



City of Powell, Ohio
Board of Zoning Appeals
Ryan Temby, Chairman
Robert Hiles Shaun Simpson Dan Wiencek

MEETING MINUTES
APRIL 25, 2016

A meeting of the Board of Zoning Appeals was called to order by Robert Hiles on Monday, April 25, 2016 at 7:02 p.m. Members present included Robert Hiles, Shaun Simpson, Ryan Temby and Dan Wiencek. Also present were David Betz, Director of Development; Leilani Napier, Planning & Zoning Clerk; and interested parties.

BUSINESS ITEMS

David Betz, Development Director asked Shaun Simpson and Dan Wiencek, newly appointed Board of Zoning Appeals members, to stand and repeat the Oath of Office. Mr. Simpson and Mr. Wiencek rose, raised their right hands and repeated the Oath of Office. Mr. Betz advised both they will sign a paper oath form at a future meeting and thanked both for their service on the Board.

Mr. Betz advised the Board a Chairman needed to be elected. Robert Hiles nominated Ryan Temby as the Chairman. Shaun Simpson seconded the nomination. All Boards members were in favor of the motion. By unanimous consent, Ryan Temby was nominated Chairman of the Board of Zoning Appeals.

APPROVAL OF MINUTES

MOTION: Robert Hiles moved to adopt the minutes from May 23, 2013. Ryan Temby seconded the motion. By unanimous consent the minutes were approved.

APPLICATION FOR VARIANCE

Applicant: Carol Stillman
Location: 233 E. Olentangy Street
Zoning: (R) Residential District
Request: Approval of a variance to the required side yard setback, from 25 feet to 20 feet, and to the required rear yard setback, from 80 feet to 30 feet, to accommodate the construction of a single-family home.

Carol Stillman, 233 E. Olentangy Street, was sworn in by Chairman Temby. Ms. Stillman said she didn't prepare a presentation because she didn't know what concerns would be raised. Chairman Temby recommended Ms. Stillman explain her plans and why her ideas are better. Ms. Stillman said she purchased the property two (2) years ago. There is a lot involved with developing a complicated piece of property; more than she realized. She is doing as much of the development, engineering and investigative work as possible. She has a mechanical engineering background. She has also worked with an engineering firm. Most engineering firms don't regularly work on complicated projects like this one. She has spent a significant amount of money, for her budget, for background and investigative work but she found her own work was more effective. She worked directly with FEMA, the Army Corp of Engineers and EPA. She is working with a private engineer out of Dayton who has the type of experience designing the kind of bridge she decided to go with. Her plans on what to do with the bridge and driveway have changed 3 dozen times. It has been a very complicated process getting from a general understanding of what needed to be done to where she is now; having an approved bridge plan, an understanding of what the driveway grade needs to be and knowledge of where the most sensible place to put the house is to accommodate the driveway grade requirement. Ms. Stillman hopes the bridge will be finished within the next month. She has a couple driveway options planned out. Staying with current zoning and placing the house on the property at the furthest spot still leaves the driveway with a 10% slope. She thought a 10% slope was acceptable and she has learned it is not. Powell's limit is 8%. She had the bridge raised 1-1/2 foot to help with the driveway slope but the overage still wasn't completely alleviated. Ms. Stillman said she would like to move the house further back on the lot which will allow her to get the length of driveway she needs without building on the west property

line. She doesn't need to go all the way back to the 30 foot setback to obtain an 8% grade on the driveway. She asked to go with the 30 foot setback because it is one of the offset allowances Powell has. Placing the house further back would allow her to have a gentle curve in the driveway. Trees have already been cleared for the path of the driveway based on her original understanding of the driveway slope allowances. She has tried to do minimal clearing. Ms. Stillman said she was told, due to the Indiana bat thing, she could only cut down trees between October and April so she had to make a decision on which trees to cut down in a specific time frame. She would prefer not to cut down any more trees. The cost of putting in a driveway which curves is significantly more than just putting in a straight driveway. Putting in a driveway with curves causes opportunities for material to slide, having to use fill material or cut material out, which makes the driveway less stable and you end up needing more material for the driveway such as retaining walls; not to mention disrupting the natural surroundings. Chairman Temby asked why both the driveway and house have to be moved; why does the house have to move if the driveway is moved. Ms. Stillman said she has a house plan selected which has the garage at the front of the house. She would have to put a concrete pad in if she didn't move the house; which means she would have to put in retaining walls and fill around the concrete pad. Chairman Temby asked if the driveway could work leaving the house in the original spot. Ms. Stillman said moving the house back allows her to build on the most flat spot of the property. Building the house on the most flat spot simplifies house and driveway construction. Chairman Temby asked where the driveway pad would be and if there will be a single lane driveway which goes right into the garage. Ms. Stillman said per fire department regulations, there needs to be a pad out front. Mr. Wiencek asked if the proposal has been submitted so the house construction on ground which isn't flat, which would require retaining walls and fill, doesn't need to happen. Ms. Stillman said some amount of grading will still need to be done to get the consistent 8% slope on the driveway. Moving the house back gives her 200 more feet of driveway to lessen the slope. Mr. Wiencek asked Mr. Betz if the Board has the ability to approve a variance to the 8% driveway slope. Mr. Betz said the Board does have the authority. The fire department has looked at the site with Ms. Stillman and would like to keep the slope at a minimum. The Township zoning allows up to 10% so the fire department is used to seeing driveways with a 10% grade. Due to how the Olentangy valley is, the fire department probably sees grades higher than 10%. In Ms. Stillman's instance, Mr. Betz recommended not going over a 10% grade because 10% is standard in the Township. There is a need for a flat area at the top for a fire vehicle to be placed if needed and this is another reason for moving the house back onto a more flat area of the property. Mr. Hiles asked if there is still going to need to be some type of retaining wall by the bridge. Ms. Stillman said she hasn't had engineering work done so she doesn't know.

Mr. Betz reviewed the Staff Report (Exhibit 1).

Staff has worked with Ms. Stillman for quite a while regarding what she wanted to do with her property. The bridge design went through all of the necessary flood plain development reviews and it took some time to obtain the permit. The abutments are outside the flood plain. The flood plain extends far enough it isn't suitable to put a house in front of the stream. The bridge is the best environmentally friendly bridge for the area. Mr. Betz commended Ms. Stillman for completing the bridge. Ms. Stillman has applied for setback variances to the rear and side. Ms. Stillman may not need the side setback variance granted in the end. She may just need the rear setback granted. Ms. Stillman would like to build her house on a flat area which will allow the driveway to have an 8% slope. The Board of Zoning Appeals hears Zoning Variance applications and appeals, which are often applied for when an owner encounters a hardship or practical difficulty in developing a property. The applicant can seek relief if the requirements in the best interest of the City and adjoining residents if the City and adjoining residents aren't adversely impacted. Staff has referenced several sections of the Zoning Code for the Board to examine.

1127.06 APPLICATION AND STANDARDS FOR VARIANCES.

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property;

Certainly, there can be beneficial use of the property without the approval of the proposed variances. However, by approving the variances, the development of the property in the manner for which it is zoned can be completed in a more sustainable and environmentally sensitive manner.

- (2) Whether the variance is substantial;

The variance requested is not substantial. The requested setbacks provide for the same setbacks as required with the sub-division located on both sides.

- (3) Whether the character of the neighborhood would be adversely affected or whether adjoining properties would suffer an adverse impact as a result of the variance;

The character of the neighborhood is a single-family neighborhood bordering on a farm lot which has approval for single-family homes. The proposal here will allow for a single-family home. There should be no adverse impacts to any of the neighbors due to this variance approval.

- (4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

The applicant has reviewed the bridge project permitted with all governmental agencies prior to its approval. The setback variance requested will allow a home to be constructed in a manner which is more environmentally sustainable and should not adversely affect provision of governmental services to anyone.

- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;

The property owner did purchase the property knowing the zoning restrictions, however she also knew a variance to the requirements is possible under the guidance of these provisions.

- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and

There are other methods and design locations where the driveway can be located, however those locations either create a higher driveway slope needing a variance or much greater tree removal, grading and land disturbance to construct the home and driveway. Therefore, the applicant's intent with this variance is to overcome this practical difficulty with a unique placement of the home.

- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

There are several provisions within our Zoning Code which call for best practices in environmental stewardship to be followed. This applicant has shown her willingness to greatly go beyond those requirements. The granting of this variance application provides substantial justice to the owner to build a home at a location which better protects her land with no detriment to the neighborhood.

In overcoming the practical difficulties of meeting driveway slope requirements along with good environmental stewardship, the applicant should be commended for her proposal and Staff does recommend approval as we believe all of the above requirements are met with this application.

Mr. Betz said based on Ms. Stillman's testimony on where the building could be placed, the setback on the west side might be able to be reduced back to the regular setback. Depending on the size of the home, the rear variance might be less also. Mr. Wiencek asked, if the Board approves the request, does the Board need to be involved in determining the amount of setback. Mr. Betz said yes, the Board would want to state the setback allowed as a condition of approval. The Board would have 30 days to make the decision.

Chairman Temby asked if any property owners would like to speak. All who intended to give testimony were sworn in by Chairman Temby.

Jon Sudler, 87 Glenlivet Place, said his property is to the southwest of the applicant's property. Chairman Temby said Mr. Sudler is Parcel #3. Mr. Sudler said he would prefer a variance be granted for the driveway slope and keep the house within the existing zoned setback areas. It seems Ms. Stillman is requesting a variance because she would like the garage on the north side of the house. Mr. Sudler asked why the garage can't be located on the south side of the house where the land is naturally more flat. The request for the variance is due to Ms. Stillman's preference and not really due to a hardship.

Michael & Nicolette Hyland, 40 Bartholomew Blvd., said their property is southwest of Ms. Stillman's property. Chairman Temby said Parcel #4. Mr. Hyland asked why the setbacks are in place. Mr. Betz said setbacks are created for properties so buildings don't get too close to one another; open air, open field, open yard area reasons. When an area such as Powell has larger, 1 acre or more lots, there will generally be larger setbacks. In Powell, the smaller lots generally have smaller setbacks. Mr. Hyland said this is their concern. They just had their house appraised and he asked the appraiser if a house being built within 20 feet of theirs would negatively impact the value of their home. The appraiser said absolutely it will. He and his wife are here tonight because the request has a negative impact on the value of their home. Ms. Stillman's house will be right on their property line. All of the other neighbors feel the same way. Mr. Hyland asked what will happen if this request is approved and Ms. Stillman turns around and sells her property. Will the approved setbacks stay in place or go back to the original setback measurements? Chairman Temby and Mr. Betz both said the approved variances would be passed on to a new owner. Mrs. Hyland said they met and spoke with Ms. Stillman before she bought the property. They informed her of the issues involving this property. Ms. Stillman actually went around and spoke with all of the neighbors and everyone warned her of the issues. Previous owners knew a house couldn't be built on the most flat area without building retaining walls, which are costly. Previous owners never built due to the required setbacks. Now Ms. Stillman is asking for a variance. Previous owners weren't allowed. Chairman Temby said previous owners could have applied for a variance also. Mr. Betz said previous owners did not apply for a variance. Mrs. Hyland said it seems as if this request is due to financial hardships for Ms. Stillman. Ms. Stillman has 2 acres. Why does she have to build right on top of current neighbors? Mr. Hiles asked Mr. Betz how much of the property is buildable. Mr. Betz said the main part of the property affected by physical hardship is the flood plain areas, down near the stream. The slope does hurt in trying to build a home. Building on the flat area is practical and easier. It is up to the Board to determine if, by definition, it is a practical difficulty. Mr. Betz said moving the house further away will make the slope of the driveway steeper. Building the house back as far as possible makes sense for the driveway slope. We have already mentioned it might be acceptable to leave the side setback as is. Mrs. Hyland said it sounds like these decisions are all up in the air now and granting the setbacks will give Ms. Stillman permission to do whatever she wants when in fact she might not need to. Mr. Hyland repeated what Mr. Betz said about setbacks being made so people don't build on top of each other. He doesn't understand why there is a need to vary from the current setbacks.

Mr. Sudler returned to the podium and said there was talk about subdividing Ms. Stillman's property. Approving the setbacks certainly opens up the possibility for Ms. Stillman to subdivide her property and sell. Whether the Board approves this request or not, he would like to request that a condition be set stating the property cannot be subdivided, possibly allowing 2 houses on the property. This would negatively affect their property values. Mr. Simpson asked if subdividing would be a total zoning change. Mr. Betz said the property is 2 acres and technically the property could be subdivided. If the property were subdivided, there may be a need for a variance in the front or re-zoning the property to a Planned Residence District. The requested variance would match a Planned Residence District setback. Going through the re-zoning process would require public hearings at both the Planning & Zoning Commission and City Council. It would also require dedication of a right-of-way along Olentangy Street, which would bring the acreage down to under an acre each, when split. A lot of further review would be required to go this route.

Monica Reineki, 28 Bartholomew Blvd., said there have been several meetings between Ms. Stillman and City Staff regarding this property. She asked for the honest truth. Has the applicant talked about subdividing the property? Mr. Betz said yes. Ms. Reineki said Ms. Stillman told everyone she has. Ms. Reineki said her concern is Mr. Betz is encouraging Ms. Stillman to request the setback variance so Ms. Stillman can subdivide the property. Ms. Reineki said Ms. Stillman has already said she has a friend who would like to buy the other portion of the property. The intent is to put two homes on this property. The property is 2.5 acres but 2.5 acres is not buildable. There is more non-buildable land than buildable land. Ms. Reineki said she doesn't have a problem with one home being built on this property. To accommodate Ms. Stillman's cost issues, Ms. Stillman wants a setback variance to allow two homes on the property. Mr. Simpson asked if the Board has the authority to block dividing the property. Mr. Betz said no. A request would have to go through the Planning & Zoning Commission, a different authority than the Board of Zoning Appeals. Ms. Reineki said approving this variance request gives Ms. Stillman the ability to go ahead and split the property. When a person takes on a large project such as this, they need to be prepared to not affect the people nearby. Ms. Stillman can build on the property. We are all very sad she cut down all of the trees 2 years ago and left them laying in our backyards. Apparently someone within the City told Ms. Stillman, because of brown bats, she needed to cut all of

the trees down before March. Two years ago, Ms. Stillman cut down all the trees and left the trees lay. Ms. Reineki said she took pictures of the land, how the land has looked since Ms. Stillman destroyed the land. If you walk back on the property today, it is still a mess. The variance request is to allow Ms. Stillman to split the driveway so the property can be split and two homes built. Ms. Stillman wants her house to be set back so a second house can be built. We are all standing here tonight like little stool pigeons because this has already been discussed between Ms. Stillman and the City.

Mr. Wiencek asked what elevation the flood plain includes. Mr. Betz said to move on to the next person while he tries to find the information.

George Conti, 94 Glenlivet Place, said he received a postcard because his property is within so many feet. His property isn't directly adjoined. Setbacks are set for a reason. Someday Mrs. Bennett is going to pass away and her 32 acres will be sold. A developer will come in and see the setbacks have been changed to 30 feet. He will then have someone sitting on top of his house. He has lived in his house for 28 years and the value of his home has been increasing. Property values will drop if a home is built so close. A compromise can be met by changing the layout of the house rather than change setbacks. This will prevent future developers from saying the City approved changing setbacks before, why can't they again. Mr. Conti asked the Board to make a wise decision.

Dean & Charlene Appleman, 90 Glenlivet Place, said their property is Parcel #2. Mr. Appleman said their property will be the most adversely affected by this request. Ms. Stillman's house will come 50 feet closer to his property. Chairman Temby said a couple of the Board members went out to the property so they have seen firsthand. Mr. Appleman said the character of the neighborhood would be adversely affected by a house that close to them. We live in Powell and we expect the Codes to be enforced. It is why they live in Powell. If they wanted houses right on top of each other they would live somewhere else. Mr. Appleman said he read variances aren't supposed to be granted for reasons of convenience or for reduced cost. Chairman Temby asked what the setback requirements are for the Bartholomew Glen sub-division. Mr. Betz said Bartholomew Run sub-division has a 25 foot rear yard setback. Ms. Stillman asked if all yards met the 25 feet setback. Mr. Betz said it is unclear whether all of the setbacks are met or not. There is a house with a patio or back porch which seems very close. There are 99 houses in the sub-division. Mr. Appleman said their property values will crash if the variance is granted.

Mr. Sudler returned to the podium and said Bartholomew Run is a sub-division so the setbacks are smaller. Ms. Stillman's property isn't a sub-division. By granting this variance, a sub-division is being created on this property. The property wasn't designed to be a sub-division. The site is a 2 acre, residential lot and should stay that way.

Mr. Betz pulled up a report from the County Auditor's office to show the flood plain area on the site per Mr. Wiencek's request. The mapping is based on FEMA maps. The flood plain is from approximately 882 elevation on the west property line and down to approximately 879 elevation on the east property line. As the stream goes down further, the stream lowers in elevation. The bridge location is at the thinnest point of the flood plain. The bridge location was also chosen for driveway location. Chairman Temby said it appears as if the only way the site could be split is if a house were built on stilts. Mr. Betz showed how the lot could be split and where two houses could be placed. A house cannot be placed on the front of the property. Mr. Wiencek asked if the property could be split down the middle. Mr. Betz said yes. Ms. Stillman said the driveway would then have to be shared. Mr. Betz said the Planning & Zoning Commission would have to approve this type of split.

Ms. Stillman said the plans for her property have consumed her life for 2-1/2 years. She didn't realize people had such strong feelings about the setbacks. She wishes she had talked with people more about the setbacks. Ms. Stillman said she has considered splitting the lot; it has been a back-up plan from a financial standpoint. Splitting the lot isn't the reason she wants to obtain approval for the side setbacks. She spoke with neighbors to see if they wanted to purchase some of her property to increase the size of their yards. This idea didn't go anywhere. Ms. Stillman said she is still interested in selling some of her land to her neighbors because she doesn't need to have 2 full acres to build a house on. Having the variance for the side setbacks approved would allow her to build a house and sell some of the land to her neighbors if they were interested. Ms. Stillman said she is willing to compromise on the rear setback. She doesn't need 30 feet. She has never intended on putting her house 30 feet off the back of the property. There are still trees at the 30 foot area. Ms. Stillman said a driveway around to the back of the house wouldn't be better for anyone. As the plans stand, neighbors would see the back

of her house rather than a driveway. Mr. Betz said everyone has asked about flipping the house design so the driveway would be on the other side. Ms. Stillman said this would be worse. Mr. Simpson asked where the front of the house is supposed to face. Ms. Stillman said the front of the house will face Olentangy Street. Mr. Betz said the house design isn't in the submittal. Seeing the house layout plan might help the Board understand everything. Chairman Temby said he sees two separate issues; one, the grade of the driveway and two, the actual setback on the south side. The setback on the west side doesn't seem to be an issue. Chairman Temby said he doesn't see the need, based on the proposed drawing, to move the setback from 25 feet to 20 feet. Ms. Stillman agreed. Chairman Temby said the issue is the rear setback. He said the Board really needs to see the precise location and design of the house, in order to make a decision on the rear setback. Ms. Stillman said she can't design a house until she knows if she can afford to build a house on the property. Chairman Temby said he understands but the Board can't render a decision until the Board sees a proposed location and design of the house. He has been to the site and he agrees Ms. Stillman has ecological advantages for putting the grade at the top of the hill but the Board can't make a determination without knowing the exact placement and design of the house. Mr. Hiles asked if there has been a house designed, is there a site plan showing a house. Ms. Stillman said she did an initial house design but it isn't finished and there is no site plan. There is a general sketch of what she anticipates the house looking like. Mr. Hiles said the Board has no drawing to look at. Ms. Stillman said she is not going to do a site plan to apply for a variance. If a site plan is required, she will just forget it. Chairman Temby said an actual design of the house isn't required. The Board is struggling with understanding the layout. It would help to see which way the house faces and where the garage is; which way the garage loads. Chairman Temby asked if Ms. Stillman would consider an east facing house with a front load garage. Ms. Stillman said she would like to have a south facing roof for solar panels. Her intent was to keep the house facing south. She would rather go for a driveway variance or deal with a driveway curvature versus getting rid of a south facing house. Chairman Temby said this confuses the situation more. The rectangle in the current plan shows more square footage on the west and east side. Ms. Stillman said this isn't how the roofline goes though. Mr. Betz suggested Ms. Stillman come up with a list of options, with a higher driveway grade, making sure the fire department is OK with it and minimize the setback variance to an amount everyone is comfortable with, and then come back before the Board at a later date. Ms. Reineki said she respects what Ms. Stillman is having to go through but this whole thing has been set up to sell half of the property. Everyone is concerned about two houses being built on the property.

Mr. Hiles said this request needs to be tabled for now. Chairman Temby asked Mr. Betz what the Board's options are, can the request be tabled for further information to be presented. Mr. Betz said yes, advise the applicant of what information the Board is looking for. Ms. Reineki asked if the residents are going to be asked to come back a second time. Mr. Betz said yes, the Board has a right to table for 30 days and residents will be invited back.

Chairman Temby asked for a motion to table the request.

MOTION: Mr. Hiles moved to table the Application for a Variance to the required side yard setback, from 25 feet to 20 feet, and to the required rear yard setback, from 80 feet to 30 feet, to accommodate the construction of a single-family home located at 233 E. Olentangy Street. The applicant needs to address a driveway slope variance to reduce the current setback variance request. Mr. Simpson seconded the motion.

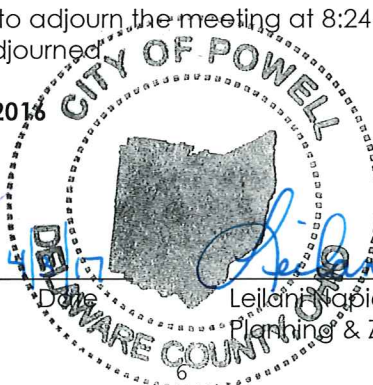
Mr. Betz polled the Board members to see if everyone can meet on May 23, 2016, at 7:00 p.m. The meeting was set for May 23rd.

ADJOURNMENT

MOTION: Chairman Temby moved to adjourn the meeting at 8:24 p.m. By unanimous consent of the Board members the meeting was adjourned.

DATE MINUTES APPROVED: May 23, 2016

Ryan Temby
Chairman



Leilani Napier
Planning & Zoning Clerk

4/3/17
Date