



Board of Zoning Appeals
Jim Hrivnak Randy Duncan Janice Hitzeman Greg Short Ryan Brickner

MEETING MINUTES December 16, 2021

Chair Jim Hrivnak called a meeting of the Board of Zoning Appeals to order on Thursday, December 16, 2021 at 6:30 p.m. Members present included Jim Hrivnak, Randy Duncan, Ryan Brickner and Gregory Short. Janice Hitzeman was absent. Also, present were Claudia Husak, Planning Director, Elise Schellin, Development Planner; Jesse Shamp, Legal Counsel and interested parties.

APPROVAL OF MINUTES

MOTION: Board Member Duncan moved to approve the minutes of August 16, 2021 as written. Board Member Brickner seconded the motion.

VOTE: Y – 4 N – 0

MOTION: Board Member Brickner moved to approve the minutes of September 2, 2021 as written. Board Member Duncan seconded the motion.

VOTE: Y – 4 N – 0

NEW STAFF

Claudia Husak introduced new staff member Peyton Kaman, Development Technician.

HEARING OF VISITORS FOR ITEMS NOT ON THE AGENDA

Chair Hrivnak opened the citizen participation session for items not included on the agenda. Hearing none, closed the public comment session.

APPLICATION FOR VARIANCE (Case 2021-40V)

Applicant: EyeCare Professionals of Powell c/o Craig Moncrief
Location: 265 N. Liberty Street
Existing Zoning: (PC) Planned Commercial District
Request: Review and approval of a variance to reduce the required minimum street frontage from 160 feet to 107 feet, and a variance to reduce the required side yard setback from 25 feet to 19 feet 5 inches.

Elise Schellin, Development Planner reviewed the Staff Report for this application and stated Staff recommends approval. (Exhibit 1 - Staff Report)

Variance Standards:

1. **Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property.**

Applicant Statement: The request is reasonable based on the property history and the arrangement of structures on the property. Prior to the lot combination in 2021, the property consisted of two parcels of similar size and street frontage. Lot split is reasonable considering there are two buildings on the property that will require different users and customers. Variances are necessary in order to improve the property with new access, better site circulation, and additional parking spaces. There are numerous lots on North Liberty Street with street frontage and building setbacks that are consistent with the requested variances.

Standard Met: Staff agrees with the applicant's assessment. Approval of the variances will allow the parcel be split, which in turn allows EyeCare Professionals to sell the northern portion of the parcel to another business.

2. Whether the variance is substantial.

Applicant Statement: The variances are technical in nature and not substantial. Variances are required to split the property back to its original two parcels distribution. A cross-access easement will be executed to ensure the lot split will not impair access, maneuverability, or parking of the proposed lots. The variances will have no negative effect on the current condition of the property and are necessary to improve the property with additional access and parking spaces.

Standard Met: Staff agrees with the applicant's assessment. The variance requests are not substantial, and will create a similar condition to what previously existed before the two parcels merged.

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.

Applicant Statement: The character of the neighborhood will not adversely be affected and adjoining properties will not suffer an adverse impact because of the variances. The variances are necessary to rectify the unorthodox shape of the parcels prior to the combination. The property is within the Planned Commercial District and will continue to be used for commercial purposes. The lots fronting on North Liberty Street consist of various uses, lot sizes, and street frontage. There are numerous lots with street frontage and building setbacks consistent with the requested variances.

Standard Met: Staff agrees with the applicant's assessment. The variances will not adversely affect the neighborhood or adjoining properties.

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

Applicants Statement: The variance will not affect the delivery of any governmental service.

Standard Met: Staff agrees with the applicant's assessment.

5. Whether the property owner purchased the property with knowledge of the zoning restriction.

Applicant Statement: The applicant purchased the property in 2019 with the intention of improving the site and rectifying the unorthodox shape of the parcels. Applicant was aware that improving the site would require a new development plan and certain variances; however, the variances are a result of the existing location of the buildings and the size of the property.

Standard Met: The applicant has stated that they were aware of the setback and frontage requirements on the property.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.

Applicant Statement: The applicant's predicament cannot be feasibly obviated through some other method other than a variance.

Standard Met: Staff agrees with the applicant's statement. The frontage of the combined lot is not large enough for both new parcels to meet the code requirement for minimum lot frontage. Similarly, the side yard setback cannot be met due to the location of the existing buildings and parking spaces and aisles. Although the side yard setback cannot meet the minimum require, the 50' minimum distance between the buildings is met.

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

Applicant Statement: The spirit and intent behind the Zoning Code requirements are observed because the property will have improved circulation, access, and parking after the lot split and improvements. The property is unique because there are currently two detached commercial structures, with different users, on one parcel. Splitting the parcel will improve the marketability of the property and return the property to its original characteristics.

Standard Met: Staff agrees that the spirit and intent of the zoning requirement would be observed and substantial justice done by granting the variance.

Staff recommends approval of the variance to reduce the required minimum street frontage from 160' to 107', and a variance to reduce the required side yard setback from 25' to 19'-5".

Chair Hrivnak administered the oath to Craig Moncrief, Plank Law Firm, LPA, 411 East Town Street, Columbus, OH 43215, applicant representative. Mr. Moncrief gave a brief description of why his client is making the request.

Chair Hrivnak opened up public comment on the matter. Hearing none, he closed the public comment session.

Chair Hrivnak asked the Board if they had any questions or comments. After hearing none, he reminded the Board that they would be making two motions on the case.

MOTION: Board Member Brickner moved to approve the variance to reduce the required street frontage from 160' to 107'. Board Member Short seconded the motion. By unanimous consent of the remaining members present, the motion passed.

VOTE: Y – 4 N – 0

MOTION: Board Member Short moved to approve a variance to reduce the required side yard setback from 25' to 19'-5". Board Member Duncan seconded the motion. By unanimous consent of the remaining members present, the motion passed.

VOTE: Y – 4 N – 0

APPLICATION FOR VARIANCE (Case 2021-37V)

Applicant: Amanda Kish, Represented by Thomas F. Schmitt, Esq.
Location: 476 Welwyn Drive
Existing Zoning: (FR1) Liberty Township Farm Residence District
Request: Review and approval of a variance to the Liberty Township Zoning Code Section 8.07.C.2 to permit a setback of 25 feet along the eastern property line for a new single-family residence.

Claudia Husak, Planning Director reviewed the Staff Report and stated Staff recommends approval. (Exhibit 1 - Staff Report)

Variance Standards:

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

Applicant Statement: Without the variance, the topography and vicinity of Tyler's Run impede a reasonable return and beneficial use of the property. Additional testimony as to the engineering requirements for footers and foundations will be provided at the Board of Zoning Appeals meeting. The current market for homes in the area do not reflect the additional cost of engineering a home on a challenging site such as this property.

Standard Not Met: Staff has determined the standard can be viewed as not warranting the granting of a variance as it is likely a reasonable return can be yielded if the home were built elsewhere on the lot.

2. Whether the variance is substantial.

Applicant Statement: Applicant's statement indicates the variance is not substantial because it is within 5' of the required rear yard of the adjacent properties to the north, which require a 30' rear yard setback. In addition, applicant points to the setback requirements for accessory structures is 15'.

Standard Met: An encroachment into a required rear yard of 35' appears to be a substantial deviation from the requirement and there may be portions of the lot where a home could be built. Typical lots within Powell require rear yard setbacks of 25' to 35'. Given the size of the lot, this encroachment could be considered similar to lesser encroachments granted for smaller lots.

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.

Applicant Statement: The character of the neighborhood will not be adversely affected; the setback to the north will not change from the required 25'. The lot on Welwyn Drive will have a far greater side yard (north) setback than what is required for the adjacent homes. The requested variance is to a vacant lot in Liberty Township and the building envelope of the lot would be far away from the subject property due to the location of Tyler Run.

Standard Met: The lots off Welwyn Drive have a unique character due to their size, topography, environmental challenges and vegetation. The adjacency of the proposed home and driveway to the Liberty Hills subdivision lots is limited and granting the variance will not adversely affect the character of the neighborhood. Directly adjoining properties will have a view of the home when vegetation is sparse in both the permitted and requested location.

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

Applicant Statement: The delivery of governmental services will be facilitated due to the location of water and sewer services off the north property line. Additionally, the home and driveway location as proposed will enable emergency vehicles easier access to the potential home site.

Standard Met: Staff agrees with the applicant's assessment that there will be no adverse effects to the delivery of governmental services.

5. Whether the property owner purchased the property with knowledge of the zoning restriction.

Applicant Statement: The property owner had no knowledge of the setback restrictions.

Standard Met: Knowledge of zoning requirements prior to the purchase or entering into a contract do not deprive an applicant from seeking a variance.

6. Whether the property owner's predicament feasibly can be obviated through some method other than a variance.

Applicant Statement: The predicament cannot be obviated through any other method unless having prohibitive foundation costs. In addition, rezoning the property to a comparable City of Powell standard would not alleviate the necessity for a variance due to similar or larger setback requirements.

Standard Not Met: There are other locations for a home on this lot, as described in Standard 2, the environmental impacts of other locations may be less desirable for the City of Powell and associated cost may be less desirable to the applicant, however there are other areas on this lot for construction o

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

Applicant Statement: The spirit and intent behind the zoning requirement is observed and justice done by granting a 25' setback as it would allow for a tree buffer to be maintained to the north.

Standard Met: Granting of a setback variance in this particular instance is in spirit and intent of the zoning requirement and substantial justice is achieved by construction of a home.

Staff recommends approval of the variance request at 476 Welwyn Drive to decrease the required east rear yard setback from 60' to 25'.

Chairman Hrivnak administered the oath to Thomas F. Schmitt, Esq., Metz, Bailey & McLoughlin, 33 E. Schrock Road, Suite 100, Westerville who is representing property owner, Amanda Kish.

Thomas F. Schmitt – Gave a presentation on why his client is asking for the variance based on the lower area setback not being of reasonable economic feasibility. He offered reasons why it is not reasonably economically feasible to comply with the setbacks and build a home in the lower area.

Chairman Hrivnak opened up public comment on the matter and swore in those giving testimony on the variance.

Lee Puckett, 2546 Pimlico Court, Powell – Ms. Husak read an email statement from Mr. Puckett against the approval of the variance. He is the owner of Lot 1216 and part of Lot 1217 on Shady Glen Place.

Timothy Burnham, 307 Bluff Ridge Court, Powell – Distributed information packet to the Board and then gave his testimony as to why he is against approval of the variance.

Board Member Short – Addressed Mr. Burnham with concerns he has related to examples and statements he presented.

Paul Pratt, 261 Bluff Ridge Court, Powell – Gave testimony to the Board regarding his opposition to the granting of the variance.

Michael Kouskouris, 281 Bluff Ridge Court, Powell – Gave testimony to the Board regarding concerns he and his wife have regarding the approval of the variance.

Brandon Pickworth, 289 Bluff Ridge Court, Powell – Gave his testimony to the Board on why he is opposed to the approval of the variance.

Tracey Mayberry, 446 Briarbend Blvd., Powell – Gave his testimony to the Board as to why he is opposed to the approval of the variance.

Chairman Hrivnak closed the public comment portion and invited the applicant to respond to the testimony given.

Mr. Schmitt – Responded to the applicants objections to statements made by those that have testified against the variance.

Chairman Hrivnak opened the public comment portion back up for anyone that has commented in the public portion that wishes to provide additional evidence to rebut the additional comments of the applicant's representative. Hearing none Chairman Hrivnak closed the public comment rebuttal portion.

Chairman Hrivnak gave the applicant's representative time to confer with his client and then give additional testimony. Mr. Schmitt gave additional testimony on behalf of his client.

Chairman Hrivnak closed the comment portion and opened the matter up for discussion from the Board.

Board Member Short stated it has been well said here tonight from both sides this is the second time we have heard this variance with this one being a little different because it is just the rear setback. We have heard a lot of discussion about the driveway, and how it is going to affect the adjacent property owners and I sympathize with them. There was mention of moving the house down towards Tyler Run, but as Mr. Schmitt mentioned you do not want to impede on that and cause possible harm to Tyler Run. I know we cannot take into consideration what was presented previously, however these house plans are significantly different than before so adjustments have been made to the house plan. In my opinion, the rear setback is not going to affect the neighbors to the north even though there will be tree loss. I feel what has been shown here tonight by both sides are very passionate views and we as volunteer members of this Board have a decision to make.

Board Member Brickner agreed with comments made by Mr. Short. I would mention the east side of the property with the 60' setback being varied is the issue in front of us. It is good to see the neighbors in Powell are passionate about the community and enjoy living here.

Board Member Duncan appreciated everyone coming out tonight. The one thing I would like to have seen would have been more options that were looked at, not engineering, but other scenarios as well as more backup.

Chairman Hrivnak appreciated the information Mr. Schmitt gave regarding building the house down on the lower portion and the cost to build down there would be more than one would expect. We do not have detailed plans but I wonder if the house could be changed in shape and therefore not need to be oriented north and south. If it were oriented more east and west, could it be built up in the other area and then the driveway moved further to the west. Unfortunately, that was not presented to us. In my mind, it could be built there. When we saw the sewer taps and the descriptions of the setbacks, it would indicate that the building envelope was really further to the west than what we see here. It is correct that we are only considering one setback; the driveway is part of the easement and is not an issue before us. The issue to consider is simply should the 60' be reduced to 25'. As we have done in the past when our discussions conclude, we make a motion in the affirmative and then we can vote on it in that manner. If there were no further discussion, I would ask for a motion from the Board.

MOTION: Board Member Short moved to approve the variance to the Liberty Township Zoning Code Section 8.07.C.2 to permit a 25' setback along the eastern property line for a new single-family residence at 476 Welwyn Drive. Board Member Duncan seconded the motion.

VOTE: Y – 1 N – 3 (Yes – Short; No – Hrivnak, Duncan, Brickner; Absent – Hitzeman)

Motion failed.

OTHER COMMISSION BUSINESS

Ms. Husak discussed the 2022 meeting schedule and the time change to 6:30 p.m. There will be no January meeting, as no applications were submitted.

The next potential meeting date is February 3, 2022.

ADJOURNMENT

MOTION: Chairman Hrivnak moved to adjourn the meeting at 8:54 p.m. Board Member Duncan seconded the motion. By unanimous consent of the remaining members, the meeting adjourned.

VOTE: Y – 4 N – 0

DATE MINUTES APPROVED:


Jim Hrivnak
Chair


Date _____ Amy Decker
City Clerk


Date _____