

CITY OF SYLVAN LAKE
ZONING BOARD OF APPEALS
MAY 12, 2010

A Meeting of the Zoning Board of Appeals, was held on Wednesday, May 12, 2010, opening at 6:17 p.m. at the Sylvan Lake Community Center, 2456 Pontiac Drive, with Chairman Storrie presiding.

Present: Harrop, MacGillis, Menuck, Storrie
Absent: Holly

Also Present: City Manager Martin and Clerk Clippert

APPROVAL OF AGENDA

Moved by MacGillis, seconded Menuck, to approve the Zoning Board of Appeals Agenda for May 12, 2010, as presented.

Yes: All
No: None

MOTION CARRIED

APPROVAL OF MINUTES

Moved by MacGillis, seconded Menuck, to approve the minutes for April 14, 2010 as submitted.

Yes: All
No: None

MOTION CARRIED

VARIANCE REQUEST

Z-002-10

Property: 2242 Garland
Petitioner: Gerry and Christine Arrowood
Zoning Ordinance Sections: 78-297 Total of both side yard setbacks

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant a variance from the zoning ordinance to allow the construction of a staircase and landing on the left side of a new home at 2242 Garland.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Storrie opened the hearing. Proof of mailings and required proof of application are in the file.

Todd Bergsman, builder for the property, stated the property is an undersize lot by the ordinance definition of square footage. Martin corrected Bergsman and informed him that the ordinance does not consider this lot undersized. The lot does meet the ordinance requirements under the notes to regulations as a platted lot. Bergsman explained there are two front yards for this house. They are proposing 10-18 steps in height. Wants to make as attractive as possible. They are trying to minimize it as much as possible.

Menuck stated the house was designed on a vacant lot. She questioned why this wasn't included in the original plans. Bergsman stated the stairs were an after thought. They didn't think they would need them. After the house was built and landscaping put in it was determined the stairs did make sense.

Chairman Storrie opened the meeting to the public.

Eric Wiegand stated he lives within 300 feet of the property. He has spoken with some of the neighbors and they are ok with it and feels it adds to the area. They feel there are no adverse affects to the neighboring properties.

Gerald Arrowood stated he spoke with Mr. Lloyd's daughter (neighbor which this would affect) and they didn't have a problem with it.

Storrie questioned how much the variance is for. He stated it looks like more than 10 inches. Bergsman stated he didn't include the landscape steps. Martin stated he feels an 18" variance is needed and posted the public hearing notice stating that. Storrie questioned if the steps could go to other side. Bergsman felt they would be to low and would run into the mud room door. Storrie explained aesthetics are not part of the board's consideration. They are looking to see if this is the absolute minimum variance required to get the job done.

Menuck reviewed a variance was already given based on the neighbor encroaching on the required setbacks. She asked if the neighbor's house was set correct today would they still need a variance. Martin stated they need it for total side yard setbacks. It has nothing to do with the house to west. That house is further back.

MacGillis explained he is having a hard time with a practical difficulty. It can not be self-imposed. Storrie explained the guidelines which they have to follow. Storrie added, functionality and aesthetics are nominal considerations. Menuck feels this is self imposed.

Arrowood asked how he would fix this. Storrie informed him he needs to build within the ordinance requirements of the setbacks. He invited to submit another design. He suggested they work with Martin on it.

Wiegand doesn't understand why the board won't approve it. He feels they are too rigid.

Bill Brundage feels they should do whatever they can do to prevent an ugly staircase.

Storrie proposed a motion to deny the application for the variance at the property located at 2242 Garland, for total and side yard setbacks. The applicant has not shown a practical difficulty pursuant to the ordinances of the City of Sylvan Lake. The failure to define the practical difficulty is for the following reasons:

1. Strict compliance with the specified dimensional standards will not deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district. Further, it will not create an unnecessary burden on the applicant or unreasonable prevent him from using the property for permitted purpose.
2. The variance will not do substantial justice to the applicant as well as other property owners in the neighborhood. As a lesser variance would give substantial relief to the applicant and be consistent with justice to the other property owners.
3. The need for the variance is not due to the unique circumstances peculiar to this particular parcel of property. Lots that are 50' in width are very common in the City of Sylvan Lake.
4. The variance is not necessary for the preservation and the enjoyment of substantial property right also possessed by other owners in the same zoning district.
5. The requested variance will not be granted in such a fashion that the spirit of this ordinance will be observed and public safety and welfare secured.
6. Problem and resulting need for the variance has been self created by the applicant as this is a new parcel of property, recently constructed pursuant to a new set of plans.
7. The alleged hardship and practical difficulty that will result from the failure to grant the variance do not include substantially more than mere inconvenience or the inability to obtain a higher financial return.

This board has also considered that the granting of a lesser variance will provide reasonable relief and substantial justice to the applicant.

Moved by MacGillis, seconded Menuck, to approve the motion as stated by Chairman Storrie.

Yes: Harrop, Macgillis, Menuck, Storrie
No: None

MOTION CARRIED

VARIANCE REQUEST

Z-003-10

Property: 2650 Island Court
Petitioner: Howard Fingerroot
Zoning Ordinance Sections: Sec 78-296 p.CD78:55; Sec. 78-610(a)(2) p.CD78:81

In accordance with the provisions of the Zoning Ordinance, a Public Hearing was held by the Zoning Board of Appeals at the request of the petitioners, to grant two variances from the zoning ordinance, one for each proposed lot, to allow a lot split at 2650 Island Court.

All property owners within 300 feet of the parcel in question having been duly notified of the hearing and the hearing published as required by PA 110 of 2006; Chairman Storrie opened the hearing. Proof of mailings and required proof of application are on file.

Chairman Storrie explained the board previously heard an application on this matter on April 14, 2010, and did a full factual investigation at that time. They considered each of the elements for a practical difficulty, heard comments from the public and approved the variance request. They are hearing this application again due to deficiencies in mailing notices 15 days prior to that hearing April 14, 2010.

Howard Fingerroot, petitioner, explained what has changed since they met last month. He has closed on the property in late April and moved in. He is here for a variance for access. There are original plotted two and one-half (2 ½) lots on the property and he is looking at making it two lots. His property has 40' of right of way. The request is for 20' of frontage for each lot. What this will allow for is one lot being 65' wide and the other being 93' wide. Fingerroot continued that this exact variance he is requesting was approved by the Zoning Board two other times and again last month. His practical difficulty is living on the end of a dead end road, with water on three sides and no way to meet the required road frontage for each lot. The board considered all the facts and approved the variance with the six points noted in the minutes. He plans to live on the property even after the lot is split.

Storrie asked if either of the lots will exceed minimum width requirements or lot coverage. Martin stated they meet all the ordinance requirements except for access frontage on a street because it is a dead end street.

Storrie asked if there is anyway to do a lesser variance than proposed.

MacGillis asked if the property is ok currently as it sits. Martin explained it is currently a non-conforming lot because it doesn't have the frontage on the street.

Martin asked Fingerroot if he has ever considered dedicating the street back to the city to eliminate these issues. Fingerroot stated he would still be in the same situation in terms of conformity because the original plat as it stood had a 40' right-of-way ending on lot 21. Martin reviewed how he was looking at it. The one lot has 65' and would meet the requirements. The

actual road went to that last lot, but the way it is proposed you will have a lot and a half there, so the way he calculates it, it would around 57' of frontage. What this would do is take away from Fingeroot's buildable area. Storrie reviewed the discussion. In order for Fingeroot to have a lesser variance he would have to give property back to the city. Martin added, it would decrease the lot by about 1,500 square feet.

Storrie asked if there is any indication that this would create a danger for public safety. Martin stated nothing that has been shown so far.

Storrie asked, does anyone believe this is going to unreasonably diminish the value of surrounding lots or alter the essential character of the neighborhood or surrounding properties. All the board members agreed they would not.

Chairman Storrie opened the meeting to the public.

Barb Misuraca feels the area is really crowded and adding another house will congest the street more. She is worried about safety and is against the variance.

Marian Reed stated there are six young children at the end of Beverly. There is the lagoon there with people parking their cars to get to their boat docks. It is a dead end with no sidewalks and not a safe area for more traffic to be added. She is concerned if an emergency vehicle would be able to have enough room.

Richard Eriksen started out by informing the board the notice, which went out to residents, is missing the legal description and code section, which is required by ordinance. He stated this case is different from the one approved June 11, 2008 because it was a different body of law. Two days after this case was heard, a new ordinance was adopted. He discussed areas within the ordinance he felt were pertinent. The 45' variances belong to two different proposed lots. He feels this is what they are basing the variance on, not the existing lot. He feels they are allowing a split of the property. He noted in requirements under practical difficulty it requires the applicant to demonstrate all of the following:

1. Has the applicant convinced the board by denying deprives him of common rights, create an unnecessary burden or unreasonably prevent him from using his property.
2. Has he convinced the board that the variance is necessary to preserve and enjoy a substantial property right. Eriksen did hear that from the applicant.
3. Has he convinced the board that granting the variance will keep the public safety and welfare secure. Eriksen heard concern with the public at this meeting.
4. Has he convinced the board that the need for two 20' frontages was not created by him wanting two lots. Eriksen feels the applicant did create the problem.
5. Has he convinced the board that denial will cause substantially more than mere inconvenience or a loss of gain.
6. Has he convinced the board that granting of the variance will not increase the hazard of fire or otherwise endanger the public's safety. Eriksen feels with having two lots you double the combustible material at that location and it is a fire hazard.

Eriksen stated when he spoke with the applicant he had stated the spouse didn't even want the lot split. She wanted to build on the full lot. The applicant wanted to have this split just to keep in his back pocket.

There were no other public comments. Chairman Storrie closed this portion of the meeting.

Fingerroot rebutted, he is not an expert on fires. He is not sure what difference it makes whether he has a 10,000 square house or two home at 5,000 square feet each. He knows you are required to building within so many feet of a fire hydrant, which it is. Brick and drywall for two homes actually provides additional fire suppression as opposed to one 10,000 square foot home. He is quite comfortable with the State laws protecting everyone. He also added he has a ½ acre of property which allows for two lots within the zoning requirements.

Storrie asked who makes the determination of a fire hazard or will a fire inspection take place. Martin replied, what will normally happen is Planning will review lot split request and see how it fits with the City's ordinance. The only thing that doesn't comply with the ordinance is the frontage of the street. Martin added, it could be brought up and provide that information to Planning Commission. Storrie added, if they granted the variance the lot split is contingent upon the recommendation of Planning Commission and approval by City Council.

Based on this hearing, Menuck is confident the Planning Commission would seek the Fire Marshall's opinion before they make a recommendation. The Zoning Board granting of the variance does not split the lots. The board is only acting on the access frontage.

MacGillis questioned if the problem is self created. Menuck doesn't believe it is. The applicant did not create plot. She doesn't agree with Eriksen's point of depriving the applicant of his common right. Menuck stated if this was any other lot in the city it could be split. She addressed Eriksens point on preservation of property rights. Eriksen didn't read the whole requirement with this. It also mentions: also possessed by other property owners in the same zoning district. This is the relevant part. The dead end road doesn't conform. The applicant didn't create it. Menuck also believes it is up to the board, who is trained, not the petitioner, to consider these things and prove each point. Storrie added, the board questioned the petitioner to know the answer to each point.

Storrie proposed a motion to approve the applicant's non-use variance at the property located at 2650 Island Court as follows. The board finds that the applicant has shown a practical difficulty pursuant to the ordinance, for the following reasons:

1. Strict compliance with the specified dimensional standards would deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district. It would create an unnecessary burden on the applicant or unreasonably prevent the owner from using the property for its permitted purpose. Specifically the right commonly enjoyed by other property owners is the right to build a home. This is a very large lot in an unusual location and it is undisputable that a right to build a home on a normal size lot in this neighborhood is commonly enjoyed by others and the restriction would

unreasonably prevent Mr. Fingerroot from building a home on the lot.

2. The variance will do substantial justice to the applicant as well as to other property owners and a lesser variance than requested will not give substantial relief to the applicant or be consistent with justice to other property owners. In order for there to be a lesser variance Mr. Fingerroot would have to vacate a portion of his property and give to the city in order to extend the road and accordingly with both of those lots sizes would be reduced. It is an unreasonable requirement for the applicant to have to give up property rights.
3. The need for the variance is due to the unique circumstances peculiar to the land structures involved that are not applicable to other land structures in the same district. The property is surrounded on three sides by water. There is no other property in this neighborhood which is like this one and it is extremely limited by the fact that the road is 40' wide.
4. The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other property owners in the same district and it is not a condition or situation, which is of a recurrent nature. The variance is necessary to preserve Mr. Fingerroot's right to build a home on the property, which everyone else enjoys in this neighborhood if they have normal size lot like he would have two normal size lots.
5. The request for a variance or appeal can be granted in such fashion that the spirit of this ordinance will be observed and public safety and welfare observed. The granting of this variance will be contingent upon review and approval of fire issues by the City of Sylvan Lake City Council.
6. The problem or need for the variance has not been self created by the applicant. Applicant did not lay the plot for this neighborhood, the applicant did not setup the size of this lot, the applicant did not build a house as with previous application that created an issue. The property is what it is, large enough to build two homes on it except for this frontage variance.
7. The alleged hardship practical difficulty that will result in the failure to grant them variance includes substantially more than a mere inconvenience or inability to obtain a higher financial return. This was not the basis for the applicant. The inability to build would be more than a mere inconvenience. It would be a substantial infringement on Mr. Fingerroot's property rights.
8. The granting of a lesser variance will not provide reasonable relief and substantial justice to the applicant. A lesser variance is not possible without Mr. Fingerroot vacating property.
9. The granting of a variance will not increase the hazard of fire or otherwise endanger

public safety. The board received no concrete evidence of this. The variance will be contingent upon review and approval of all fire issues by the City of Sylvan Lake City Council.

10. The granting of the variance will not unreasonably diminish or impair the value of surrounding properties. There was not evidence of this presented.
11. Granting of the variance will not alter the essential character of the neighborhood or surrounding properties. There was not evidence of this presented.
12. The granting of the variance will not impair adequate supply of life or air to the adjacent property. There was not evidence of this presented.

The granting of the variance is contingent upon the house being removed within one year; otherwise, the variance will lapse.

Moved by Menuck, seconded Harrop, to approve the proposed motion as stated by Chairman Storrie.

Yes: Menuck, Storrie, MacGillis, Harrop
No: None

MOTION CARRIED

ADJOURNMENT

Moved by MacGillis, seconded Harrop, to adjourn the meeting.

Yes: All
No: None

MOTION CARRIED

The meeting adjourned at 7:56 p.m.

Nicole Menuck, Secretary

Dennise Clippert, City Clerk