



**Zoning Board of Appeals Meeting Minutes
Remote Meeting by Zoom**

CALL TO ORDER

Chair William Darbee called the meeting to order with a quorum at 7:05 p.m.

INTRODUCTIONS & ROLL CALL

Present: William Darbee, Jan Rise, Larry Elliott, Chris Greenleaf

Absent: Lonnie Dowd

Excused:

Others: Staff Liaison, Scott McKillop

APPROVAL OF MINUTES

Motion made by J. Rise, seconded by C. Greenleaf, to approve the minutes from September 15, 2020 corrected to note Lonnie Dowd as being excused. Motion carried unanimously.

Motion made by C. Greenleaf, seconded by L. Elliott to approve the minutes from January 12, 2021 as submitted. Motion carried unanimously.

Motion made by L. Elliott, seconded by J. Rise to approve the minutes from February 9, 2021 corrected to note Lonnie Dowd as being excused. Motion carried unanimously.

PUBLIC COMMENT - NON-AGENDA ITEMS

None.

NEW BUSINESS

1. Z 21-01 1007 S. Arbor - Robb

The appellant is requesting a non-use variance from the zoning regulations governing the distance a front stoop may project from the front wall of a dwelling.

Present: Chris Robb, owner; Emily Mattison, architect (mother)

Mr. Robb stated he has a disease called spinal muscular atrophy which is physically limiting as far as a mobility standpoint. He wanted to have a platform built over the grade of the yard that would be level to with the door so that it could be modified to add a ramp. The intent was to build a more elegant structure than just what a traditional ramp would be.

Mrs. Mattison added there was a concern with the houses on Arbor Street being below the street-grade. The front yards of all the houses on Arbor Street flood with major rainfall. She explained they had to replace multiple parts of the framing in the front of the house due to dry rot and inadequate drainage. They decided against a French drain for multiple reasons. She designed a platform that could be accessed by building a “bridge” that would be level from the street to the front door that obscures of all the unsightly gravel and drainage underneath it. The overflow will now by-pass the house. She said her main concerns had been drainage and accessibility.

L. Elliott asked if the deck was built instead of constructing a ramp. Staff clarified the work was built without a building permit; work started the previous November. The structure was almost complete, but they still didn't have a building permit.

Mr. Robb replied the deck was their solution for accessibility instead of building a ramp and to help with the drainage issue.

J. Rise asked staff if the deck encroached on city right-of-way. Staff did not know but said it extended at least to the front lot-line.

J. Rise inquired as to the distance between the deck and the lot line. She also wanted to know what the front setback was. Staff replied a stoop may project five-feet from the front wall of the home but there was no minimum setback required from a front lot-line.

Mrs. Mattison answered the deck projected 15 feet from the front of the house and did not extend into the right-of-way.

Staff noted the distance was five feet short of the property's front lot-line.

Mrs. Mattison commented the "bridge" was in lieu of walking over to a ramp from the car. She explained it is a platform that connects to a main platform that is level with the house.

J. Rise noted it was not a ramp; that it was a step-up no matter how approached. Mrs. Mattison confirmed that it wasn't actually a barrier-free access. She said it was easier for Mr. Robb at this point in time with his mobility issues to navigate a four-inch step rather than a ramp.

Mr. Robb stated it could be easily modified into a ramp later if he became wheelchair bound. He added it was an accessibility issue for him.

Staff pointed out zoning regulations allow a barrier-free access ramp to extend to the lot line.

W. Darbee asked for an explanation how it assisted with the property drainage. Mrs. Mattison explained with the houses being lower than street grade, the sewer system is inadequate, and the house became a retaining wall which caused a lot of water damage. A drain was dug that drains the water to the south side of the home and into the backyard. The deck bridges that drain.

J. Rise inquired if any correspondence had been received. Staff stated there had not been any.

DISCUSSION and FINDING OF FACT:

C. Greenleaf commented:

Standard A

Mr. Robb would not be able to get into his home or have safety getting into the home and needs to have access to enjoy the house. It would also help with the drainage preventing rot and structural damage.

Standard B

He felt this was true. Mr. Robb needs access to the house without harming himself and it would help with drainage in the neighborhood.

Standard C

He did not think a lesser variance would suffice. Mr. Robb will need reasonable distances to eventually install a ramp and referred to the zoning regulation allowing a ramp to extend to the lot line.

Standard D

He felt this was true. The house is built near to the front lot-line. He doesn't think anything smaller would meet the criteria.

Standard E

He does not think it was self-created because the house has been there for many years. He felt Mr. Robb needed the deck/bridge/ramp to sustain living in the home.

J. Rise said she didn't agree with C. Greenleaf. She said it was possible to have a deck stoop within the code. It is not barrier free, so she didn't see it as being something to help with Mr. Robb's disability. She noted it was larger than what is needed with his disability and that other homes along the street had the same problem, so it was not unique to Mr. Robb's property. J. Rise felt it was self-created because he wanted it bigger than allowed. She said they could discuss a lesser variance, but she had issues with approving the requested variance.

W. Darbee agreed with J. Rise. He felt it could be reduced to five feet and still be able to be used in the manner requested. He said a ramp could be installed right up to the property line.

L. Elliott commented:

Standard A

He said it did not prevent the property from being used. The deck could be five feet with the ramp running all the way to the driveway, property line or in any other direction.

Standard B

He said it would allow justice to this applicant, but it would be opening a can of worms to allow a deck that large and felt it may impact some of the neighbors.

Standard C

He said they could easily allow a lesser variance to allow for an additional five foot towards the curb with a step but did not see the need for such a large deck that didn't meet the code.

Standard D

He felt the street grade and water drainage situation was unique to the area but not to the specific property. He felt even that was questionable as he knew of other houses in the city with hilly property with the same problems.

Standard E

While the street grade and water drainage situation were not self-created, he felt the desire to have something that large was self-created.

L. Elliott remarked the deck looked nice, but he was having a hard time trying to meet the standards that were required to meet to allow it.

C. Greenleaf asked staff for clarity on zoning and to confirm an accessibility ramp could extend right to the lot line. Staff replied a barrier-free ramp does not need to be set back from a front lot-line. He said a barrier-free ramp is regulated by the state, but the term barrier-free ramp is not included in the zoning ordinance as it is a common term most everyone understands the meaning of. Staff stated the building code has minimum specifications for ramps but the actual physical constructure was not being discussed. He said the applicant had indicated he was currently capable of negotiating a four-inch step but as his condition deteriorates, he may need to modify the structure to accommodate his condition. Staff said his opinion was that a deck had been built in the front yard, not a ramp.

W. Darbee added it is a deck that extends beyond the five-foot that is allowed and he is having trouble meeting Standards A, B, C, and D. He said Standard E has been self-created because the deck is there. He said he agreed with L. Elliott concerning Standard D with the house having the same low street-grade level as the other houses on Arbor Street and didn't feel it was a unique situation in that neighborhood.

Motion made by W. Darbee, based on the foregoing findings, I move the ZBA deny the variance requested by the appellant.

Seconded by J. Rise.

Roll call vote: "Yes" vote is in favor for the motion.

Four "Yes" votes; One "No" vote.

Motion carried. Request is denied.

2. Z 21-02 114 N. Jackson – Midtown Storage

The appellant is requesting a use variance from the zoning regulations precluding the establishment of self-service storage facilities in the C-2-A General Business zoning district.

Present: Ronny Hamama & Anthony Banaszak, (development and operations team) on behalf of buyer

W. Darbee cautioned the use variance required a super majority vote of four in order to pass.

Mr. Hamama explained the property has been vacant for a long time and is an eye sore. It is tough for other uses for multiple reasons and the proposed use seemed to be the best use for the building. He said it has definite potential.

Mr. Banaszak reiterated Mr. Hamama saying it had been vacant for several years and the intent was to keep the historical integrity of the building, making it into a beautiful building with curb appeal as depicted in their rendering. He said it would have high-function use as a storage facility. They intended on investing a lot of money making it fit in with the Columbus Street theme while focusing on curb appeal and functionality of the building along with helping to clean that neighborhood up.

Staff asked if they were able to discuss any of their financial investment in the building cash wise. Mr. Hamama replied they hadn't invested anything other than legwork up to that point.

Mr. Banaszak said the building was purchased at a tax sale and they had a binding contract with the buyer for \$175, 000.

Staff summarized a large investment was being made on a property that was alleged to have been sitting vacant for years. Mr. Banaszak confirmed it was correct.

J. Rise asked for the last year the building was occupied. Staff replied the Arc of Bay County briefly occupied the premises after Do-All. It was purchased for about \$8000.

J. Rise stated the staff report indicated the building was occupied by Do-All from 1974 to 1994. Staff explained the Arc of Bay County occupied until the early 2000's and then moved to their present location. The building was purchased by Steven Ingersoll who lost it to foreclosure over a 10-year period. It was then purchased by two successor purchasers at tax sale who both forfeited for non-payment of county taxes.

J. Rise asked if they could assume the building was last occupied in 1994. Staff confirmed she could assume that.

W. Darbee was confused as to when the building was last occupied.

It was stated Do-All occupied until 1994 and C. Greenleaf stated he believed the Arc of Bay County to have occupied until approximately 2001. Staff said he thought that as well. He said he believed this would be a substantial investment in a very significant historic property in town.

J. Rise inquired if the property could be considered vacant for 20 years. Staff confirmed it could.

C. Greenleaf asked if the building was in the historic district. Staff replied it was a single-site PA 169 Historic District established by the City Commission. He said several single-site Historic Districts in town were established at the encouragement of Steven Ingersoll for redevelopment occupancy that never materialized. He said this building was in the best shape of all of them.

L. Elliot asked if this was part of the Center Ave. Historic District expansion when Steven Ingersoll had plans on making the building into a school. Staff said it was not. He said it was a separate PA 169 Historic District established at the same time in November 2011.

J. Rise asked if it would need to be reviewed by the Historic Commission. Staff replied it would before any exterior alterations could be made. The interior was not subject to review.

L. Elliott asked the applicant what was preventing the building from being used for any other allowed or permitted use. Mr. Hamama answered he did not see why it couldn't be used otherwise but they thought it had potential for self-storage.

Staff asked Mr. Hamama to clarify why they wanted to use the building for a use that was not permitted in that zoning district.

Mr. Banaszak explained the financial feasibility for housing is not attainable in the building due to many reasons and assumed it was the reason why no one has tried or has failed multiple in the last 20 years besides having to maintain the historic integrity which they intend on doing.

L. Elliott asked if it could be used of office space, not just housing. Mr. Banaszak said it could, but it had the same financial feasibility. Staff added that there have been a few calls every year since 2011 asking what it could be used for, but nobody has found a viable use for the building.

C. Greenleaf asked if anyone had thought about a self-storage facility prior to this. Staff said they had not.

In summarization, L. Elliot said it could not be used for other uses; others have looked at it and the feasibility is just not there; others have failed, or it was not workable. Staff remarked it was safe to assume nothing was feasible if nothing had happened in 20 years.

J. Rise asked if it would fit under OPRA. Staff replied it was very likely but did not know. He said it would be eligible for federal historic rehabilitation tax credits because it's a commercial venture.

C. Greenleaf asked about a similar case on Washington that had come before the zoning board. Staff said it was denied but was in a completely different zoning district and there had been discussion on how that use for the property was inconsistent with the city's master plan for downtown. It was a completely different set of circumstances with a history of use, recent work and permits.

W. Darbee stated there was email correspondence from Amelia Stovall who lives in the neighborhood of 114 N. Jackson who thought a storage facility would not help the crime and trash situation in her neighborhood.

Staff remarked he had received a call from a neighborhood resident who was opposed to the idea. She said she would send email but never did.

Mr. Hamama said they will have a staff person who will oversee and maintain the property and their surveillance system would be top notch. He said their number one concern is for the safety of the tenants, building and neighborhood. He said he was local, and part of his staff would be watching the building. He said they would have a person visit the site daily.

Motion made by J. Rise to close public comment, seconded by L. Elliott.
Motion carried.

DISCUSSION and FINDING OF FACT:

W. Darbee stated the history of the property showed a heavy usage but it has not been used for 20 years and is vacant. He said various inquiries have not resulted in any development in 20 years. He felt it is unique in it being a historical parcel which will limit development on the property, and the proposed use would enhance the neighborhood and provide some surveillance. W. Darbee said the property will be used daily as opposed to being vacant, and it would not alter the neighborhood. He felt the problem was not self-created as it has not been used in 20 years.

L. Elliott added C. Greenleaf was correct in that the previous case was denied because the building could be used for other purposes but this property was different in that it had been vacant for 20 years and the size, structure and huge elevator prohibits and limits what it can be used for. He believed it was further limited being in the historic district. He said he can't see anybody trying to build offices or using it for any other purposes because of the feasibility. Other buyers have failed and there have only been a few inquiries a year into the uses of the building. He thinks it is different than the previous case which was denied for that reason. L. Elliott said he agreed with W. Darbee on Standard B. He felt it would potentially help and increase the character of the neighborhood and provide for some type of locked security on the property versus people coming and going any time they want. He thinks it will help the neighborhood.

J. Rise pointed out a unique issue is the size and age of the building which would require a large sum of money. She didn't feel it would alter the neighborhood's character in any way and thought it may spur other neighborhood improvements.

J. Rise referred to:

A variance is warranted when an appellant presents substantial evidence indicating the subject property is essentially valueless if used only for the uses permitted.

She agreed the property is essentially valueless because of the length of time that the building has sat vacant with only the applicant's interest in turning it into indoor storage.

Motion made by J. Rise, based on the foregoing findings of fact, I move that the ZBA grant the variance requested by the appellants.

Seconded by L. Elliott.

C. Greenleaf asked for confirmation that all four votes were needed to approve the request. Staff confirmed that was correct.

Roll call vote: "Yes" vote in favor for the motion.

Five "Yes" votes. Motion carried. Request is approved.

OLD BUSINESS

None.

OTHER BUSINESS

Staff relayed there would be two cases for fence variances for the May meeting.

ADJOURN

Motion made by J. Rise, seconded by C. Greenleaf, to adjourn the meeting at 8:30 p.m.

Meeting adjourned.

Prepared by Lisa Griffiths, Planning & Zoning Administrative Assistant