

**CITY OF GERMANTOWN BOARD OF ZONING APPEALS
MINUTES OF MEETING HELD JULY 10, 2017**

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The City of Germantown Board of Zoning Appeals met on July 10, 2017 at 7:02 p.m. in the City Building Council Chambers.

MEMBERS PRESENT:

The following members were present at the Call to Order: Mr. Hutchinson, Mrs. Izor, Mr. Jones, and Mr. Treiber.

MEMBERS ABSENT:

On a motion by Mr. Jones, seconded by Mrs. Izor, it was moved to excuse absent member Mr. Richter. All were in favor; none were opposed. Motion carried.

ALSO PRESENT:

Also present were Mr. Wafzig, Council Liaison; Mr. and Mrs. Jason Canter, Applicants for Case# 17-02; Mr. and Mrs. Edward Brate; Applicants for Case# 17-3; Keith Brane, City Planner; and several members of the community.

CONSIDER APPROVAL OF THE MINUTES OF THE APRIL 10, 2017 BZA MEETINGS:

On a motion by Mr. Jones, seconded by Mrs. Izor, it was moved to approve the minutes of the April 10, 2017 meeting. On call of the roll: Mr. Jones, yes; Mrs. Izor, yes; Mr. Hutchinson, yes; and Mr. Treiber, yes. Motion carried.

PUBLIC HEARINGS:

Mr. Jones swore in those citizens of the community who would be giving testimony for either of the public hearings for July 10, 2017.

VARIANCE APPLICATION 17-02

Mr. Jones said the first hearing is for variance application 17-02 made by Jason and Amy Canter of 967 E. Market Street to appeal Section 1129.02 (b) (6) addressing accessory structure regulations. Granting of the variance would allow the current owner to construct an accessory structure in the front yard of the property.

Mrs. Amy Canter of 967 E. Market said basically we want to put a 10 x 18 shed off our driveway. Our house is built into the side of a hill, so it's really the only place we have access to flat ground where we could put a shed. We've provided pictures of our lot as well as diagrams of our house. It's all wooded behind and down the side, so right where our driveway is we have a little side piece of driveway to turn around and that's where we want to put it, along that driveway in the grass.

Mr. Brane summarized the application and said where the Canters want to put the shed is in the front yard as defined by the code. Due to the placement of the dwelling, irregular shape of the

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lot as well as the topography which is described as steep inclines with vegetation and numerous amounts of trees, they feel it does not allow them to have an accessory building anywhere but the location as requested. Submitted materials include the shed will be located 53 feet from the tree lined southern property line, 36 feet from the sidewalk, 31 feet from the dwelling unit, and 15 feet from the wooded northern property line. They intend to use the structure for storage of tools/lawn equipment, it will blend well with the existing home and beautiful landscaping will be maintained. The materials submitted depicted the shed's door will be double wide, tongue and groove floor panel, wood and metal framing with double top plate, barn and cottage rafters and a metal roof. As you folks saw from the materials it is a nice building and they feel they need to place it as drawn.

Mr. Jones opened the public hearing at 7:08 p.m. and asked if anyone in favor of the requested variance would like to speak. Being none, he asked if anyone opposed to the variance wished to speak. Seeing none, he asked if there was a final statement from staff. Mr. Brane said we do recommend approval. Mr. Jones closed the public hearing at 7:09 p.m.

Mr. Jones said I looked at the property on Google and it does look like the back yard has a steep grade and there's little room to put a detached building. You can also look at street level view and get an idea of where the building would go. While it's not ideal, topography is one major criteria for the granting of a variance. Reasonably, you would be allowed to enjoy the use of your property as anyone else would and a detached building is typically a reasonable use. That's something to consider.

Mr. Hutchinson said I drove by the house and saw the turnaround where you park your cars; is that where you are putting it? Mrs. Canter said on the edge of that grass line.

On a motion by Mr. Jones, seconded by Mrs. Izor, it was moved to approve variance application 17-02 made by Jason and Amy Canter, to allow a detached accessory building in the required front yard at 967 E. Market in the City of Germantown. On call of the roll: Mr. Jones, yes; Mrs. Izor, yes; Mr. Hutchinson, yes; and Mr. Treiber, yes. Motion carried.

VARIANCE APPLICATION 17-03

Mr. Jones said next up is variance application 17-03 made by Alyson and Edward Brate of 313 S. Main Street appealing Sections 1137.07 (d) (22) and 1137.03 (e). If granted it would allow the current owner to have required off street parking in various locations that are not on site and to require dust free parts of surface pavement. The BZA will also make a determination of required parking spaces for uses not specifically mentioned as required by GCO 1137. I believe there are 4 variances but I read in the staff report that we also have to consider a variance for the number of spaces that are actually on site based on the recommendation of the City Planner.

Mrs. Alyson Brate of 412 Dayton Pike said the land Shuey Mill sits on at 313 S. Main had been reduced from the entire end of the Germantown area to .5 acres and the two buildings that sit there now take up nearly .5 acres. We have a lane driveway that has about eight parking spots, two being the required handicap parking spots, otherwise there is nowhere to go.

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Mr. Jones said in the staff report it states there was a discussion about the number of required parking spaces; is there a use within that building now? Mrs. Brate said it has been vacant. Mr. Jones said your plan is to make improvements to open a catering business as well as perhaps a bed and breakfast; correct? Mrs. Brate said yes, the kitchen would be the catering business. Mr. Jones asked if there would be consumption of food on site. Mrs. Brate said yes. Mr. Jones said so it's to provide onsite services, preparation and consumption of food but also, to do those things off site as well. Mrs. Brate said yes. Mr. Jones said you would prepare food and take it for a wedding, retirement ceremony, whatever, Mrs. Brate said yes. Mr. Jones asked if Mrs. Brate was the sole proprietor and sole employee. Mrs. Brate said yes. Mr. Jones asked if there were plans to hire additional staff Mrs. Brate said we don't have those plans; I have a large family, six children, so it's not very often we need too much staff. Mr. Jones said for the bed and breakfast, is there going to be four bedrooms upstairs. Mrs. Brate said three. Mr. Jones said if that occurs, usually there is a breakfast; correct? Mrs. Brate said yes. Mr. Jones asked who was going to do the housekeeping that is usually associated with a bed and breakfast. Mrs. Brate said I am.

Mr. Treiber said I saw seating so I assume people are going to come there and the food will be prepared there. Mrs. Brate said yes.

Mr. Hutchinson said there is nothing established though; you don't have any license or anything to do this at this time. Mrs. Brate said I have had a catering business for six years and I had a sandwich shop in Germantown but I have catered for over 20 years in this part of Ohio. Right now I travel to different venues but this is home and the goal is to have one location.

Mrs. Izor asked if this is an event space where things are booked or more like a restaurant that is open regular hours. Mrs. Brate said it would be just events; special occasion parties. Mrs. Izor asked if the catering business would require a semi-truck for deliveries that would include furniture. Mrs. Brate said no; I have a van.

Mr. Jones asked if supplies would be picked up rather than delivered. Mrs. Brate said yes; I hand pick everything I use. Mr. Jones asked what hours she planned to have people on site. Mrs. Brate said I believe the town has a curfew of 12 a.m. and we are going to set a time limit of when the property has to be vacated which is a typical practice of wedding venue.

Mr. Brane summarized the application and said we did talk in early April on site. We knew early on there was limited parking that would need a variance as well as a variance for the gravel surface parking to maintain the historic nature. 72 offsite parking spaces are shown, there are eight onsite spaces with 18 offsite at Huntington Bank and 46 offsite at St. John Church. The banquet and catering area depicts 88 seats at capacity and under Section 1137.07 (d) (22) one space for every 2.5 seats at capacity would be required or 36 spaces for that use alone. The bed and breakfast on the second floor indicates four bedrooms and along with the catering, those types of uses had no explicit listing in parking regulations. As you discussed, the determination will need to be made based on the expected number of parking spaces the particular use would require to satisfy the estimated peak load requirement. Due to the historic nature, no surface improvements were indicated. So essentially what we have here is that we are not giving variance from the number of parking spots, what you are giving them variance from is the location of those spots. In the determination component, staff is recommending three spaces for the catering operation and four for the bed and breakfast.

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Mr. Jones said if the parking schedule says that just the banquet/catering part the computation is 36 spaces; where are these two numbers that we made off site. First it was 88 then it went down to 72. Mr. Brane said when we met onsite in April, they had a tentative plan which showed 112 seats as opposed to the 88 they have ended up with. Mr. Jones said what is the 72 then? Mr. Brane said 72 is the total number of spaces they are providing for all three of their uses; they just happen to be offsite. Mr. Jones asked if 72 spaces will suffice for what she wants to do. Mr. Brane said right; she only needs 36 for her banquet use. Mr. Jones said if there are eight spaces on site, then the additional are to be provided on non-contiguous sites. I'm trying to get an idea of what those numbers are and the other issue is that for those two other sites that if those business are open, there's still enough parking for both uses – the bank and the catering; does that make sense? Mr. Brane said sure; if you folks saw on the back, the bank is offering after banking hours for overflow parking and the church says they wouldn't have things interfere as well. Mr. Jones said if she's just doing food prep there herself, I don't think it will be an issue; but if you have people there, I assume there will be more than five cars there. Mr. Brane said that is why the second condition reads the way it does; you don't have any offsite parking agreements right now, what you have is a generalized notion fully in agreement with what needs to happen but that condition needs to be approved as to form by our legal counsel. Mr. Jones said I don't have an issue how many spaces she has offsite as long as the spaces that are occupied are not taking up required off street parking for the primary business at the offsite location.

Mr. Hutchinson said she is going to have to make arrangements that the two other properties aren't in use when she has an event.

Mrs. Izor said it is an historic downtown district and we have other businesses in this dense area. We do public street parking and we haven't missed the lots. How is this different? I would hate to see an historic downtown turn into a parking lot and the time sharing makes sense. Mr. Jones said the parking schedule is based on the district and there is a downtown district that doesn't require onsite parking; this property is not in that district. Mr. Brane said for the use described there is a certain number of parking spaces required. Beyond that you have the city's intent and an overall zoning intent; you seek to provide as many off street parking spaces as you can so if you do have overflow and you are overwhelmingly successful, you have the parking in the downtown situation. They are a C-2 that is isolated and a specific use she described, the banquet center, has a minimum number of parking spaces required. In a restaurant situation, you have people coming and going and they are not there for a set time; a banquet center has everyone come at once, they stay for the event, and then everyone leaves at once. More intense parking is required for that use.

Mr. Treiber asked if there was any parking available on the street at all. Mr. Brane said yes and I'll let Mrs. Brate elaborate. Mrs. Brate said the block in front of the mill has many spots that are not being used. She gave pictures to the board that she had taken at different times.

Mr. Jones opened the public hearing at 7:35 p.m. and asked if anyone in favor of the requested variances would like to speak.

Mr. Al Mangio of Spring Valley said I am the architect hired to work on this project and there is an aspect of this that hasn't been addressed; in his 30 years of business, I have never had a

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client that is more passionate and thorough about preparation of trying to address every aspect of this project. I respect that passion. My job is to maintain the feel of that historic building and when you go into an existing building, Chapter 34 of the Ohio Building Code allows you to do what is called a compliance alternative analysis for this building. It's a point based system and if you score a certain amount of points for safety, you provide certain features like fire alarms and other things, it give you flexibility to do things differently from the normal building code. Normally this building would require a sprinkler system but because it is smaller and she's providing other safety features, we don't have to do that. The big benefit of this analysis was it allowed her not to rate the floor/ceiling assembly between banquet center and the second floor. The reason that's important is because historically this is a heavy timber structure and the heavy timber doesn't have to be covered up and we can maintain the historical feel. This takes something that wasn't being used and I think it will bring extra business and income to the city.

Mr. Tom Winning of 24 E. Central said I have had the opportunity to work with the Brates on this concept and in that process I have come to the conclusion that there is a well-developed business plan to support the proposed event center. In discussions with merchants and businesses within the community, I think it addresses a need for a meeting or reception center that isn't currently available. I think it also provides an opportunity to draw people into Germantown to appreciate the things about our community that most of us take for granted. I think this is a positive and certainly warrants consideration.

Mr. Jerry Dalton of 6900 Weaver Road said I have lived in Germantown my entire life and have the funeral home on Rt. 4. Not a month goes by that I don't have 2 or 3 inquiries from the families we serve asking about a nice place to have a funeral meal after the funeral. As far as size for something like that, dinner would be around 25 to 30 people and I can tell you in regards to car numbers, an average funeral procession has about 12 to 14 cars. There is a definite need, there just isn't an appropriate place locally to have anything that is nice in regards to this. I can tell you without fail the families we serve end up going out of town to do something which is not only an inconvenience but a necessity. We have several churches that don't have more than a handful of off street parking spaces. In regards to a funeral they would be in an out in two hours tops during the day when most people are working.

Mr. Jones asked if anyone else wished to speak in favor of the requested variances. Seeing none, he asked if anyone wished to speak in opposition.

Mrs. Lisa Sasser of 67 Circle Dr. said I'm not really an opponent, I just would like to know about the parking. Our back yard looks out across the field which is a flood zone so I know they can't build there but I'm worried about my view being obstructed by a lot of cars being parked in that area. My husband and I didn't know about the offsite parking and it was our concern. I am excited about something like that because I think there is a need but the parking was an issue for me. I also wouldn't want a party going on until 2 or 3 in the morning. Those were the concerns we had.

Mr. Brane said just to follow up on that immediately that was an early discussion; what about the field and can we put gravel down. No; it's a variance here or a variance there or a variance across the street. The folks didn't mind gravel going down but they certainly didn't want to pave and they would have been required to pave it. Mr. Jones asked why they wanted to keep

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gravel down at the site. Mr. Brane said its historic nature. Mr. Jones asked if the property was on the National Historic Registry. Mrs. Brate said yes.

Ms. Jill Lane of 264 S. Main said I was wondering how people are going to get to and from the parking area. Mr. Jones said I thought I read somewhere there is going to be a shuttle service. Mrs. Brate said we are planning on using street legal electric golf carts because they make no sound and we plan to observe the curfew because we don't want to be a nuisance. There will be a roundabout in front and the guests are welcome to pull up and their cars will be valet parked. At the end of the night they will be shuttled back to their cars. Mr. Hutchinson asked if the golf carts are heated for winter. Mrs. Brate we'll have to use blankets.

Mr. Jeff Shyrigh of 323 S. Cherry said our parking for our residence is off the alley that runs between the end of Main and Cherry. My question is are you going to take them up around Old Main Street and bring them back down or are you going to go through the alley. Mrs. Brate said we would be going up Perry then Walnut. Mr. Shyrigh said someone asked about on-street parking and I wonder if anyone had been down there to see how narrow it is on Main Street past the Shuey Mill. Mr. Jones said from a zoning standpoint, if on-street parking is permitted then it's permitted; I'm not aware of a codified ordinance that says somebody can't park on a city street as long as they are obeying the traffic laws. Mr. Shyrigh said I was concerned about emergency vehicles.

Mrs. Brate said S. Cherry Street has been widened and as you can see from the photos there is an abundance of parking that is never used. The valet service was going to extend to that; if we are allowed to use some street parking, we were going to valet the cars to S. Cherry. So I know where the cars are, I live on Dayton Pike, I park on the street in front of my house and I know when I come home with a load of groceries, it's inconvenient to park three houses down. I am trying to address those issues.

With no one else wishing to speak, Mr. Jones closed the public hearing at 7:54.

Mr. Jones said based on what I read in the staff report, there are four different variances. There are eight gravel spaces onsite. To me, it is not an issue of how many spaces are needed off site because it's on another property and as long as the cars coming to this business don't take up more spaces than the required off street parking for the businesses on that particular site, for example Huntington Bank. I don't have a concern about where they park. There is less than 20% of the spaces that you need on that property; everything else has got to be provided either on the street or on another private property. To me it's a non-issue about how many total spaces. Here's what I don't want to happen, if indeed a recommendation is made and it passes, I don't want you to have to come back and say well we initially said we needed 72 spaces but now I need spaces on a third site and a fourth site. I would rather it be a situation where the recommendation that's made doesn't address the number of spaces offsite except that it states that any spaces provided on another commercial private property does not take any required off street parking required for that business.

Mr. Jones said the other issue is the determination of the number of spaces needed for the bed and breakfast. When I look at the parking schedule, the use most similar to a bed and breakfast is under Section 1137.07 (d) (23) for hotel and motels which says there has to be one parking space per room.

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Mr. Jones said the third issue is a variance for the dust free hard surface that's existing on site. It's stated by the applicant it's an historic property and the argument is to pave would take away from its historic character. They need a variance to permit gravel parking.

Mr. Jones said the last part is for the number of spaces generally. Since there is only seven spaces, there has to be a variance to allow for off street parking beyond those seven spaces. I don't think we can address on street parking.

Mr. Hutchinson said I don't know if we need to add it in but Section 1137.05 says something about the collective parking facilities being no further than 500 feet; does that get exempted out. Mr. Jones said he does mention 1137.05 (a); is that what you are looking at? He's saying in the staff report there needs to be another variance and I missed that part. The collective provision allows for parking offsite within a certain distance, so we would have to show, based on testimony, that there is a hardship.

Mrs. Izor said since I haven't measured myself, does this off street parking stay within a quarter mile of the mill. Mr. Jones asked if anyone knew how far away the bank is. Mr. Treiber said the bank is probably further than the 500 feet. Mr. Jones said it's definitely not within 500 feet, to me that's not really an issue; if getting from one place to another is done legally, then I don't think it matters how far away it is except that we do have to grant a variance.

On a motion by Mr. Jones; seconded by Mrs. Izor, it was moved that the BZA determines under 1137.07 (d) (23) parking for hotels/motels at one space per room would be the most similar use to a bed and breakfast use. On call of the roll: Mr. Jones, yes; Mrs. Izor, yes; Mr. Hutchinson, yes; and Mr. Treiber, yes. Motion carried.

On a motion by Mr. Jones; seconded by Mrs. Izor, it was moved to approve the variance request from Section 1137.03 (e) which requires a dust free parking surface and to allow the gravel surface to remain in front of the mill. On call of the roll: Mr. Jones, yes; Mrs. Izor, yes; Mr. Hutchinson, yes; and Mr. Treiber, yes. Motion carried.

Mr. Jones said the third part is a variance for that location on the same lot, so I make a motion that we approve a variance from Section 1137.07 (d) (22) that requires a total of 8 parking spaces for banquet halls. Mr. Hutchinson said that's the bed and breakfast isn't it. Mr. Jones said for the number of spaces specifically, 36 spaces for the banquet hall and catering, and now we made a determination for three bed and breakfast rooms which brings the total number of required spaces to 39, so I'm requesting recommendation of variance that there only be eight spaces of the required 39. Mrs. Izor seconded the motion. On call of the roll: Mr. Jones, yes; Mrs. Izor, yes; Mr. Hutchinson, yes; and Mr. Treiber, yes. Motion carried.

On a motion by Mr. Jones, seconded by Mrs. Izor, it was moved to approve the variance request Section 1137.05 (a) requiring collective parking be within 500 feet of the same lot with the condition that regardless of the number of parking spaces required, that the parking spaces required do not infringe on the number of required off street for the principal business on those two sites or any other site with the following conditions:

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1. Prior to any use of the subordinate carriage house/garage accessory use, specific zoning and occupancy approvals attesting the structure meets all requirements and is safe to occupy as an alternative seating area shall be obtained.
2. Inasmuch as the required parking spaces are not located on the same lot with the building/use served and such spaces are collectively or jointly provided and used, a written agreement thereby assuring their retention for such purposes shall be properly drawn and executed by the parties concerned, approved as to form by legal counsel, and filed with the Clerk of Council prior to any occupancy of the premises.

Mrs. Izor said we are requiring a legal contract, is that what we are saying. Mr. Jones said yes; that's pretty much standard, correct Mr. Brane? Mr. Brane said that is lifted right out of the code, part (c) of the section you've been discussing. We need variance from part (a) and part (c) is the exact wording and something that is required of anyone.

Mr. Hutchinson asked if there was any liability as far as if somebody at her business falls on the other person's property. Mr. Brane said that would probably be a civil issue and that is why we need to approve that as to form with our legal counsel.

Mrs. Izor asked if we are restricting this to just St. John's and Huntington. Mr. Jones said no, my motion isn't specific to any number of off street spaces; what I'm saying in the motion is that no matter how many spaces are offsite or how far away they are, they do not infringe on the number of off street spaces that are required for that particular use and that if all requirements that Mr. Brane mentions on page 3 are met, the variance should be granted.

With no further discussion, on call of the roll: Mr. Jones, yes; Mrs. Izor, yes; Mr. Hutchinson, yes; and Mr. Treiber, yes. Motion carried.

BUSINESS:

Mr. Jones said the Planning Commission has been working on updates to the planning and zoning code and one of the chapters I've been working on is the off street parking and loading chapter; it appears that based on this particular use we may have to make some further modifications to that chapter. If the board has any issues you think Planning Commission should look at, I encourage you to put that in writing for them to review before they make recommendations to Council.

Mr. Brane said as an outsider coming in, one thing we desperately need is a sign code update; currently you can take a piece of plywood, paint on it, mount it on a 4 x 4, and put it in your front yard. While that is quaint, we certainly want to tighten up those restrictions; at least weather able material. Mr. Jones said we will look at the sign code and the adult entertainment regulations per the City Solicitor; those are both first amendment issues.

Mr. Brane said to follow up on the sign, you folks are going to be seeing a variance for an electronic message board. I don't know the philosophy, whether we just don't allow those although we have them in a PD, but we do have that coming forward. We might want to look at some rules, if we wish to allow them and how we can control them.

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Mr. Brane said at the last meeting you did your by-laws and there was a question about whether you had to meet or not. I took it to the City Manager; we both researched it and couldn't find anything saying a meeting was mandatory. It was also reviewed by legal counsel and he said it reads fine, don't touch it. Mr. Jones said it simple enough as we do now; if there is no business, a notice is put out by the clerk and we don't have a meeting for that month. We haven't met a lot but I have a feeling we are going to be meeting more; that's a good thing. Mr. Brane said you have two projects that want to come in and talk with Planning Commission ahead of time to get some initial comments, so you have development coming.

Mrs. Izor said I think the project Ms. Brate is working on is quite interesting and I think this is a nice piece to understand. One thing we do have of value in our community is our historic structures; I think it's really great to be able to preserve and conserve the historic nature of our town.

ADJOURNMENT:

On a motion by Mr. Jones, seconded by Mr. Treiber, it was moved to adjourn. All were in favor; none were opposed. The meeting adjourned at 8:19 p.m.

Respectfully Submitted,

Keith A. Brane
City Planner