in the same district. A lot smaller than 5,500 square feet has not been allowed since 1962. This lot measures 4,875 square feet. Lots smaller than 7,000 square feet have not been allowed since 1991. No other property owners in this district have been allowed to create a lot this small.
6. The granting of the variance requested would not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare.
7. The granting of the variance requested would be opposed to the general spirit and intent of the Zoning Ordinance. The purpose of the R-1B Single Family Residential zoning district is to protect and preserve existing development of a similar character.
8. The variance being requested is not the minimum variance that would accomplish this purpose. This request is based on R-1C Single Family Residential zoning, minimum lot size – 5,600 square feet. The subject property is located in an R-1B Single Family Residential zoning district, minimum lot size – 7,000 square feet. The minimum variance request would need to be 2,125 square feet.

**BOARD OF ZONING APPEALS  
MINUTES OF APRIL 7, 2008  
PAGE FIVE**

The Board considered all eight (8) factors. Based on these factors, Tim Bailey moved, seconded by Hyun Kim, that the variance be **denied** based on the fact it was an illegally created non-conforming lot and to allow a house to be constructed on such a small lot would not fit in with the other properties in the neighborhood. Motion carried unanimously.

Chairperson Jim Belew stated that he had overlooked introducing the new member of the Board, Dr. Hyun Joong Kim, and that they would like to welcome him to the Board.

The next scheduled meeting of the Board of Zoning Appeals is May 5, 2008.

There being no further business to discuss, Don Judd moved, seconded by Tim Bailey, that the meeting adjourn. Motion carried unanimously and the meeting adjourned at 5:30 p.m.

Respectfully submitted,

Todd Kennemer  
Assistant Director of Public Works