



**CITY OF WALLED LAKE  
ZONING BOARD OF APPEALS  
(ELECTRONIC MEETING PLATFORM)  
MONDAY, JULY 27, 2020**

The Meeting was called to order at 7:30 p.m.

**ROLL CALL:** Arnold, Easter, Gunther, Hecht, O'Rourke, Rundell

**OTHERS PRESENT:** Consultant Building Official Wright, City Attorney Vanerian,  
Recording Secretary Stuart

**REQUESTS FOR AGENDA CHANGES:** None

Recording Secretary Stuart explained correspondence was received from Mr. Berry stating that he will not be ready for the ZBA meeting tonight and he asked to be placed on the agenda for August.

**APPROVAL OF MINUTES:**

**ZBA 07-01-20 APPROVAL OF THE JUNE 29, 2020 ZONING BOARD OF  
APPEALS MEETING MINUTES**

Motion by O'Rourke, seconded Hecht: CARRIED: To approve the June 29, 2020 Zoning Board of Appeals meeting minutes.

**COMMUNICATION:**

Recording Secretary Stuart explained an email was received today from a Mr. Michael Kernan. Chairman requested the letter be read into the record.

*Jennifer,*

*I am emailing you because I have another meeting this evening for the charity I am a part of, and the meeting is in my office. This note strenuously opposes the build out of my direct neighbor Ben Berry's home on East Lake Drive. He is building it out and HE WONT EVEN LIVE THERE! He is attempting to turn the house for a larger profit and all of our expenses! I have lived on East lake Drive my entire life! My family has owned businesses in Walled Lake and I built my house accord to the sight lines on East Lake drive just like everyone except the New build next to me in which I could be more upset and now people want to put two houses in front of mine toward the lake. I prepared to hire the Best Attorneys in the state if this is allowed.*

*Michael Kernan*

**UNFINISHED BUSINESS:**

1. Case: 2020-03  
Applicant: Ben Berry  
Location: 821 E. Walled Lake Drive  
Request: Non-Use Variance

Recording Secretary Stuart explained applicant Mr. Berry requested to post pone he was not ready to present this evening.

2. Case: 2020-04  
Applicant: Kelly Tome  
Location: 821 E Walled Lake Drive  
Request: Interpretation of single-family front yard setback

This matter relates to an interpretation of the front yard setback requirement applicable to property located at the above referenced location. The applicant is requesting an interpretation of the single-family front yard setback requirements under sections 17.01 and 17.02, subsections (a) and (o), of the zoning ordinance as applied to the above referenced single family property at the above referenced location. The plan for an addition to the single-family structure at the above location proposes a front yard setback of 73 ft. from the center of E. Walled Lake Dr. The Applicant claims a proper interpretation of the front yard setback requires alignment with the existing front yard setbacks of neighboring properties.

Chairman Easter explained he was not at the last few meetings, however, he said read the minutes but asked for the board's views.

Chairman Easter said he read Mr. Kernan wants to see lining up to the ERBP as well as Ms. Tome neighbor on opposite the side of applicant's home. Chairman Easter explained a prior build was held to remain in line with the other homes and follow the Established Residential Building Pattern (ERBP). Chairman Easter said he read Building Official Wright's report and understood his position. He asked Board Member Hecht, who is also a member of the city Planning Commission, that if someone were to propose a develop, before constructing homes, if the neighborhood already has an established residential building pattern, do they not have to follow it.

Building Official Wright explained that is not something dictated by the Planning Commission. He said there is nothing that is set as an ERBP when new sub is constructed.

City Attorney Vanerian said that would depend how it was presented and approved by the Planning Commission, if approved by a PUD, then that could be the way it works if that is what the PUD calls for. He said if it is just a straight build per code and if nothing is in the approved

site plan for the development that requires them to build in a certain specification, it would require them to build by the zoning ordinance.

Chairman Easter said that is clear, if you are establishing a neighborhood. He said he agrees with Board Member's Hecht and Gunther because in the last meeting they discussed the zero line, even if houses are back from the 30-foot setback. He said even with an ERBP established if you have a neighborhood where they chose to abide by the ERBP, behind the 30 foot setback by the neighborhood standards, and the neighborhood is established, houses line up, it would be a zero line. He said you would have 20 feet tall would be built behind the 30-foot setback. It does subtract from the lot size by 20 feet it creates unusable space, it does allow you the line to measure.

Board Member Gunther said if all the homes were at 20 feet instead of 30 foot, then the 20 feet would be less than the 30 feet. He said where it does work is when all the homes are rearward of the 30 feet. He said the way the ordinance is written, is to make the neighborhoods uniform. He said if the ordinance interpretation is kept as it is interpreted by Building Official Wright, it will look like a jack o lantern. He said there was one home that got through because it did not have to have a variance. He said the interpretation of Building Official Wright is wrong.

Chairman Easter said there must be consistency with the people who are consistent in the city. He said the city has requested them to stay in line. Mr. Easter said he went before the ZBA several years ago and requested a variance for a setback and was told no. His home was built in 1997. He said since the ordinance in question was written on 2002, the people were told no. He said when he reads section 17.02, whichever is less. Chairman Easter said this neighborhood was established and directed by the city to stay back, zero line and minus 30 feet. He said he is confused. He said Building Official Wright supplied information and drawings and thanked him for that.

City Attorney Vanerian explained the board requested him to provide a memo on the ordinance interpretation. He said the language of the zoning ordinance itself, is not ambiguous, interprets the ordinance in its entirety, establishes a minimum of a 30 ft setback in the single-family zoning district. He said the ERBP is a formula that generates a number, the number generated to this formula is compared to the 30-foot setback, if greater than 30 feet then 30 feet is the setback. If ERBP is less than 30 feet, then the front yard setback is the ERBP less than 30 feet. He said he does not know the measurements of the adjacent properties. He explained basically, what the zoning ordinances says for purpose of calculating the ERBP setback, immediately adjacent dwellings same side of road and same zoning districts, measure the setback of adjacent properties and that average number is compared to 30 feet. If less than 30, the front yard setback is the ERBP if more than 30 then under the zoning ordinance, 30 feet is the applicable front yard setback. That is what the zoning ordinance says based on the language.

Board Member Gunther asked what the zero line is.

City Attorney Vanerian said he does not understand what the zero line is that Member Gunther is referring to.

Board Member Gunther said it only works in keeping the house lined up when considering, it does not make sense when the established residential building profile is set behind the setback.

City Attorney Vanerian explained he is not basing his opinion on what the street may or may not look like. He said measure the distance of the adjacent structure and front lot line.

Board Member Gunther said yes in attempt to average them.

City Vanerian said the average, is less than 30 if it is, then the ERBP is the setback that would apply. If it is greater it would be 30 feet.

Board Member Gunther explained the reason you average the neighboring properties, is so their views are not obstructed. He said the only way to make sense of averaging the adjacent properties to try not to block the views.

Chairman Easter said he agreed with Member Gunther, it would also lend credence, to people of the city, throughout history people have held people to the ERPB to be fair. If the city does not want to be fair and not be consistent everybody has been held accountable to the current ERBP not the 30-foot setback.

City Attorney Vanerian said you cannot have a negative number when discussing the distance.

Chairman Easter said it was a decision to build a neighborhood further back than the 30-foot setback. Chairman Easter said when a neighborhood established a line, the zero line is the front corner of home. It was decided at that time how the homes were to be established.

Board Member Gunther said the city attorney interpretation is correct. The intent is not to obstruct neighbors' views. For example, homes on Welfare, applications for variances were denied. It required averaging for neighbors, so it remains a clean site line. He explained the homes on Walled Lake Drive are so far setback.

Building Official Wright said the ERBP was established for properties that had less than a 30-foot setback. He explained the board cannot apply it to circumstance here, the interpretation is the way it is written. The board may want to request another ordinance. Right now, there is not an ordinance written.

Chairman Easter said section 17.02, this does not fit the fact that someone can build behind the 30-foot setback.

Board Member Rundell said Building Official Wright reviewed the plan and asked if an architect was involved. Building Official responded yes.

Board Member Rundell said the board does not have a case here, we cannot stop an applicant from building, he can sue us, the applicant followed the ordinances. He said the board should consider making a change, as Mr. Wright explained. Mr. Rundell said he spent his life in

architectural structures, and he followed all the rules when creating and going before the board if necessary.

Chairman Easter said he is trying to exhaust section 17.02, he wants to make sure. He said the board had someone bring the concern forward, there were residents who have been told in the past they cannot do it. He said Mr. Berry can sue and so can the residents of the neighborhood. He said avoiding those situations is primary, the board needs or be consistent.

Vice Chairman Hecht said he agrees with Easter and Gunther. It is a very confusing ordinance; it can be interpreted either way. He said at the end of the day, the right thing to do is to keep the community intact, look out for the citizens. He said he does not want to negatively impact the residents that have been here for a long time. He opined the interpretation of Building Official Wright is not correct.

Board Member Gunther said he agrees with Board Member Rundell, the applicant has prints, he went with the interpretation of Building Official Wright and that is the same as City Attorney Vanerian. He said hanging it now does not make a difference, the plan was approved.

Chairman Easter said Building Official Wright and City Attorney Vanerian provided interpretations.

Vice Chairman Hecht asked if an ordinance amendment can be done.

City Attorney Vanerian said if the zoning ordinance went through the ordinance amendment process, amending a zoning ordinance is not something to be done quickly, there are processes of first and second reading for amendments and in between there is a planning commission public hearing. It is not something that can be done in a couple of weeks

Building Official Wright explained if the applicant came with revised plans and removal of impervious surface, he would be required to provide a permit.

Board Member Rundell said the Planning Commission is reviewing, correct. He asked if the ZBA board can make a recommendation to the Planning Commission for an amendment.

City Attorney Vanerian said yes the board can do that.

Chairman Easter explained houses on the lake, the front yard setback is the lake for everybody on the water, the lake is the front yard.

Vice Chairman Hecht said it is disappointing, disheartening, and frustrating when things like this take place in the city. He said there has to be a way, the risk of not approving a permit, fighting a lawsuit as opposed to upsetting someone. He said if we fight the fight, so be it, stick up for what's right there is something to be said there.

Chairman Easter said even if Mr. Berry corrects his impervious surface, as by the books now, he is obliged by law to issue the permit.

Attorney Vanerian said yes that is correct, the Building Official is required by law to issue a building permit, the Building Official does not have discretionary authority because neighbors do not like it. He said if the board chose to interpret the ordinance in a different way, then it is no longer the same interpretation. He said there have been discussions so far, but he has not heard a motion from the board.

Board Member Rundell said someone needs to prepare something to the board so it can be voted on and submitted to the planning commission.

City Attorney Vanerian said the board can approve a resolution. He said before anybody can draft a resolution, they need to know what the board wants to say. He said this is before the board for interpretation.

Board Member Gunther said while he is agreement that it should be, the legal interpretation of the ERPB, does not supports the boards theory. He said the city will have this home that stands out. He said the ordinance needs to be fixed.

Board Member Rundell opined it is too bad that someone in the city, could not find the cause and make recommendation to Mr. Berry to follow the line of homes in the beginning.

Chairman Easter said the board did read the ordinance one-way and has the opportunity to do something different by resolution.

City Attorney Vanerian said amending the ordinance is not a problem, it sounds like the planning consultant is working on this to go before the Planning Commission. He explained an amendment would be discussed by the Planning Commission and eventually the City Council. He said the amendment is not that far yet it is still in beginning stages.

Chairman Easter asked City Attorney Vanerian to provide legal advice to the board.

City Attorney Vanerian said the board could rely on prior interpretations although he is not aware of any prior interpretations, as applied to this street. He said he has heard discussions tonight of homes approved in the past, however how the setback issue was resolved was not clear to him. He said he is not familiar with prior interpretations to the extent the board can rely on them. He said beyond the board, the spirit and intent are preserved based upon a reading from the zoning ordinance as a whole and shall not have the effects amending the zoning ordinance. He said based on that the zoning ordinance establishes a 30 ft front yard setback unless the ERBP is less than 30, the setback is equal to the ERBP. He explained calculating the ERBP based upon the average front yard setback and comparing that number to 30, is it more or less? He said if less then it's the ERBP setback, if more than it's the 30-foot setback.

Vice Chairman Hecht asked if a board made motion to interpret the ordinance, how would that affect build permits going forward.

City Attorney Vanerian explained whatever the interpretation the board gave to the zoning ordinance language would stand, unless amended by the city council or successfully challenged in court.

**ZBA 07-02-20 MOTION TO APPROVE INTERPRETATION FOR FRONT YARD SETBACK TO FOLLOW THE ESTABLISHED RESIDENTIAL BUILDING PATTERN (ERBP), WHERE THE ESTABLISHED RESIDENTIAL BUILDING PATTERN IS CONSIDERED TO BE A NEGATIVE VALUE TO ENSURE THE ERBP AVERAGE OF TWO NEIGHBORING PROPERTIES IS TAKEN INTO CONSIDERATION WHEN AUTHORIZING THE BUILDING LOCATION RELATIVE TO THE FRONT LINE**

Motion by Hecht, seconded by Rundell, UNANIMOUSLY CARRIED: To approve interpretations for front yard setback to follow the Established Residential Building Pattern (ERBP), where the Established Residential Building Pattern is considered to be a negative value to ensure the ERBP average of two neighboring properties is taken into consideration when authorizing the building location relative to the front line.

Discussion

Board Member Arnold said he is torn and sees both sides, his interpretation is that of the attorney. He asked in discussion, of upsetting one or many, what are the damages, protecting the city, architectural drawings, cost.

Vice Chairman Hecht said one example is that the home will be built for the next number of years further out.

Board Member Arnold said if the applicant is out architectural drawings he is out drawings fees verses the home being built for a number of years angering the surrounding neighbors

Board Member Gunther said if the applicant choses not the build the city loses that tax revenue it is not as sample as considering architectural drawings fees.

Building Official Wright said if this interpretation stands, then for every building project and applicants will need a survey for any project that projects into the front yard. This will be costly to the applicants. He said in every neighborhood, there is an ERBP unless there is an ordinance amendment made. He said the board is making an interpretation which is almost like an ordinance amendment because he will be ignoring the setback requirements and abiding by the board's interpretation.

Vice Chairman Hecht said the board is here to protect the community.

City Attorney Vanerian said he would have to review the applications that have been submitted, he cannot say with any legally certainty, when the board's interpretation would be effective.

Vice Chairman Hecht said the current plans were pending, hypothetically, if the variance is not approved, the applicant would have to resubmit new plans. He said if the board votes tonight on the interpretation this would impact any new plans submitted.

City Attorney Vanerian said again he would have to review the timeline of what has been submitted to the building department.

#### Roll Call Vote

Ayes (5)	Gunther, Hecht, Rundell, O'Rourke, Arnold
Nays (0)	
Absent (0)	
Abstention (1)	Easter

#### AUDIENCE PARTICIPATION

Ms. Kelly Tome said this is frustrating, the city of Walled Lake should want to keep the front setback the same. She said she truly feels, the value of her home will go down, Mr. Berry does not live here he does not care. She said the board has denied variances in the past for blocking views what can't this be denied. She said we have all gone by the setbacks. She said she would have loved to come further forward, why is this a concern now, all the home remodeled have followed the setback. She asked how is the happening now.

#### ADJOURNMENT

**ZBA 07-03-20**

#### MOTION TO ADJOURN

Motion by Gunther seconded by Rundell, CARRIED, to adjourn the meeting at 8:59 p.m.



Jennifer Stuart  
Recording Secretary

*approved 9-28-20*

Jason Easter  
Chairman