

BOARD OF ZONING APPEALS - Minutes of July 27, 2021

Minutes are posted on the City Website @ www.cityofvermilion.com (meetings tab/city meeting minutes)

Roll Call: Philip Laurien, Dave Chruski, Guy LeBlanc, Dan Phillips. Absent: Bob Voltz

Attendees: Bill DiFucci, Building Inspector; Steve Hologacs, City Council Representative

Guest: Mayor Forthofer

NOTE: OFFICIAL ACTION REQUIRES 3 AFFIRMATIVE VOTES. See COV 1264.02(b); Therefore, *Motions will be stated in the positive (e.g., To Grant... / To Waive... / To Determine...); and a member=s >Yes= vote means Agree and a >No= vote means Disagree.

Dan Phillips, Chairman called the meeting of July 27, 2021 to order.

APPROVAL OF MEETING MINUTES:

G. LeBlanc MOVED; D. Phillips seconded to approve the meeting minutes of June 22, 2021. Roll Call Vote 3 YEAS; 1 ABSTENTION (LeBlanc). **MOTION CARRIED.**

An *Oath* of truthfulness was administered to those in attendance who planned to speak during these proceedings. *Dan Phillips* described how meetings are conducted, explained the avenue of recourse available when a variance request or appeal might be denied, and gave a reminder that it takes 3 affirmative votes for an action (motion*) to pass.

OLD BUSINESS:

(R-S) 4355 Edgewater – Applicant: Donald Oliver, Jr. (Front yard setback/allow no footings)

Applicable City code section(s) cited:

RCO 403 – Footings required – proposed = no footings – variance request to allow no footings

Don Oliver of 4355 Edgewater Drive confirmed that he wants no footings on his detached garage.

D. Phillips said he was not at last month's meeting when this came before the board. G. LeBlanc stated the same. D. Oliver said there were only three members in attendance. D. Phillips asked for a refresher from the board members who were in attendance.

P. Laurien explained the Oliver's applied for a building permit for a shed/garage; it is intended typically to be a free-standing shed with a wood floor that can be used as a garage. It is has a low bearing pressured treated wood floor. They applied for the building permit, but before the permit was issued the shed was delivered. The shed

extends into the required front yard, so they were advised by the Building Inspector that they need a front yard setback. There is also the issue of whether the shed in the front yard is appropriate even if it is being used as a garage. The other issue is that there is a requirement if the garage is attached to the house you need to have a fire rated separation wall between the garage and the house, so at the last meeting Mr. Oliver advised the board members that he did have the wall fire rated and the inspector did inspect it. He had the shed/garage pushed almost all the way back to be touching the house, but not touching. It cannot touch because the garage without a foundation is subject to moving in frost, so it cannot be attached to the house. He did not recall the reason why they finally dispensed with this, but it is back before the board, and he thinks it is because this issues had not been advertised.

B. DiFucci said the board that night went down the path of keeping it as a shed and it did not require footings in lieu of addressing the issue of no footings for a detached garage, so it was either a garage or a shed that was discussed and the board decided to vote for the shed placement in a front yard because sheds are not allowed in front yards, so they voted for the shed in the front yard in lieu of treating it as a detached garage and then addressing the requirement for footers.

G. LeBlanc asked if it had been a garage, it could be in front, but you would need footings and a shed cannot be in front, but you can get by without footings. B. DiFucci said correct. D. Phillips asked what they are being asked to vote on tonight then. B. DiFucci said the shed is located in the front yard and it does house a vehicle and by the definition of detached garages – detached garage means an enclosed building or structure used for the storage of motor vehicles, which is not attached to the main building or structure. He said Mr. Oliver has this right now – a building in the front yard and he has pictures of his vehicle parked inside of it. It is not your typical garage, however, Mr. Oliver has documentation that it is a detached garage, and he is parking a vehicle in it, so the location is approved per the setbacks, but the board did not address or vote on the requirement for no footings for this detached garage. D. Phillips asked if the board last month allowed the shed. B. DiFucci said the board did not approve the placement of the shed in the front yard. D. Phillips said the board then is looking at this as a detached garage and they are looking for a variance for no footings.

P. Laurien said this is a shed functioning as a garage and this is the way the manufacturer intends for it to be – it can be a free-standing garage without footings placed on a stone base. It is designed to do this, and it is a zoning and language nicety, and the board has to decide how they feel about this.

G. LeBlanc asked D. Oliver if their intention is to bring this before the board as a garage. D. Oliver said it is a garage and this is new technology. People get scared of new technology, but it helps them. During the first meeting there were suggestions made on how to pass this, which he did as he put in the fire wall, and he cut back the

eaves on his house and pushed everything back as suggested. Also, it was suggested that he receive documentation that shows the building does not need footers. He provided the board with a copy of that documentation from the manufacturer which shows the building does not need footers. D. Phillips asked if the manufacturer has specifically said this can be used as a garage. D. Oliver said yes, and he can also park his 1998 GMC Suburban in their too and it is a big vehicle.

P. Laurien said ultimately it is going to be the longevity because a pressure treated wood floor when driving into it will have snow, salt and so forth, so it will deteriorate faster. D. Chrulski said it also looks like a shed in the front yard. P. Laurien said he thinks after they pushed it back and cut the eaves it did blend in more with the house than it initially did.

D. Phillips said at the first meeting he did comment that he did not think it looked good and he drove by it again this time and it does look much better, so he will take that comment back from two months ago. He said he never said he liked it though, but it looks better.

P. Laurien said while they are talking about looks and the elephant in the room – one of the things zoning is intended to do when it was first adopted in the United States a hundred years ago and here in town in 1966 – is to protect property values in neighborhoods and Mr. Oliver's yard is a mess! D. Oliver said he has been trying to get it cleaned up, but he is trying to finish his siding that he got a permit for. P. Laurien said he is disappointed. D. Oliver said he is disabled, and it takes him time, but he understands what he is saying. P. Laurien said he has not made a good faith effort since he initially came before the board to clean up what he considers unsightly junk that his neighbors have had to put up with. D. Oliver said, "Oh yes I did!" P. Laurien specifically focused on an attractive dangerous nuisance to neighborhood children, which is his gallows with the noose hanging. Any neighborhood child could decide it would be fun to scramble up there and stick their head in the noose. D. Oliver said it will not hold. P. Laurien said he cannot guarantee this, and it is a dangerous attractive nuisance, and he should remove it in his opinion before he asks for dispensation from the city to do something that is otherwise not allowed. You're asking for special treatment.

D. Phillips said he was not at last month's meeting but was at the meeting two months ago and stated to Mr. Oliver at that time that he did receive a lot of complaints from his neighbors. He thinks Mr. Oliver is asking the board to help him get this shed/garage in place and his neighbors are not happy about it. He felt that P. Laurien was trying to imply without putting words in his mouth that to make the neighbors happy they might be able to live with the shed if they can clean up the yard more. He drove by today and it there was a bicycle laying there and other items, and he thinks the neighbors would appreciate it a little bit more if they kept the yard a little tidy, and they would not be complaining so much about the shed/garage going up front. D. Oliver said he just did not want to move things again

until this issue is settled. He cannot keep putting things in and out. D. Phillips said it is not their place to lecture him on this, but he is trying to give them good advice to keep the neighbors happy.

G. LeBlanc said to get back to the footing question, it seems like a question for the city engineer. D. Oliver said he contacted him, and he was told that he could not get involved in this because ... B. DiFucci said it is a conflict of interest for him to give an opinion on D. Oliver's situation while also representing the city, so typically when something does not meet code and they have something from an engineer for a recommended installation instructions from a manufacturer then it gives the design and use of a structure. G. LeBlanc asked if this is written somewhere in code that they can use manufacturer's written instructions. B. DiFucci said it is a determination of the building code, and if they are going for a variance – they bring the manufacturer installation instructions into the mix because they are the ones who designed this for its intended use. P. Laurien said they are also sitting as the Board of Building Appeals on the footing issue in this case and sitting as the Board of Zoning Appeals on the setback issue, so they have a dual responsibility, and this is why it is appropriate for this to be before the board.

G. LeBlanc asked who followed the instructions from the manufacturer when it was built. D. Oliver said the people who placed it in – the gentleman who put the rocks down met him over at his house. There was ones and twos put down and 304's put down. G. LeBlanc said he is asking who followed the instructions – was it a licensed contractor? D. Oliver said he was a contractor, but he does not know if he is licensed or not. B. DiFucci said if he is doing work in the city, he should have been registered – they are under the impression that Mr. Oliver was doing his work. P. Laurien said it appears as the stone base is as required by the maker.

G. LeBlanc MOVED; D. Phillips seconded to allow no footings on the detached garage. Discussion: P. Laurien said he is sympathetic to the use of the shed as a garage. He thinks the fire proofing issue has been resolved and the free-floating part of the footing is okay, but he will abstain because he is not satisfied with the good faith effort to clean up the yard situation. Roll Call Vote 3 NAYS; 1 ABSTENTION (Laurien). **MOTION FAILED.** D. Oliver said at this time he would like to appeal. Mrs. Oliver asked if they go to county now with this. D. Phillips said yes, or they can come back and try it again. Mrs. Oliver said this is for health reasons, so she will take it to somebody else. D. Phillips said they can modify it and come back to the Zoning Board.

NEW BUSINESS:

[R-S] 446 Ewa Yea - Applicant: Michael Taylor (Allow Home Occupation)

Applicable City code section(s) cited:

1271 – Home Occupation – variance request to allow home occupation

Michael Taylor of 446 Ewa Yea said he formerly had a gun store on West River and since he has been back in Vermilion, he has not been able to find a place that meets his requirements and money obligation, the ATF said he could operate out of his house as long as he went to the city and got the permission. He said he did not have a lot of foot traffic when he was on W. River and right now most of the paperwork that he does is transfers for people who are buying over the internet. He does not sell that many guns out of his house. He does them at the show. He does not have an influx of people and he tries to keep it that way because he does not want to sit in his house or office eight hours a day for the whole week, so it is more or less a part-time hobby, and he is trying to follow the guidelines defined by the ATF to operate his license. The laws have changed recently in Ohio and for him to do the paperwork and you have a concealed carry permit, they fill out the paperwork and they take the weapon and leave, so he is not having people coming and going and waiting three or four days and coming back. He has also done some business with the police department, but he has not talked with Chief Hartung on his feelings of this situation.

D. Phillips asked where his old business was located on W. River. M. Taylor said in the old Crow Lumber building, and he had very little foot traffic there. D. Phillips asked what type of guns he usually sells. M. Taylor said he pushes the concealed carry handguns, but there is a Russian rifle that he likes to specialize in. He said if you go to a bigger dealer, you can buy a gun, which can be shipped to him, and he would do the paperwork. He has an alarm system, and all the guns are secure. D. Phillips asked how many guns he keeps on the property. M. Taylor said he has 11 in his inventory. D. Phillips asked if all the guns are locked up. M. Taylor said they are all locked up in cabinets and the cabinets are bolted to the floor and to the wall. He is working on getting a safe, but with a 400 – 500 pound safe in the room he is putting it in, he doesn't trust it because his house is 120 years old and if he puts it in the living room then it stands out front and he wants to no part of this either.

G. LeBlanc asked the abbreviation name for ATF. M. Taylor said it is Alcohol, Tobacco, and Firearms. G. LeBlanc asked if there is anything in the code that comes close to this. B. DiFucci said home occupation speaks of minor and majors, which is based on foot traffic and the amount of people that would be coming and going. They give examples as such, but they do not specifically call out permitted uses. G. LeBlanc thought they had a list of home occupations. B. DiFucci read to the board the list of minor/major home occupations as defined in Chapter 1271.00 "Standards for Home Occupations" of the Codified Ordinances of Vermilion.

D. Chrulski asked if M. Taylor could rent from any business address and operate. B. DiFucci said with the requirements from ATF he did not know. M. Taylor said he has to have his inventory secured at that address which is on his license. D. Chrulski asked if a commercial business address would be appropriate. B. DiFucci said a commercial building would be appropriate.

P. Laurien said the previous location at the Crow Lumber building is zoned commercial, so it was an appropriate location for his business. M. Taylor said this building was leased again when he was in Milwaukee, so he had no place to go. P. Laurien said there is a lot of commercial places for lease in Vermilion. M. Taylor said a lot is finding the proper size and money he can afford to be able to do this.

P. Laurien said in his 40 years of experience in writing over 100 zoning codes and teaching Ohio Planning and Zoning law, this would not be considered a customary home occupation, so what they are being asked to do is allow something that is much more inappropriate in a residential neighborhood. To him this should be a business use and should be in a business location for security for the neighbors and business as well. Also, they should not lose fact that this is a very small lot in a very dense neighborhood, and there is very little parking and street traffic will have an impact on the neighbors. M. Taylor said he tries not to have the traffic by scheduling the people.

Dave Volak of 457 Ewa Yea addressed Ohio headlines as attached hereto and incorporated herein as part of the official record of proceedings. He said Nokomis Park let alone any residential community is just not the place for this type of business. He understands he is in a hard financial situation right now, but he does not believe they would be doing their neighborhood a good service by saying this is okay. He asked what the plans would be for his structural security from keeping someone from breaking in and stealing his guns. M. Taylor said he has an alarm system through an alarm company and the guns are safely secured. He said he does not want people in there to know what he has. D. Phillips said they are in a public forum and unfortunately people are going to know that he has guns in his home, so this secret is going to be out.

Donna McCay of 447 Ewa Yea said she did not believe people should be allowed to have a business like this as their streets are not very wide.

Tiny Swinehart of 4867 Shoreline Way said she respects the rights of gun owners as her husband had 35 to 40 guns that he safely stored in their home, which was not in Nokomis, so it is not that she is anti-gun, but the idea of selling firearms in Nokomis where the streets are barely wide enough for one car to pass by, where they really have no parking - they cannot park along the side of the street because it is illegal, so she does not know how he would be able to accommodate cars coming and going. It is a rejuvenating and friendly neighborhood with lots of families and activities, and the idea knowing there are guns and gun sales in the neighborhood sits wrong with her. She thinks it belongs in a commercial building and location, and not in a neighborhood.

Kylie Volak of 457 Ewa Yea said she respects the situation and the rights of gun owners, but their neighborhood has a history of people trespassing. A few months ago, someone came up at midnight and sat in their front yard. They opened their

door and the person said it was the wrong house. It turned out they stole a bike and stored it in Ms. MaCay's back yard, and situations like this have happened prior. Also, considering she would not feel safe with weapons in this situation and people coming and going on the property.

Maria Stafford of 422 Minnie Wa Wa respects his right to have his gun, but she does not want them in their neighborhood. She does not want them around where they are trying to rejuvenate a family community. She has a neighbor that she believes is selling illegal drugs and she is constantly monitoring that, so she does not want to monitor other cars for other reasons. She thinks a business on this street and in this little community is not needed, and she thinks during this pandemic people would be willing to go the extra mile to work with this. M. Taylor said if he had one customer a month on W. River it was amazing. M. Stafford said that is a lot of customers on this little street and she really does not want it in the area.

M. Taylor said he is trying to follow the proper channels. D. Phillips said as it has been pointed out this home occupation is a completely different animal of what they normally would ever deal with. He does know this neighborhood and it is a very small neighborhood and the roads are tiny, so he would not be in favor of any home occupation in this neighborhood, so personally his neighbors have made a lot of good solid points, and he would feel the same if he lived in this neighborhood.

D. Phillips MOVED, D. Chrulski seconded to allow the home occupation as requested. Roll Call Vote 4 NAYS. **MOTION FAILED**.

[R-4] 5229 Langfitt Street - Applicant: Christopher Neeley (Fence Height)

Applicable City code section(s) cited:

1272.09 (a) (1) – Fence height not to exceed 42” in front yard – proposed = 72” – variance request – 30” fence height

Christopher Neely explained he wants to replace an existing fence because the old one is really crappy. D. Phillips said the height is 42” for the front of the house and the back can be 6’. B. DiFucci said it can be 7’. D. Phillips said because this is a corner lot they have two front yards, but he is just replacing an existing fence. C. Neely said his fence does not block the views of seeing the other side of the street. D. Chrulski asked if work was started and then stopped. C. Neely said they replaced one portion of the fence and then stopped until they could come before the board. B. DiFucci said they were not doing anything wrong as they were allowed to install the rest of the fence because it met code requirements. They stopped at the point of where it had to come before this board. G. LeBlanc asked about the south side. B. DiFucci said they stopped at the edge of the house on the south side.

D. Phillips MOVED, D. Chrulski seconded to approve the variance request for 30” fence height. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

[R-2] 475 Edison Drive - Applicant: Louis & Lianep Carrion (30' Fence Height)

Applicable City code section(s) cited:

1272.09 (a) (1) – Fence height not to exceed 42” in front yard – proposed = 72” – variance request – 30” fence height

Louis Carrion said they have a wooden fence on the property that needs replaced and they are in the same situation as the Neely’s as they have a side lot. The board agreed it was the same situation as stated above.

D. Phillips MOVED; G. LeBlanc seconded to approve the variance request for 30” fence height. Roll Call Vote 4 YEAS. **MOTION CARRIED.**

[R-S] 6175 Shadyside Drive - Applicant: Joseph Janesz (Front Yard Setback)

Applicable City code section(s) cited:

1272.09 (e) (2)(A) – Front yards not less than 30’ on match existing established = 25’ – proposed 10’ – variance request of 15’

Joe Janesz explained he has an old log cabin, and all the concrete is moving towards the foundation of the property, so his first thought was to drain it off and get the proper grade on it. There are a lot of downspouts that are washing rainwater back into this area, so he wanted to tie into the storm sewer. After much thought, he did not think the concrete would be too appealing, so he thought about putting a little porch structure and gazebo on either side, so he can put chairs out there to enjoy the lake. This will not impair the neighbors view of the lake and he showed the plans to the neighbors who loved the idea. He said they would like to add a porch feature on both sides of which he showed on his plot plan.

D. Phillips thought he was putting up a pavilion, but technically it will be a pergola. He asked if it was going to be one pavilion and two pergolas. J. Janesz confirmed.

P. Laurien asked if there will be new concrete that will be constructed for this project. J. Janesz said this is correct. P. Laurien asked if the pad area will be larger than the existing. J. Janesz said yes. P. Laurien asked if the pavilion that would protect the front of the cabin is one issue and the two pergolas – drainage is an issue and it is draining towards the structure, so why does he want to put in more concrete – why not increase your grass/garden area to be more permeable? He said he is asking for three different structures and setback issues on at least two of them. J. Janesz said with regards to the concrete there is already a lot of concrete as a walk and sitting area are towards the left side, which is draining into the foundation. So, they need to pull this out and grade it properly, and to use it in a more useable way, so they would like to put a sitting area and to have concrete verses grass. P. Laurien said he is asking for a 16’ x 12’ pavilion which has the roof over it, so is this not

enough sitting area for them to gaze at the beach. He said the pergolas are open so there is no protection from the elements. J. Janesz said one pergola has three panels of special plastic roofing, so the area to the right they want to add a little sitting area. The pavilion area will not be a lot of room and they can really only put one or two chairs in it. D. Phillips said actually this is pretty good size. He said this would be 10' from the street and there is a fire hydrant, so is this an issue. P. Laurien said the next-door neighbor cannot be more than 3' from the street. There is a lot of houses in this neighborhood that are less than 10' from the street. He is just concerned and sympathetic to the pavilion because he does feel it serves a function, but he is in a quandary as to why he wants to add more impervious surface if he is trying to improve his drainage. He does not think he needs additional seating area personally. He is separating these out because he has three structures.

Matt Osfield of 769 Blissful said he would like to view the site plan to see what he proposes to do. The board provided him with a copy.

G. LeBlanc MOVED, D. Chrulski seconded to approve the front yard setback of 15'. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

[R-S] 483 Walnut - Applicant: Prete Builders (Front/Rear Yard Setbacks)

Applicable City code section(s) cited:

1272.04 (e) (2) (A) Front yards not less than 30' or match established – proposed = north side 3', established – 10 – variance request 7'

1270.09 (e) (2) (B) Rear yards not less than 30' – proposed – 6' – variance request 24'

Paul Prete of Prete Builders explained they are tearing down the existing house and rebuilding to honor the requirements as set by the Association and the city.

G. LeBlanc asked if there were any buildable lots adjacent to this property. P. Prete believed there was one lot to the east that is buildable. He is not certain for sure though. The south property is park property. P. Prete said everything will be fire rated.

D. Phillips MOVED; G. LeBlanc seconded to approve the variance requests as submitted. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

Adjournment:

D. Phillips adjourned the meeting after no further business was entertained.

Next Meeting: Tuesday, August 24, 2021 – 7:00 p.m. @ Vermilion Municipal Complex, 687 Decatur Street, Vermilion, Ohio.

Transcribed by Gwen Fisher, Certified Municipal Clerk