

BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD SEPTEMBER 9, 2013.

1

The Board of Zoning Appeals met in regular session on September 9, 2013 at 7:00 p.m. in the Municipal Building Council Chambers.

MEMBERS PRESENT:

The following members were present: Jonathan Greene, Mark Heistand, Pete Hutchinson, Scott Johnson and Jeff Jones.

MEMBERS ABSENT:

None.

ALSO PRESENT:

Also present were Anna Sizemore, Municipal Manager; Kelli Novak, Zoning Officer and two visitors.

APPROVAL OF MINUTES:

The Board reviewed the April 8, 2013 meeting minutes.

Mr. Jones moved to approve the April 8, 2013 minutes as submitted.

ROLL CALL: Mr. Greene, yes; Mr. Heistand, yes Mr. Hutchinson, yes; Mr. Johnson, yes; Mr. Jones, yes. 5-yes, 0-no. MOTION CARRIED

PUBLIC HEARINGS:

Mr. Heistand stated the Board would begin with Variance Application #13-01, made by William & Vicci Jackle to vary Section 1129.02 (b)(6), Accessory Structures, of the Planning and Zoning Code of the Municipality of Germantown at 235 East Center Street. The variance request would allow an accessory structure to be located in the required side yard.

He went on by briefly explaining how the hearing process works.

Applicants Presentation:

Bill Jackle, 235 East Center Street, stated he and his wife moved to Germantown approximately a year ago. They like this City because it is established and very accessible for them to get around to the park and the library. This would be much more difficult if they were living in a large city or in the country.

He had a stroke about five years ago and has lost the use of his left side. He will not get any better. He would like to build the garage next to the house to have easier access. The

BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD SEPTEMBER 9, 2013.

2

purpose of this garage is to store the trailer that transports his power chair and the power chair itself.

When they purchased the property on Center Street he was getting around fairly well but he fell at his other home in New Lebanon and broke his hip which has caused more issues. They were fortunate they had the home on Center Street to move into while he recuperated. He also had a bout with pneumonia and does not feel that he has a disability, but he does have to face reality.

He is standing here tonight asking for the variance. It really does not seem like a big thing. This building would not violate the spirit of the neighborhood.

Mr. Jones questioned if 235 East Center was just one lot (213). He was just making sure that they had a single lot. This lot is about 63.5 feet wide. Mrs. Novak replied that they do only have one lot. He noted that this property does have access from the alley on Water Street. Mr. Jackle replied yes it does. Mr. Jones went on by asking if there was a detached garage already on the property. Mr. Jackle replied that was correct.

Mr. Hutchinson questioned if the existing garage would be staying on the property. Mr. Jackle replied that he intended on keeping the existing garage.

Staff Summary:

Mrs. Novak stated that Mr. Jackle is asking for the proposed detached garage to be located in the required side yard and the Code does not allow this. The Code reads that all accessory structures must be located in the required rear yard. His handicap does prevent him from walking long distances and the variance if granted would shorten the distance for him.

The plans for the proposed garage do comply with all other restriction of the Code and he is aware that if this variance is granted he would have to obtain a building permit.

Mr. Hutchinson questioned if the applicant is allowed to have three accessory structures on the property. Mrs. Novak replied at this time the Code does allow him to have all the structures.

Mr. Jones stated he would like to see the original site plan. Mrs. Novak replied that the copy that was given to the Board was the site plan that was submitted by the applicant.

Mr. Jones questioned what the measurement was for the required rear yard in the R-3 district. He looked the requirements up in the Code book and the requirements for R-3 are 30 feet for the rear yard.

The Public Hearing opened at 7:15 p.m.

**BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD SEPTEMBER 9, 2013.**

3

Proponents Recognized:

None.

Opponents Recognized:

None.

Final Statement of Staff:

None.

Final Statement of Appellant:

Mr. Jackle stated he was glad to meet the Board.

Close Public Hearing:

Mr. Heistand closed the Public Hearing at 7:16 p.m.

Deliberation and Decision:

Mr. Johnson questioned if everyone on the Board was good with the distances of the structure on the property from the house, the property lines, etc. He commented that the house sits on the property line on the west side. Mr. Jackle stated that his home sits one foot away from the property line and the neighbor's home is maybe ten feet off the property line.

Mr. Jones stated that the lot is approximately 157 feet deep. When you look around at the lots around there, the lots on the other side of the street, most of those lots are irregular. The side of the street that Mr. Jackles home is on is basically full lots; there has been some re-plating with some other lots. He understands the physical hardship and that is unfortunate. He was filling out paperwork this past weekend for a family member for disability. The applicant must be having some challenges. But unfortunately the standards that are set for the Code talk about standards for practical difficulty and the lot itself poses no elevation or the shape of the lot that would, to him, necessitate the variance. If the required rear yard is 30 feet, you could put the new garage right behind the rear plane of the house. He is not sure how much further back that is from what the applicant has applied for but to him, to comply with the zoning regulations it would not be difficult to move the garage. It may require the applicants to move/travel further to get to the garage, and he can understand that. But from a practical difficulty to get the garage on the lot and still meet the zoning requirements is not difficult. He is not trying to be hard or mean, he is just saying we have to look at the property/land and not the applicant particular issues. I know this sounds mean and harsh but it is just the way it is. It would seem that, looking at the site plan, if the garage was pushed back another 20 feet

BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD SEPTEMBER 9, 2013.

4

approximately, it would be in the required rear yard. The point is that it looks like it would be very easy to put another detached garage on the property without a variance. He does not see where the practical difficulty is, or a hardship, or any challenges of getting a detached garage in the rear yard. In fact, some of the properties on the north side of the street are only 130-37 feet from the front lot line and are not deep at all. This property has 157 feet of depth and has access to the alley way that abuts a dedicated street. He is trying to figure out what the practical difficulty or the challenge is of getting a detached garage on the property. This is a pretty deep lot and it appears if the applicant removed an existing flag pole the proposed garage would fit in the rear yard. I would refer everyone to the standards of granting a variance under Section 1143.04 (f) there are six standards. By reading those standards I cannot see any practical difficulty or anything unusual about that property that would prevent them putting a detached garage in the rear yard.

Mr. Heistand stated that as sympathetic as he is to the situation of the Jackle's and please do not understand any comment to that he makes that is not sympathetic to that concern. We are required in his opinion to consider the application in light of the standards of Section 1149.04 (f) and how the property is impacted not how the owners are impacted. Specifically if you look at criteria #3 and #4. He supports Mr. Jones in what he is saying. He read criteria #3. There are no special circumstances to this property. Mr. Jones has pointed out that there is more than enough yard in the rear of the property to build a garage. Unlike the properties on the north side of the street. He read criteria #4. Part of this may lead you to believe that this is a hardship and practical difficulty but it goes on to say that this hardship cannot be self created nor can it be established on the basis of who purchases with or without knowledge of the restrictions. He feels that this criteria specifically tells the Board, we have to divorce the individual situation from the property and how it fits in the zoning. He stated that he agrees with Mr. Jones's thoughts.

Mr. Johnson questioned if the garage would have to be 30 feet from the back lot line. Mr. Jones stated that the required rear yard is 30 feet, which means the rear plane of the house would have to be 30 feet from the rear lot line. Mr. Johnson calculated the dimensions of the property and the restrictions of the Code.

The Board discussed the dimensions of the property and the dimensions of the garage and home. They concluded that the proposed garage would fit in the required rear yard and still comply with all the zoning regulations.

Mr. Jones stated that what was nice was is that the house is nearly on the side lot line that they would have a large side/front yard.

Mr. Heistand stated that when the Board is ready to make a motion, remember we want to make a motion that in accordance with the criteria in an affirmative motion, but if we are going to deny it we may want to explain why we are making it a denial vote if that may be the motion.

Mr. Jones questioned if someone makes a motion in the positive, is that the Board members vote. Mrs. Sizemore replied no.

BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD SEPTEMBER 9, 2013.

5

Mr. Heistand questioned that if a motion is made in the positive, is it necessary to explain why they voted no. Mr. Jones stated that the minutes should reflect the concerns of the Board members. Since we have discussed #3 and #4 of the criteria the minutes should reflect the concerns. Mr. Jones went on by saying that he does not see any difficulty or hardship. There is plenty of lot depth, lot width and frontage to put the proposed garage in the rear yard. And if it were placed in the rear yard it would still meet any other zoning regulations.

Mr. Heistand questioned the Manager if she had any options of how the Board should word the motion, whether it would be in a positive or a negative fashion. Mrs. Sizemore replied that would be up to the Board.

Mr. Jones moved to approve Variance Application #13-01 to put a detached accessory structure in the rear yard at 235 East Center Street.

ROLL CALL: Mr. Greene, no; Mr. Heistand, no Mr. Hutchinson, no; Mr. Johnson, no; Mr. Jones, no. 0-yes, 5-no. MOTION FAILED

Mr. Heistand stated that he was sorry that this did not go the way they were wanting. They were given some ideas from the Board that they may want to consider. They may want to come back to the City with revised plans that would push the garage behind the house to the point where it does sit in the rear yard. If they would need a variance after the new plans would be submitted they would be welcome to come back to the Board for consideration.

He questioned if the motion was for the rear yard. Mr. Heistand replied that the motion was to approve the application as it existed. Mr. Heistand went on by saying that the motion reflected the plans that state there would be a 20 foot set back from Center Street and next to the house. The Board has determined that it did not meet the criteria to grant a variance.

Mr. Heistand thanked the Jackle's for coming and we wish them the best of luck. The Board would welcome them back if they would need to apply for another variance.

Mr. Jackle stated that it seems that the general state of things is to create large spaces in the rear of the house. If he places the garage in the rear yard it would be a wart in the space and to his neighbors.

Mr. Heistand replied that he understood the comment and knowing the neighborhood he does see the point.

Mr. Heistand thanked the Jackle's again for coming.

**BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD SEPTEMBER 9, 2013.**

6

OTHER BUSINESS:

Mr. Jones stated that the Planning Commission is looking at recommendations made by a consultant specific to issues in the Berryview Estate area. Specific to some problems that were created because of changes in the Zoning Code. These changes have made it difficult to develop the remaining lots in that area. He will update the Board on any changes.

ADJOURNMENT:

There being no further business to conduct, Mr. Johnson motioned to adjourn the meeting.

The meeting adjourned at 7:38 p.m.

Respectfully Submitted,

Kelli R. Sanders-Novak
Clerk of Council