

MINUTES
MARSHALL CITY ZONING BOARD OF APPEALS
Regular Meeting Thursday, August 20, 2015
7:00 P.M. – COUNCIL CHAMBERS

CALL TO ORDER

This meeting was called to order by Chair Feneley at 7:02 p.m.

ROLL CALL

Members Present: Board Members Byrne, Feneley, Karns, Revore, Daily

Members Absent: Board Members DeGraw and Gerten

Staff Present: Lisa Huepenbecker, Community Services Project Coordinator

Motion by Karns, supported by Byrne, to excuse the absences of Board Member DeGraw. On a voice vote; **Motion Carried.**

APPROVAL OF MINUTES

Motion by Byrne, supported by Karns, to accept the minutes of the July 16, 2015 regular meeting as submitted. On a voice vote; **Motion Carried.**

APPROVAL OF AGENDA

Motion by Karns supported by Byrne, to approve the agenda of the August 20, 2015 meeting as submitted. On a voice vote; **Motion Carried.**

AUDIENCE PARTICIPATION

Charles Johnston, 214 High St., spoke in favor of Appeal 15.06 in regards to the proposed side yard set-back change in order to build a garage. Due to his professional experience in the casualty insurance industry, he expressed concerns in decreasing the separation between accessory structure and primary dwelling to five feet from ten feet, as it's intended to be a fire break.

NEW BUSINESS

Appeal #15.05 – Use Variance filed by Matthew Huggett, owner of 510 Warren from §156.221 ACCESSORY STRUCTURES AND USES (A) (1); §156.051 PRINCIPAL PERMITTED USES; §156.052 LAND USES SUBJECT TO SPECIAL CONDITIONS in order to build a storage shed for tools used for maintenance and upkeep of the property.

Staff reported that the petitioner is requesting a use variance to place a storage structure on vacant land. She reported that the ordinance states that storage is generally not a permitted or a special land use for the proposed zoning district, R-2. Staff stated that the petitioner is asking for a variance for up to 900 sq. feet of storage without a primary residential dwelling on the property. Staff noted that she did not receive any phone calls or emails either in support of or in opposition to this appeal.

(official)

Brian Huggett, petitioner Matthew Huggett's brother, representative and co-owner of 510 Warren and resident of 319 North Mulberry, stated that his brother and himself were requesting a variance to construct a storage shed on the property in order to house tools and equipment. He stated that the need for the storage is due to necessary maintenance on the dozen apple trees they planted on their property.

Commissioners asked for clarification from the representative on the dimensions, the size and length of ownership of the parcel, and the intended use of the shed. The representative explained that the shed would be no greater than 30 feet by 30 feet and that the size of the property was about 1.5 acres that has been owned for about a year and a half. The representative also explained that the storage shed would be only used for storage of tools necessary for the upkeep of the apple trees. It was also noted that the storage shed would only be one story tall.

Commissioners asked whether or not the petitioner had any intention of building a primary residence on the property. Brian Huggett responded that he did not know of any intentions of his brother to build a house on the property.

Commissioners asked where the petitioner planned on putting the accessory structure on the property. The representative stated that the shed would be at the back of the property towards the middle. Staff explained that the setbacks for an accessory structure are five feet from the rear and sides and thirty feet from the front of the lot.

Commissioners then asked clarification from staff as to the allowance of accessory structures on properties without primary dwellings. Staff explained that the ordinance allowed for accessory structures to be no larger than the footprint of the primary structure, however, because there is no primary structure build on this lot, granting this appeal would allow the storage shed to be only used as an accessory structure. Staff also reported that if a house were to be built on this property, the minimum floor area would be 672 sq. feet or 1,000 sq. feet. She explained that if this appeal was granted and at a later time a house was to be built, it would be required to have at least the same size footprint as this accessory structure.

Commissioners asked if there was a certain shed size that would not need a variance, but staff explained that a variance would be needed for this property regardless of shed size due to there not being a primary residence on the property.

Motion by Byrne, supported by Daily, to approve Appeal #15.05 – Use Variance filed by Matthew Huggett, owner of 510 Warren from §156.221 ACCESSORY STRUCTURES AND USES (A) (1); §156.051 PRINCIPAL PERMITTED USES; §156.052 LAND USES SUBJECT TO SPECIAL CONDITIONS in order to build a storage shed for tools used for maintenance and upkeep of the property.

Using the Use Variance Worksheet, the board cited the following items pertaining to this variance:

- The current zoning ordinance prohibits the property owner from securing any reasonable economic return or making any reasonable use of the property. Under this standard, the ZBA must find the property (land, structures, and other improvements) is not suitable for uses permitted in the zoning district. ***Board Members discussed that there are in fact reasonable uses of this property available at this point, such as building a residence on it. The property in itself is currently underdeveloped, but it does restrict it from being developed with a permitted use. It was reported that putting an accessory structure on the property that is in fact accessory to no other primary building does not conform to this aforementioned point.***

- The landowner's plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions. Circumstances common to the larger neighborhood may reflect that unreasonableness of the zoning itself, which should be addressed through a rezoning or other legislative actions. **Board members remarked that the variance is in regards to the specific parcel and is not in reference to the zoning in comparison to surrounding parcels.**
- The use variance, if granted would not alter the essential character of the neighborhood. This standard requires consideration of whether the intent and purpose of the chapter and zoning district will be preserved, and the essential character of the area will be maintained. **Board members discussed that the lot could in fact be used in the future for residential use if the variance was granted. However, it does alter the essential character of the neighborhood by putting an accessory building on a vacant lot, something one would not find throughout the rest of the neighborhood. Board members also discussed safety concerns such as security and a homeowner not being there to watch over the structure, like there would be if there was a primary residential structure. Board members commented that this fact goes against the original intent of the ordinance.**
- The hardship is not the result of the applicant's actions. Under this standard, the ZBA must determine that the hardship that led to the use variance request was not self-created by the applicant. Purchase of a property with a pre-existing hardship does not constitute a self-created hardship. Financial hardships that would prevent reasonable use of the property shall be considered, but shall not be only determining factor in granting a use variance. **Board Members commented that this hardship was self-created due to the applicant planting trees that would need significant upkeep and would require storage without any intent to build a primary structure on the parcel.**

On a roll-call vote-ayes: None; nays - Byrne, Feneley, Karns, Revore, and Daily. **Motion Denied.**

Appeal #15.06 – Dimensional Variance filed by Scott Harden, owner of 401 E. Mansion, from §156.221 ACCESSORY STRUCTURES AND USES (G) and (D) to build a two-car garage in required and non-required side yard.

Staff reported that the petitioner is requesting a variance to build a two-car garage in his side yard. The petitioner requested the dimensions of the space between the accessory structure and the primary structure be 5 feet instead of 10 feet that is written in the ordinance. He is also requesting 35 feet from the west property line instead of the 75 feet that is noted in the ordinance.

Scott Harnden, 401 E. Mansion, stated he is requesting a variance for a new garage because his previous garage was destroyed two winters ago due to the heavy weight of ice and snow on the roof. He stated that, because of a new zoning ordinance being enacted since he put up the first garage, he is losing six feet on the north side of the garage and five feet on the west side. The petitioner then explained that the proposed building plan will allow him to have an extra bonus space above the garage.

Commissioners inquired as to how the size of the original structure. Harnden replied that it was a three car garage that was built after the house was built in 1886. He explained that the new garage will be occupying the same footprint as before, however, it will be slightly smaller due to the new setback requirements. The old structure was about 20 to 22 feet deep and he is hoping to have the new structure be about 30 feet deep.

(official)

Eddy Aiken, Scott Harnden's contractor, living at 6650 N 39th St., Augusta, explained that the new structure will have two doors on it, each approximately eight feet wide. The five foot setback they are requesting instead of the ten foot one written in the ordinance will allow them to reach about 24 feet wide. Without the modified setback, the garage will only be about 18 to 20 feet wide.

Motion by Karns, supported by Daily, to approve Appeal #15.06 – Dimensional Variance filed by Scott Harden, owner of 401 E. Mansion, from §156.221 ACCESSORY STRUCTURES AND USES (G) and (D) to build a two-car garage in required and non-required side yard.

Staff noted that she did not receive any phone calls or emails either in support of or in opposition to this appeal.

Using the Dimensional Variance Worksheet, the board cited the following items pertaining to this variance:

- Strict Compliance with the specified dimensional standard(s) will deprive the applicant of rights commonly enjoyed by other property owners in the same zoning district, create an unnecessary burden on the applicant, or unreasonably prevent the owner from using the property for a permitted purpose. **Board Members discussed that if the current property was not a corner lot, the homeowner would only have to deal with side and rear setbacks. If the west property line was one without road frontage, they would only have to have five feet of setback from the property line.**
- 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. **Board Members discussed that a lesser variance could potentially appear out of place in the neighborhood and due to the house being a historical home, the same style of garage and house will do the neighborhood substantial justice to the applicant and neighborhood.**
- The need for the variance is due to unique circumstances peculiar to the land or structures involved that are not applicable to other land or structures in the same district. **Board Members reported that due to the property being on a corner lot, unique circumstances apply. One must consider two of the four sides as front yards and the other two as side yards. Staff commented that accessory structures are generally permitted in rear yards, but corner lots do not have rear yards so the extended front yard setback (75 feet) is required in order to place on in the side yard. The property is only 66 feet wide, so any accessory structure would require a variance no matter the size to meet the 75 feet setback.**
- The problem and resulting need for the variance has not been self-created by the applicant or the applicant's predecessors. **Board Members discussed that the need for the requested variances arises from unpredictable weather that came about two winters ago that caused the roof to cave in, thus not self-created by the applicant.**

(official)

- The variance will not cause significant adverse impacts to adjacent properties, the neighborhood or the City and will not create a public nuisance or materially impair public health, safety, comfort, morals, or welfare. ***Board Members commented that the variance would not cause significant adverse impact. Staff also commented that due to the majority of their neighbors having two story homes, the petitioner would be permitted to build up to 25 feet which could exacerbate any nuisance.***
- The alleged hardship and practical difficulties that will result from a failure to grant the variance include substantially more than mere inconvenience, or an inability to attain a higher financial return. ***Board Members reported that a financial return is not a factor in this variance.***

On a roll-call vote-ayes: Byrne, Feneley, Karns, Revore, and Daily; nays - None. **Motion Carried.**

OLD BUSINESS

None

PUBLIC COMMENT

None

REPORTS

Staff invited Board Members to the Zoning Ordinance Update Open House on September 16th, 2015 from 5:00 P.M. to 7:00 P.M. in the City Hall Training Room.

ADJOURN

Meeting adjourned at 8:09 pm.

Respectfully submitted,

Elizabeth Renaud