

BOARD OF ZONING APPEALS - Minutes of May 25, 2021

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

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

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

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 May 25, 2021 to order.

APPROVAL OF MEETING MINUTES:

B. Voltz MOVED, P. Laurien seconded to approve the meeting minutes of April 27, 2021. Roll Call Vote 4 YEAS. **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) 3753 Edgewater Drive – Applicant: Zebulan Kozar (Allow 262 sq. ft. to build a garage)

Zebulan Kozar said he would like to put a garage on his lot and was told he needed a variance because he is close to the other property he owns on his back lot. He said he is 10' off that property line and the house.

D. Phillips said the board is looking at more of the green space, basically not having enough green space in the back to have this size of garage. He said if those lots were consolidated into one, then he would not even need to come before the board. Z. Kozar said this is correct but they want \$4,000 to survey the property.

P. Laurien asked why he would not locate the garage east to west as opposed to north to south and bridging those two property lines. He said if he owns both lots does he get one tax bill or two tax bills. K. Kozar said he receives two tax bills. P. Laurien told him that he can file a consolidation and join the lots as one with the County Auditor and put the garage where he thinks it belongs. He said he can straddle the property line and either push the garage north to south to the rear, or if he wants to turn it so that the doors are facing north, then he would pull in off Devonshire and the house would be to the right and the garage would be to the left. He thought this would be nicer looking for the neighborhood and he would not have a massive front wall all across the street. He did not think he needed to

resurvey, but merely file a consolidation with the County Auditor. G. Fisher clarified that if he consolidated the lots, he would need to file application with the Planning Commission and he would need to have the property surveyed. P. Laurien said to do the right thing might cost him something, but he thinks it is the right thing to do. Otherwise, he is asking for a variance to have more structure and less green space when he actually can comply.

B. Voltz asked the applicant what the hardship is and what made him arrive at this size of a garage verses something a little bit smaller. Z. Kozar said he was going with what was allowed for a square footage as far as a garage. D. Phillips said he is 262 sq. ft. over. B. Voltz said because of the percentage of green space he needs to have on his property, he would be limited to 506 sq. ft as far as the size of the garage without having to ask for a variance. Z. Kozar said he wants to use his second lot as a back yard. D. Phillips said technically if he makes the garage 24'x21' then he would not need a variance. Z. Kozar said he wanted this size because it was a two-car garage and it had a little workshop, and he has plans for it. D. Phillips said if he chooses to move forward on the original variance request, then the board can move forward with voting. Z. Kozar asked the board to move forward.

D. Phillips MOVED, D. Chrulski seconded to approve the variance request as submitted to allow 262 sq. ft. Roll Call Vote 3 NAYS (Laurien, Voltz, Chrulski); 1 YEA (Phillips). **MOTION FAILED**.

(B-3) 3330 Liberty Avenue – Applicant: John Clifford German (Allow placement of second freestanding sign that was existing and allow sign location to match existing)

Cliff German said he wants to replace an existing sign that blew down in the wind. He said it will be the same sign in the same spot.

B. Voltz MOVED, D. Phillips seconded to approve the variances as requested on the application as submitted. Discussion: P. Laurien said as a point of order he believed this existing sign had some grandfather rights to it and it was a non-conforming setback, but the size of the sign was okay, so this is a minor request since they are replacing what was there and legal non-conforming prior to zoning. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

NEW BUSINESS:

(R-1)3955 Brownhelm Station Road – Applicant: Paul Ludwig (Allow gravel driveway, garage maximum square footage, allow footings as designed)

Applicable City code section(s) cited:

1270.02 (i) (3) - Driveways shall be hard surfaced – proposed = gravel – variance request – to allow gravel.

1272.11 (e) – Garage max. sq. ft = 768 – proposed = 946 – variance request – 178 sq. ft.

RCO 403.1.4.1 – Footings must be protected by frost – proposed = see stamped drawings – variance request to allow footings as designed

Paul Ludwig explained he would like to put a barn on his side lot next to his home and run gravel to the barn. He also would like to have a 30' x 30' x 16' structure to fit his RV in.

D. Phillips asked if this property was connected because he did not know if it was separate lot. P. Ludwig said it is all one lot and their plan is to cut down all the weeds and mow the grass. D. Phillips asked why he did not want to put footers in. P. Ludwig said the state certified drawings says they are allowed to do 18" deep x 12" wide as specified on the drawing he submitted. It is basically a thicker slab on the ends – it is a steel building.

P. Laurien said this was a pre-packaged kit from a manufacturer in Canada and their winter is more severe than Vermilion. He said the footer design is probably fine, but he notes in the plan they talk about a local engineer needs to approve this. He questioned the soil conditions because to do this it might be okay as he has an engineer stamped drawing but is this engineer local? P. Ludwig said no it is somebody from the company that they are going to buy the building from. P. Laurien said he would be more comfortable if somebody had done some soil testing. If you have soils that do not drain well, they might be concerned because basically they will have a floating slab with a very shallow footer, and the drawings say to not make it higher than the ground level or change anything because it may fail. He would like to see a local engineer past judgment on whether this is appropriate due to the soil condition. D. Phillips advised the applicant that an engineer lives right down the street from him (Matt Hasel). P. Laurien said the board may want to table this until he gets this information. G. Fisher asked if the board wanted to vote on the other two variances and table the footer request. P. Laurien said he would be okay with this.

D. Phillips asked what the hardship is for the gravel driveway variance request. P. Ludwig said when they do the barn, they would like to do the paved driveway in their existing driveway to the house, and they would not have enough money to pay for the 155' all the way back to the barn.

D. Phillips MOVED, D. Chrulski seconded to approve the variance request to allow the gravel driveway and the variance request for the garage max. sq. ft. to allow a 178 sq. ft. variance. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

D. Phillips MOVED, P. Laurien seconded to approve the footings as designed subject to a local engineer satisfying the soil conditions as reported to the building inspector. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

[R-S] 4355 Edgewater Drive - Applicant: Donald Oliver (Front yard setback)

Applicable City code section(s) cited:

1270.09 (e) (2) (A) – Front yards not less than 30' or match existing – proposed – north side projects 2' 7" beyond established – variance request of 2' 7".

Don Oliver explained they have a shed in their back yard that has been discussed with the building department for a few years and it was permitted. He put a garage up in the front and it was supposed to fit up next to the house but their eaves made it so it did not go all the way back, so it sticks out further than it should. He put it to the end of the gutters, and it was supposed to be up next to the house. Therefore, they need a variance for both the garage and shed.

B. DiFucci said they got a building permit for the shed in the rear yard and was given the approval to install the shed. The homeowner made application for a garage in the front and was told it had to match the existing setback on the street, but when it was delivered they could not set it back far enough so it would align with the front, so while they were there addressing the garage they did a final inspection on the shed in the rear yard and he matched the shed to the gutter on the house, but it projects beyond the front wall, so the setback talks about matching the existing setback which is dictated by the front wall of the house, so the shed in the rear yard sticks out too. Both of these have to match the existing setbacks.

D. Phillips said he viewed the county auditor's page, and it looks like there was a garage already there. P. Ludwig said this will need to be turned into a bedroom for his mother. Therefore, they put the garage up for his wife's MS because she fell last year in the snow, so they put her car in the garage.

D. Phillips said he drove by the property and the garage in the front looks more like a shed than a garage. D. Oliver said they have a picture with his car parked in it. P. Laurien asked if it was on a wood foundation. D. Oliver said it is Forever board and it holds a 30,000-pound tractor. P. Laurien said if it could be moved back to touch the house would it meet the front setback. B. DiFucci said he is 2' 7" beyond the established.

D. Phillips said the board received a letter from his neighbor who is asking the board to decline this variance and when he was there walking around some other neighbors told him they would like to see this variance request declined. From an aesthetics point of view, they did not like this, and he would have to agree with them on this. D. Oliver said he thought it was a beautiful building.

P. Laurien asked how much the building could be pushed back. D. Oliver said six to eight inches.

D. Phillips asked the homeowner why he could not push the shed back. D. Oliver said he has a peach tree, but if the board needs him to push it back, he will remove the peach tree. D. Phillips said they need to show hardship, but he is not sure a peach tree is a hardship. If he moves the shed back, then this will come into code and the problem is solved on the shed.

D. Oliver said with moving the garage back, the roof of the garage will run into the eaves. B. Voltz thought this could be trimmed off. Mrs. Oliver indicated this is what she said. D. Oliver said he is not a carpenter so he would not know how this could be done. P. Laurien said he is sympathetic with their need for the garage, but he does

not think they have done everything they can do to alleviate the setback as much as possible – even if they push it back. It may be sticking out a little bit, but he will then be directly abutting, and it will be a one-hour rated wall, and he will be complying on this part of the code. He does not like having a gap between the two – this is a chimney fire. D. Phillips said he has more of an issue with the garage, then he does the shed. He thinks the neighbors had more concerns with this issue too. He asked why he cannot move the garage to where the shed is – just remove the shed and put the garage back there. Mrs. Oliver said the building inspector said something about the percentage of their yard and how close it will be to the property lines in the back.

P. Laurien said he would like the property owner to withdraw the variance on the shed and to get it on record that he is going to remove the peach tree and the shed will comply. D. Oliver said he was good with this.

Gabriele Bernhardt of 4366 Edgewater Drive asked the zoning board what the distinction is between a detached garage and a shed. From her understanding, a garage has a foundation, and a site plan is to be given to the city showing a building plan and an elevation drawing to scale that must be included with the permit for this garage, and then inspections are required during the construction. She is curious as to the distinction between a garage and a shed. P. Laurien clarified that the shed builders build garages and sheds, and depending upon what the local building official requires, this is built to a shed standard on a wood foundation, so they are basically pressure-treated sleepers, and they are probably 6' x 6' ground contact, and the floors are probably 2' x 6' pressure-treated tongue and groove, and they built to withstand this weight. However, if it is going to be a garage it has to have a foundation, so he would have to ask for a variance to a normal foundation standards, and they would be talking about whether they want him to push this back and attach it, so that it is now a one-hour fire-rated wall, and whether or not they want him to lift it up and put a concrete foundation under it. He said they are engineered to sit on a gravel bed, but he does not know what they did. D. Oliver said they put ankle busters, 57 and 305 down. P. Laurien asked the building inspector if he inspected this before it was done. B. DiFucci said no. P. Laurien said they do not know, and this could potentially be a proper foundation for the type of the garage he has, but someone needed to inspect this before it was done. It can still be done by probing, but it is not easy. He said he is trying to help the homeowners work this through, but they put the cart before the horse.

Karen Viterna of 4360 Edgewater Drive asked if this were to truly abut the existing front of the house on Edgewater, then how many feet beyond its normal distance that is permitted would this be? P. Laurien said they do not know, but it sounds like it will be a foot or two. They do not know without an accurate measurement. They will be close to complying if they would raise their eaves and push this back. It would give them an appropriate setback or nearly appropriate, and it would give them a fire-rated one-hour wall between the garage and the house, which is much better than a gap because this would create a wind tunnel. P. Laurien said he believes they can get an engineer from the company who built this to certify that the structure will support the vehicle, but they need to know what is under the wood sleepers. All of these things can be addressed, but the main issue is everybody

satisfied if they push this back as far as they can and attach it to the house and make it a one-hour fire rated wall. Personally, he is satisfied with this. K. Viterna asked if the zoning board's definition of a garage is something that can structurally accommodate a vehicle of some certain mass. B. Voltz explained the board does not set the definitions. B. DiFucci said the definition for a 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. The definition for an attached garage means a building, structure, or any portion thereof used for the housing or repairing of motor vehicles, excluding rooms for storage, exhibiting, or showing new or used cars for sale. D. Phillips said this is the reason why the mayor proposed looking at the city's zoning ordinances and cleaning them up.

B. Voltz felt he would need to request a variance to the building standards of what a wood foundation would be.

D. Phillips MOVED, B. Voltz seconded to grant the variance request for a front yard setback of 2' 7" as requested in the application. Roll Call Vote 4 NAYS. **MOTION FAILED**.

D. Phillips said the homeowner has the opportunity to come back before the board with a proposal to change things. P. Laurien offered guidance by saying if they were to get an engineer to look at the foundation under the wooden platform floor with the building inspector, and to draw a plan showing the exact distance they can compress the two buildings, adjust the roofline, and make it an attached wall garage that will need fire-rated drywall and bring the plan back if he needs a variance. He may not need a variance if he can push it back 2' 7". He said he would be sympathetic to the wooden foundation with a proper gravel base, but he needs to satisfy the board and the building inspector. D. Phillips said the timeframe to come back would be 30 days. G. Fisher said his application for the June 22 meeting is due into the building department by June 4. P. Laurien told the homeowner he will need an accurate to scale diagram.

[B-2] 5495 Liberty Avenue - Applicant: Sandra Coe/Vermilion Chamber of Commerce (Allow Sign)

Applicable City code section(s) cited:

1274.14 (B) – Sign approval from Board of Zoning Appeals – variance request to allow sign

1274.12 (d) – Signs may not be over the public right of way – variance request to allow sign

Sandy Coe said she would like to put up a blade sign that is similar to the Poppin Around sign from Innovative Marketing Products. She said the lettering on the Chamber window will be removed.

B. Voltz MOVED, D. Chrulski seconded to approve the variances as requested to allow the sign. Roll Call Vote 4 YEAS. **MOTION CARRIED**.

[B-3] PP#: 01-00-004-116-001 (Liberty Avenue) - Applicant: Sommer Realty Company (Allow storage use)

Applicable City code section(s) cited:

1270.13 (b) (1) – permitted uses – see list – proposed = storage – variance request to allow storage use

Attorney Howard Lane of 409 East Avenue, Elyria, Ohio was present to represent the applicant Sommer Realty Company and President Todd Sommer. He said before the board is an application for zoning review so his client can use a portion of this parcel of land located on Liberty Avenue for the use of an indoor storage facility. This is the frontage of permanent parcel #01-00-004-116-001 and it goes back 250' and this portion of the parcel is designated as the B-3 Highway Commercial Zoning District. He said Vermilion has an ordinance identified as Section 1270.13 (b) that sets the permitted uses in the B-3 zoning district. There are 28 separate permitted uses, and it reads to state: Any other retail business or service establishment or use which is determined by the Board of Zoning Appeals to be of the same general character as the above permitted uses. As he indicated, his client intends to use the frontage of this property as a storage facility, and it will be an indoor storage facility and part of it will be climate controlled. The storage will permit things such as storage of motor vehicles or small boats and Mr. Sommer was present to provide details regarding the indoor storage use, and establishing the structures of the indoor storage use, and the decisions to be made for the construction would be pursuant to and in line with any other zoning ability requirements the city may have. Again, the question before the board on their application is strictly whether or not the use of this property for indoor storage is of the same general character of the other items listed in this particular ordinance. With all due respect, this is not a question of whether or not the board or he wants it for the city, but whether or not it is of the same general use. In looking at the other items in Section 1270.13 there are other uses that they would submit to the board that are similar, such as auto sales and repair, boat and marine sales, food lockers, and the other uses that are specifically permitted are all similar to what they are proposing as they are part of the service industry – they are not talking about manufacturing or light industrial or residential. Some of these other permitted uses implicitly involve some level of storage.

Furthermore, Attorney Lane stated he had submitted in support of their application previous board minutes from the meeting of January 26, 2021. He asked the board if they saw his documentation. The board replied they did see it. Attorney Lane said on this evening the board was confronted with the exact same question that his client's application presents. Chairman D. Phillips said the board received the correspondence, but it is important to note that every situation and every item that comes through the board is based on its own merit. They do not compare each application to something else. Also, if Attorney Lane wanted to go down this road, this was already an existing building that was vacant for many years. Attorney Lane replied that he will go down that road with all due respect and he does respect Chairman Phillips comment and understands why he is making that comment, but again respectfully he will try to distinguish what he is saying to their application.

This is not a situation as to them comparing one application for a variance to somebody else's application for a variance. "He wanted to do this with his roof, why can't he do this with his roof". This is the exact same question, and it does not matter whether it is talking about his client's parcel or somebody else's parcel in the B-3. B. Voltz said he would beg to differ because the board's responsibility is to have someone demonstrate the hardship of why they might need to request what they are requesting and reflecting back on the past situation as Chairman Phillips had mentioned, it was an existing facility, and it was not being used for anything. In this case, there is no existing facility there or current use, so he thinks there is a couple of things of it being on its own merit and being a hardship of needing to have this variance requested. Attorney Lane said this is not a request for a variance – does the board understand this? B. Voltz said this is what they are here for. Attorney Lane said the board is to determine only whether or not it is of the same general character – they are not asking the board to go outside of the bounds of the ordinance. They are asking them to follow the ordinance and find that it is of the same general character. D. Phillips said he understands this, but also what he is requesting is not on the permitted use of B-3. Attorney Lane asked what his client is requesting that is not on there. D. Phillips said the storage. Attorney Lane said the board found that Mr. Wilson's use of a storage facility was... B. Voltz said he requested a variance. P. Laurien said there is no precedence, and you cannot take this case and try to apply apples to apples. The circumstances were very different. Attorney Lane asked how so? P. Laurien said the Chairman has already stated – it was an existing vacant building in a heavy commercial area set far back off the road – not within 250'. It is blocked from public view by a tire store and adjacent to a marina, adjacent to a shopping center on its side. He said they could go on and on, but this was a very different set of circumstances, so Attorney Lane is trying to take this and apply it to an open piece of property where they are asking for the frontage directly on Liberty to allow a storage use. It is not the same and he may say that it is, but it is up to the board to determine whether they think it is. This is the board's judgment. Attorney Lane asked if the board is taking into consideration facts other than the actual proposed use. P. Laurien said the board can take into consideration whatever it wants to.

T. Sommer said his plan is no different than what they had done in the previous application. It will still be indoor storage, only concrete, and it will be an extremely nice facility to accommodate a lot of people that have boats, motor homes, and large vehicles. They are hoping to possibly entertain even making them condos where he can sell them. The condos are just an idea.

D. Phillips said there are residents in the audience that probably want to speak, so he wanted to go on record saying the board received numerous letters from many individuals voicing their concerns with regards to the permitted use variance request made by Mr. Todd Sommer. He elected not to read the letters into the record as all board members received them and read them. However, Gwen Fisher, Clerk of Council will attach each letter to the official minutes because the board has read them, and they know what the residents have written. Attorney Lane said for the record he would like to object. G. Fisher asked what part he was objecting to. Attorney Lane said making these letters part of the record. G. Fisher clarified that he

did not want them as part of the record. Attorney Lane said he did not. G. Fisher said this is up to the Chairman. B. Voltz reiterated it is the Chairman's choice. D. Phillips said it seemed as though the board needs to have a lawyer sitting on their side.

D. Chrulski stated that the vote Attorney Lane keeps comparing to was not a unanimous vote and that being said he voted no against it. Attorney Lane replied it was the decision of the board. D. Chrulski said correct it was, as this should be as well.

G. Fisher asked the Chairman if she could state the names of the letters that were submitted to the board. D. Phillips said please. G. Fisher noted for the record that Homer Taft of 3972 Edgewater Drive submitted a letter on May 23, 2021; Fran Chapman of 270 Yorktown Place, A3 submitted an email on May 23, 2021; Ingemar sent an email on May 21, 2021; Bill McCourt of 4135 Menlo Park Lane submitted a letter on May 21, 2021; Robert Green of 4097 Ford Lane sent an email dated May 20, 2021; and, Ellie Roztas of 3409 Liberty Avenue, #205 presented the clerk with a letter dated May 25, 2021. In addition, as stated above – Attorney Lane submitted a cover letter dated May 19, 2021, which include a Photojournal article, a Board of Zoning Appeals application made by applicant Adam Wilson, and meeting minutes of the Board of Zoning Appeals dated January 26, 2021. All correspondence is attached hereto and incorporated herein as the official record of proceedings of the meeting minutes of May 25, 2021.

Open to the Audience:

D. Phillips asked audience participants to keep their comments to three minutes and to try not to bring up the same dialogue as included in their correspondence.

Bill McCourt of 4135 Menlo Park Lane said there was information in the letters that the general public should be made aware of, and the general comments made regarding this project for a proposed variance change had one thing left out, as there is a tremendous amount of citizen support for the concept to not allow this. In addition to, there is also a petition drive with hundreds of citizens that will have this on the ballot to clarify the concept of storage in B-3 areas.

Homer Taft of 3972 Edgewater Drive gathered the board received his four-page letter, so he does not need to repeat it all. D. Phillips confirmed the board received it. H. Taft said to Mr. Lane's point that there are a lot of differences, but one of the major differences aside from the fact that at the last meeting the board turned down the zoning on a very similar use under similar circumstances. In that case there was a request (right or wrong) for a use on a small portion of a large property. What Mr. Sommer and Sommer Realty are asking for is an entire rezoning of the entire B-3 portion of the land, which will require a division of the land. He referred the board to Section 1260.04, 1260.06, and 1260.07 on this subject. D. Phillips said they are not rezoning – the board is voting on a permitted use for the B-3. H. Taft said when you are changing the use of the entire property under the city Charter – Article VI, Section 2 – he feels it does constitute a rezoning which raises a problem for them

because it is not within their jurisdiction – it is within the jurisdiction of the Vermilion City Council, and after the recommendation by the Planning Commission. He said they are in the wrong place to begin with. He said with regards to the use – under Section 1270.13 the use has to be one related to the commercial motorist highway district. It is specifically under its intent called out to be something that motorists use on a regular basis. It is specifically limited as to permitted uses – textually limited to retail businesses and service establishments. This is neither! So, it is completely excluded and if that is not enough, it is textually included in a different zoning area; specifically, I-1 under Section 1270.15, which specifically calls out “Storage Warehouses” and “Storage Shops”, in addition to a whole list of things referring to businesses that have storage. So, it is not a retail business use. Further, the applicant is required to show beyond a reasonable doubt two things – first a list of things including a detriment to the neighborhood like all other businesses appurtenant to the other use – none of which has been shown beyond a reasonable doubt in this case, and then there is a separate set of things that is necessary and desirable to provide the service or facility for the general well-being of the neighborhood. There is compelling evidence from many neighbors that this is detrimental to the neighborhood and to the vicinity. Therefore, he asked the board to turn this down.

D. Phillips MOVED, D Chrulski seconded under Zoning District “B-3” COV Section 1270.13 (b) (1) permitted uses – see list – proposed = storage – variance request to allow storage use. Roll Call Vote 4 NAYS. **MOTION FAILED**.

Adjournment:

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

Next: Tuesday, June 22, 2021 – 7:00 p.m. @ Vermilion Municipal Complex, 687 Decatur Street, Vermilion, Ohio.

Transcribed by Gwen Fisher, Certified Municipal Clerk