



**CITY OF WALLED LAKE
ZONING BOARD OF APPEALS
MONDAY, OCTOBER 24, 2016**

The Meeting was called to order at 7:36 p.m.

ROLL CALL: Ackley, Easter, Gunther

ABSENT: DeCourcy, Stephan, Swett

OTHERS PRESENT: City Attorney Vanerian, Building Official Wright, Recording Secretary Joyce

The applicant was informed that there was a quorum but not a full board. There would have to be three affirmative approvals for the variance requests to be granted. Or the applicant can come back when there is a full board. The applicant agreed to move forward with the meeting.

REQUESTS FOR AGENDA CHANGES: None

APPROVAL OF MINUTES:

ZBA 10-01-16 APPROVAL OF THE JULY 25, 2016 ZONING BOARD OF APPEALS MEETING MINUTES

Motion by Ackley, seconded Gunther, **CARRIED UNANIMOUSLY:** To approve the July 25, 2016, Zoning Board of Appeals meeting minutes

COMMUNICATION: None

AUDIENCE PARTICIPATION: None

UNFINISHED BUSINESS: None

NEW BUSINESS:

1. Public Hearing

Open Public Hearing 7:35 p.m.

1. Case # 2016-2
Applicant: Ben Thorsen
Location: 759 E. Walled Lake Dr.

Walled Lake, MI 48390
Request: Variance Request for Side Yard Setback & Impervious Surface Coverage

ZBA Chairman Easter said the applicant is before the board for a variance for impervious surface and side yard setbacks to the detached and attached garage.

The applicant, Ben Thorsen, said he is requesting two variances; first is for the impervious surface and the second is for the side yard setback. He said an important point to note is about the impervious surface on the site plan. The coverage on the building on this plan amounts to 26% of the lot, the specification by the City Zoning Ordinance is 30% so it is well under that limit by 4%. Due the nature of East Walled Lake Drive, being across the street from the lake, and having his driveway in and around; this is where he runs into the impervious surface issue. He explained if he was adjacent to one side road, the driveway could be on the side road and not on East Walled Lake Drive then it would not be a problem. He said the design on East Walled Lake Drive is a major problem. He said he is under the 30% building coverage.

ZBA Chairman Easter said the required setback from East Walled Lake Drive is 35 feet within the road but most of the houses are 60 to 70 feet back from the road. He said the City wants to maintain the sight line along East Walled Lake Drive and keep as a beautification road. He said that line without impairing or without impeding the view and the look has been maintained and has been part of the reason the houses to stay back off the road. He said it is one of the things the City requests the homeowners to maintain.

Mr. Thorsen said he is not intending to bring his house forward at all. He showed the Board an ariel view of other houses that have impeded the impervious surface requirement. He said he feels the 43.5% that was taken off the survey is accurate and probably well under what is happening on some of these lots. He said his lot is deeper by 290 feet and allows him a lot more to work with. He also asked for a 6-month extension to the time frame of his variance request – making the variance valid for 12 months. He would like to build the detached garage this fall and start the house construction next spring/summer. He said that way he can move everything from the house into the detached garage. He said he is requesting the variance for the side yard setback so he is able to make a left hand 90-degree turn into his garage. He said his lot is 50 feet wide and if he is giving up 25 feet, half of it for the motor court. He said it leaves him with 25 feet – if the side yard is 3-1/2 feet then that garage is only 21-1/2 feet. He said if you take away 6 inches for each wall and 4 inches for the thickness of the garage door that leaves him left with just over 20 feet.

Attorney Vanerian stated that the Board can approve an extension from the 6-month time frame giving the applicant a 12-month time frame to pull necessary building permits.

AUDIENCE PARTICIPATION:

Daniel Schouman is an attorney in Walled Lake and he is representing Michelle Titus who resides at 751 East Walled Lake Drive. He said Ms. Titus is opposed to the applicant moving within 2 feet of the property line. He said she doesn't want structures that close to the property

line. He said it is their position that the City of Walled Lake's ordinance for a lot this size is generous and allowing a property to come within 3 ½ feet of their property line. He said what the applicant is asking for and what they submitted does not meet the requirements for the variance. He said the applicant would have to establish that the need for the variance is there because otherwise it would unreasonably prevent them from using their property for a permitted use, that part is in the case, because there is a 2,000-square foot home sitting there for this residential lot. He said the applicant would need to establish that it is unnecessarily burdensome; 3-1/2 feet versus 2 feet is not unnecessarily burdensome for the applicant which then would not meet this requirement. He is asking for his client to move the proposed attached garage back 1-1/2 feet so that the applicant is compliant with the City ordinance.

Attorney Schouman said the second requirement is that the variance would do substantial justice to the applicant and other property owners. He said this home at one time was one of 27 properties in the community that was designated as having historical significance. He feels that destroying one of these 27 historical homes would not benefit anyone within Walled Lake. He said he has heard that City of Walled Lake is working with Commerce Township eventually to combine the historical commission to have some input on this type of thing, to preserve the historical benefits. He said this is not happening now because the City does not have a historical commission.

Attorney Schouman stated this is problem self-created. He said it is not a 1950s cottage being discussed here tonight; it is a 2,000-square foot home. He said the applicant is pushing the limits of what is the ordinance substantially allows for new home construction. He said however the applicants are interfering with their neighbor's property by coming so close to the property line and building something outside of the footprint. He said the problem is self-created and because it has historical significance it does not benefit the neighborhood. He stated it is not unnecessarily burdensome for them to move it 1-1/2 feet so there is at least 3-1/2 feet between properties. He stated that the need for this is not unique. He said as you look at the homes in the area are of the same style, outside of Mr. Gunther's home. He expressed that from a legal standpoint none of the variances being asked for meet the requirements. He said by granting this variance it would be a burden to his client and the City as a historical building will be destroyed. He said there are many alternatives than what the applicant has proposed that would be much less concerning to his client. He said his client objects to both variance requests that are proposed.

Mr. Thorsen said the person Mr. Schouman is presenting does not reside at the address next door and resides in California. He said she is also against Mr. Thorsen's application for a seawall which he has applied for with the DNR because then she would have to put in a seawall. Mr. Thorsen stated that the chain link fence in the back of the property at 751 East Walled Lake is 5 feet onto the owner's property. He said she has two buildings on her property with her tenant living in the garage and he asked if that was permitted. He said if this variance is approved, there would still be a couple of feet to the fence.

Mr. Schouman stated these variance requests are self-imposed and the homeowner does have a right to have a certain distance between properties. He said this variance would affect the property owner as well as any future home owners of this property.

ZBA Board Member Gunther said there is a requirement if the Board allowed similar approval of variances for other homeowners, then others have the right to have the same usage of their property in the same district.

Attorney Vanerian said no, the Board is not bound to that ideology. He said the Board decides a variance request on a case to case basis based on the facts and circumstances presented to the Board. He said the previous statement is not correct.

ZBA Board Member Ackley stated that part of the problem with the lake front lots is their narrow width. She said some lots are wider than others but some lots have always been tough to deal with over the years. She said the Historical Commission was disbanded because it was not being used as it was intended.

ZBA Board Member Gunther asked if there was a reason that the attached garage could not meet the side yard setback. Mr. Thorsen said it is not an important thing; it is to maintain a green space view from the family room and by applying two feet to both garages would allow them to be in line with each other and overall give a nicer view from the house. He said the reason for the variance for the side yard is for the attached garage.

ZBA Board Member Gunther said the detached garage could be moved over. He said the distance between the two garages is about 75 feet.

ZBA Chairman Easter said he felt that the variance request should be split. He said the detached garage would be what this variance is proposed for. He said the detached garage doesn't impose on anyone.

Close Public Hearing 8:44 p.m.

ZBA 10-02-16 MOTION TO APPROVE THE VARIANCE FOR IMPERVIOUS SURFACE FROM 35% TO 43.5% COVERAGE FOR CASE # 2016-2: 759 E. WALLED LAKE DRIVE BASED ON THE FOLLOWING: COMPLIANCE WITH THE ORDINANCE WOULD CAUSE UNNECESSARY EXPENSE AND THE PROPOSED SITE PLAN IS CONSISTENT WITH NEIGHBORING PROPERTIES, VARIANCE WILL ALLOW A DRIVEWAY WITHOUT IMPEDING ON THE NEIGHBORING USAGE, AND A LESSER VARIANCE WOULD INHIBIT THE DESIGN OF THE PROPERTY BY PREVENTING INSTALLATION OF A CONCRETE DRIVEWAY BEING CONSISTENT WITH OTHERS ON EAST WALLED LAKE DRIVE, CIRCUMSTANCES ARE UNIQUE TO THE PROPERTY BY HAVING INSUFFICIENT PARKING SPACE TO MANEUVER IN AND OUT, AND THE VARIANCE IS NOT SELF-CREATED DUE TO THE LOT DESIGN AND WIDTH

Motion by Gunther, seconded by Ackley, CARRIED UNANIMOUSLY: To approve the variance for impervious surface from 35% to 43.5% coverage for Case # 2016-2: 759 East Walled Lake Drive based on the following: compliance with the ordinance would cause unnecessary expense and the proposed site plan is consistent with neighboring properties, variance will allow a driveway without impeding on the neighboring usage, and a lesser variance would inhibit the design of the property by preventing installation of a concrete driveway being consistent with others on east walled lake drive, circumstances are unique to the property by having insufficient parking space to maneuver in and out, and the variance is not self-created due to the lot design and width

Roll Call Vote:

Yes: (3) Gunther, Ackley, Easter,
No: (0)
Absent: (3) DeCourcy, Stephan, Swett
Abstain: (0)

(3-0) MOTION CARRIED

ZBA 10-03-16

MOTION TO APPROVE VARIANCE FOR THE SIDE YARD SETBACK FOR THE DETACHED GARAGE ONLY AND THE VARIANCE FOR THE ATTACHED GARAGE IS DENIED FOR CASE #2016-2 BASED ON THE FOLLOWING: STRICT COMPLIANCE WOULD NOT ALLOW THEM TO USE THE PROPERTY AS DESIRED AND SINCE THE VARIANCE REQUEST IS BEING SPLIT AND THEY ARE ASKING TO PULL FORWARD OR SHORTEN THE ATTACHED GARAGE. SUBSTANTIAL JUSTICE PLACES THE DETACHED GARAGE OUT OF SITE FROM THE NEIGHBORS AND THIS GARAGE IS BEHIND ANY EXISTING STRUCTURES. LESSER VARIANCE WOULD NOT ALLOW THEM TO HAVE THE STORAGE AREA NEEDED. A LESSER VARIANCE WOULD NOT ALLOW THEM TO USE THE PROPERTY AS DESIRED AS THEY WOULD NOT HAVE STORAGE AREA. CIRCUMSTANCES UNIQUE TO THE PROPERTY ARE THAT THEY ARE PLACING THE GARAGE BACK AND OUT OF SITE LINE OF NEIGHBORS. VARIANCES OF THIS TYPE OF SETBACK FOR GARAGES HAVE BEEN GRANTED AND NOT SELF-CREATED IN THAT IT ENTITLES THE APPLICANT TO USE THE PROPERTY WITH THE DETACHED GARAGE AND STILL BE WITHIN THE BUILDING PERCENTAGES

Motion by Gunther, seconded by Ackley, CARRIED UNANIMOUSLY: To approve variance for the side yard setback for the detached garage and the variance for the attached garage is denied for case #2016-2 based on the following: strict compliance would not allow them to use the property as desired and since the variance request is being split and they are asking to pull forward or shorten the attached garage. substantial

justice places the detached garage out of site from the neighbors and this garage is behind any existing structures. lesser variance would not allow them to have the storage area needed. a lesser variance would not allow them to use the property as desired as they would not have storage area. circumstances unique to the property are that they are placing the garage back and out of site line of neighbors. variances of this type of setback for garages have been granted and not self-created in that it entitles the applicant to use the property with the detached garage and still be within the building percentages

Roll Call Vote:

Yes: (3) Gunther, Ackley, Easter,
No: (0)
Absent: (3) DeCourcy, Stephan, Swett
Abstain: (0)

(3-0) MOTION CARRIED

ZBA 10-04-16 MOTION TO APPROVE A 6 MONTH EXTENSION FOR ZBA CASE 2016-2 FOR THE VARIANCE REQUESTS.

Motion by Gunther, seconded by Ackley, CARRIED UNANIMOUSLY: To extend the time frame of the variance requests for Case 2016-2: 759 East Walled Lake Drive Ben Thorsen an additional six months.

DISCUSSION:

Dennis Burks- 206 Spring Parks – objected to the having of a ZBA meeting and gave his interpretation of the state zoning law stating that there has to be five people for a quorum to have a city ZBA meeting. Mr. Burk gestured to attending board members and said there is going to be a problem at the circuit court according to the vote with Maher which will be talked about in court. City Attorney Vanerian corrected the misinformation given by Mr. Burk explaining that there is a difference between a quorum and the total membership of this board. City Attorney Vanerian stated that a quorum is a simple majority of the members of the board. City Attorney Vanerian stated that under the Zoning Enabling Act, MCL 125.3601 subparagraph 12, the requirement is that you need only a majority of the board which means at least three (3) of five (5) member in order to hold a meeting and conduct business. City Attorney Vanerian stated that there seems to be a misunderstanding on Mr. Burk’s part and that Mr. Burk does not seem to understand what a quorum is or what it means!

PC 10-05-16 ADJOURNMENT

Motion by Ackley, seconded by Gunther, CARRIED UNANIMOUSLY: To adjourn the meeting at 8:44 p.m.

Janell Joyce
Recording Secretary

Jason Easter
Chairman