

**DRAFT MINUTES
BLOOMINGTON ZONING BOARD OF APPEALS
REGULAR MEETING - 4:00 P.M.
WEDNESDAY, NOVEMBER 15, 2017
COUNCIL CHAMBERS, CITY HALL
109 EAST OLIVE STREET
BLOOMINGTON, ILLINOIS**

Members present: Mr. Butts, Ms. Meek, Mr. Schultz, and Mr. Brown

Members absent: Ms. Harris, Mr. Veitengruber, Chairperson Bullington

Also present: Mr. George Boyle, Assistant Corporation Counsel
Ms. Izzy Rivera, Assistant City Planner
Mr. Andrew Coffey, Acting Secretary
Mr. Kevin Kothe, City Engineer

At 4:10 PM, Mr. Coffee called the roll. With four members in attendance, a quorum was present. Since the chair of the board was absent, a nomination for an acting chair was needed. Ms. Meek nominated Mr. Butts, seconded by Mr. Brown. Mr. Butts accepted the nomination, and hearing no other nominations, the Board approved the nomination unanimously by voice vote, 4-0.

PUBLIC COMMENT: None.

MINUTES: The Board reviewed the minutes from October 18, 2017. Ms. Meek motioned to approve the minutes; seconded by Mr. Brown. The Board **approved** the minutes by voice vote, 4-0.

REGULAR AGENDA:

Z-29-17 Consideration, review and approval of the petition for a variance submitted by Julia Sutherland for the property located at 501 E Olive St. to allow a 16' addition to the width of the driveway for the length of the driveway, in the R-2 Mixed Residence District.

Acting Chairman Butts explained the procedures for the public hearing.

Acting Chairman Butts introduced case Z-29-17. The petitioner, Julia Sutherland, was present and sworn in. Ms. Sutherland stated her petition is to widen the driveway. She has lived at 501 E Olive since May 2005. This year she is financially able to do the work in the driveway. Since she has been living there, she has not been able to use the driveway. Ms. Sutherland stated that there were two things that raised concerns, the first being where the property lines are located, how big the property is and whether it encroaches on the neighbor. She was able to find a metal stake in the southwest corner of the lot, next to the utility pole. The rest of the boundaries, she identifies, by using the existing structures. Ms. Sutherland stated the fence establishes the boundaries of the property line. She stated it is a modest change, and the existing driveway does not comply with the existing requirements. Ms. Sutherland stated modern cars cannot travel on the driveway, and the least amount of change that can be made is to take a few inches and expand the driveway up to her identification of the property line. She stated the retaining wall that is currently present would be put back in place, in order to make the least amount of change,

use the same materials and not change the character. She presented additional pictures for the commissioners to view.

Acting Chairman Butts marked the pictures as Group Exhibit 1, containing 14 pictures. He asked if there was anyone else who would speak in support of the petitioner.

Mr. John Trupin stated his desire to speak and was sworn in by Acting Chairman Butts. Mr. Trupin stated the stake that was found in the back of the property, along with the fence, should be the accepted determination of the property line. He stated that what the petitioner was requesting was to take the fence line and use it as a reference point for the boundaries of the property. The request to increase the driveway by 16" would be placed right up against the fence line. He stated that one of the pictures in Group Exhibit 1, shows a previous fence that was there before. He had no further information regarding the old fence. Mr. Trupin stated if the property line that is being disputed, is encroaching on the petitioner's property, then perhaps the neighbor is also encroaching on the property to the east.

Mr. Boyle asked Mr. Trupin his interest in the property. Mr. Trupin stated he was Ms. Sutherland's fiancé.

Acting Chairman Butts asked if there was anyone who would like to speak in opposition of the petition. Mr. Boyle reminded Mr. Fritsch that he was able to look at the Group Exhibit 1. Mr. Paul Fritsch, 503 E Olive St., introduced himself and was sworn in by Acting Chairman Butts. He stated he would like to review the pictures. Mr. Fritsch stated as the neighbor directed to the east, he opposes the petition to widen the driveway. He stated the retaining wall encapsulates the front portion of his property. He stated from the east property line, the wall goes up toward his driveway, up to the walkway up the front steps, and up to the fence line. He stated he believed the previous owners, may have been allowed to build that retaining wall to encapsulate their property, without that being the actual agreed upon property line. Mr. Fritsch stated he reviewed the legal description for his property which states 244 ft west of Evans for 62 ft. He took a wheeled measuring device to measure from the inside corner of sidewalk in the corner of Olive and Evans, and he came to a point that was located 12 inches east of where the wall starts to the east of the property, and 4 inches west of the retaining wall to the west of the property. Mr. Fritsch stated he reviewed the legal description for the petitioner, it listed 56 feet wide east of Mclean and Olive. He measured from the inside of sidewalk edge at that same intersection and gets to a point that is 24 -30 inches west of the retaining wall between him and the petitioner. For these reasons, Mr. Fritsch stated he believes the property lines exists between 4 inches and 30 inches west of the wall. Making the wall completely part of his property at 503 E Olive. He stated his conversation with Ms. Sutherland regarding the stake, in which he believes it is part of the utilities company. He stated the metal stake looks newer and has a twist which would not have been present in metal stakes during the 1900s when his home was built, he stated his property was built sometime after the petitioners. Mr. Fritsch stated his other objection is the work would be completed by an individual who may not have a commercial license. He is unaware if the individual is licensed to work with concrete, or if he is licensed as a carpenter. If the work would be completed there would need to be some work done in order to maintain the character of the wall and work with the curvature of the property. He stated the retaining wall is historically significant to his property and the neighborhood. Too many are being removed and replaced with concrete that does not match the style. He thanked the Board

Mr. Schultz asked Mr. Fritsch if the retaining wall that he was referring too was a wall or a curb. Mr. Fritsch stated he thinks it is a retaining wall as it holding back his yard. For clarification, Mr. Schultz stated the retaining wall is only 6-10 inches tall, rounded at the top with some grass to the sides and pictures indicating the wall going up to a fence and a tree right up against the fence.

Acting Chairman Butts asked if there was anyone else who would be speaking. Seeing no one, he opened the floor for the staff presentation.

Ms. Rivera introduced case Z-29-17. Staff is recommending approval of the variance request. The zoning code required the driveway to be 3 feet from the property line, which it does not have and is considered non-conforming. The neighborhood is older and was built before the City's zoning code. The property is zoned R-2, Mixed Residence District. Ms. Rivera stated when looking at variance request to keep in mind the general purpose and intent of the meeting, and considerations like visual impacts, property values and neighborhood character. She stated the property at 501 E Olive is located on a corner lot and is relatively flat. The home was built in the 1800s, and located in the corner of E Olive and S Mclean St. Ms. Rivera stated Ms. Sutherland attached rope to the stake and followed it to the front of her property to show what she feels is the property line.

She stated that driveways on that block were relatively narrow, between 8 and 9 feet wide, the petitioner's driveway is even narrower. She showed the front of the property and stated the driveway is about 7 feet wide with the addition making it 8 feet 4 inches. It would still be a non-conforming driveway.

Ms. Rivera stated the standards are met, and would like to mention that a condition or an unexplored action would be to expand the driveway towards the house. It would only be a few inches, as there are pipes protruding and would not want to cause damage to the siding. This could lessen the impact toward the east, toward the neighboring property. The driveway cannot be relocated as it is a corner lot and would be too close to the intersection.

Acting Chairman Butts asked if a survey was done on the property, Ms. Rivera stated not that she was aware. She also stated she was unable to find information about when the fence was built.

Acting Chairman Butts stated he could see the opposition's argument is the retaining wall was taken into consideration. He cannot however determine the intent of the wall when it was put in place. Without knowing the actual property line, Acting Chairman Butts stated he was hesitant to make a conclusion. Ms. Meek stated her concerns with the case stemming from where the property line is located. She stated the responsibility of the property line is on the homeowner. She stated a survey should be done, and she questions how much work would have to be done on the neighboring property in order to fix the curb, she does not believe it to be considered a wall.

Acting Chairman Butts stated restoring the neighboring property to the existing condition is separate from the variance that is being requested, and is a separate legal duty. If a variance is granted, the petitioner has a duty to restore what is disturbed. Ms. Rivera stated that the petitioner would be using the same existing retaining wall and restore it at its new location.

Mr. Schultz stated a way to find property lines and metal stakes is to rent a metal detector, and find the stakes in the ground. This could be a preliminary property line check. Ms. Sutherland stated that she in fact did get a metal detector but was unable to find any other metal but the one stake she found in the back of the property. She stated another indicator of property line was that the garage was built in 1996 or 1997 and a permit was requested. In the permit the site plan of the new garage is outlined 3 feet from the property line. Ms. Sutherland asked the previous owner if they had purchased a survey and they had not. The previous property owners also used the metal stake found in the back of the property.

Mr. Schultz asked if Ms. Sutherland has gotten a quote for a survey and she stated that she had and the cost would be \$3000.00. She stated the cost of the survey would surpass the cost of the job. She stated the neighboring fence is what she determines to be a property line divider as it is exactly 62 feet wide, which is the width of their property in the legal description. The garage that was built in her property in 1997 was also a reasonable indication of where the property lines are located. Mr. Schultz asked if anyone had ever parked a car in the garage. Ms. Sutherland stated that she had, when she first moved in and had a different vehicle. She has also removed lumber and planter from her side of the property in order to give her more space. Mr. Schultz asked if the previous owner built the garage to use it to store vehicles. Ms. Sutherland stated that is was her understanding that he had, but is not sure. She stated she knows it was used for storage, possibly for vehicles but the other side was used as an art studio.

Mr. Boyle asked Ms. Sutherland if she was to receive approval for the variance, would she be open to working on expanding toward her home, as staff suggested moving the driveway expansion towards her home a few inches. Ms. Sutherland stated she would be open to it and she also will restore the retaining wall. She stated the person she has contracted is licensed and their plan is to take the retaining wall in sections, as it is already divided that way, and move it back the inches allowed by the variance. He will do the grading and will work the neighbors to make sure it is done correctly. She stated the only thing that would be cut out would be a few inches of the straight edge in order to keep the rounded curb at the front of the property. She stated that she will also extend the work to fixing the neighbor's front step that is cracked.

Acting Chairman Butts stated his concerns with the limit of the board. The Board can vote on whether or not a variance can be granted. The board cannot vote on what the property line is. He stated that the evidence, while circumstantial is not strong in either of the arguments. Without the survey a definite answer on property line is not found. The role of the Board is not to decide the issue of property lines. He stated that if a variance is granted it needs to be within the property of the petitioner. He stated if a variance is granted, there are still permits and procedures that need to be followed in order to follow City code and guidelines.

Ms. Sutherland asked if her variance was granted, and she applies for a permit, would she still need to get a survey. Mr. Boyle states that there are certain standards that have to do with the interpretation of the code, the code requisites how wide the driveway should be. The only thing that a petitioner gets from the Board is a variance. The Board considers certain factors within their purview, other permits that are needed from other departments are not related to this board.

Mr. Schultz stated if a variance was granted, the petitioner applied for a permit, and the contractor did not get a survey done, the neighbor may have legal grounds to sue the petitioner. He stated concerns with approving the variance. Acting Chairman Butts stated the Board will not endorse where the property line is located, this is not within their role or authority. He stated

to the opposition and the petitioner, that the Board's role is limited. The only thing the board decides is whether or not the petitioner may build something that varies from the zoning code. He stated the Board is not going to endorse anyone belief of where the property line is or is not. Mr. Boyle stated the Board looks at the factors listed in the staff report, and that are in the zoning ordinance. Deciding where the property line is located, is not something the Board can decided upon. Mr. Boyle asked the opposition, if some of his concerns would be addressed if the driveway was expanded to the west of his property. Mr. Fritsch stated they would not, he stated there would be no way to move the retaining wall and maintain its historical significance or architecture.

Mr. Brown asked if Mr. Fritsch if he disagreed with the petitioner on where the property line is located. He stated he did disagree and he thinks his property line is found 4 inches to the west of the curb. Ms. Meeks asked Mr. Fritsch if his thoughts were that the petitioner's driveway was partly on his property. He stated that he believes the curb is wholly on his property and that when the curb was put in, measurements where not as accurate. Mr. Brown asked if the widening of 16 inches would be encroaching in his property, and Mr. Fritsch stated that is what he believes.

Ms. Meek asked if there could be conditions placed on the approval, or hold off decision making until a survey could be completed. Acting Chairman Butts stated the Board did not have the authority to mandate a survey be done. He stated a vote can be made in regards to deviating from the code only. Mr. Boyle stated that if the variance request was not approved the petitioner would have to wait a year in order to reapply. Acting Chairman Butts confirmed the legal description outlined 62 feet of width for the property line and asked if the fence was 62 feet wide. Mr. Fritsch stated that he measured the fence and it was 61 feet 6 inches, indicating a possible 3 inch setback.

Acting Chairman Butts opened the floor for a motion, and stated the board is not deciding on where the property line is, only voting on the request for a variance from the zoning code. The decision does not grant her any other authority.

Mr. Brown motioned to accept the findings as fact, as is outlined in the staff report. Ms. Meek seconded the motion. The variance request was **denied** 2-2 with the following votes cast: Mr. Brown –no; Acting Chairman Butts –yes; Ms. Meek –yes; Mr. Schultz –no. Mr. Boyle stated is a petition is rejected by less than 5 votes, the petitioner has the right to appeal, within 10 days of receipt of letter of denial. The petitioner is able to contact the legal department to discuss the appeal process.

Z-30-17 Consideration, review, and approval of the petition for a variance submitted by the Bloomington Planning Commission on behalf of FOB Development for the property located at the northeast corner of Empire St. and Airport Rd. (Lot 6) in the B-1, Highway Business District.

Acting Chairman Butts introduced the case. Mr. Jeff Gastal, representing the land owner of Empire Business Park. He stated he is available to answer questions. He was sworn in by Acting Chairman Butts. He stated the current development on Airport Rd has sparked interest in the lot. The property owner is willing to have less landscaping in the 12 foot setback, as a result of the city's request to put in a sidewalk in the 6 foot easement. This would be much safer travel for pedestrians, as well as students attending the school.

Ms. Rivera stated staff supports the request for variance for case Z-30-17. She stated the site is located within Empire Business Park, east of Airport Rd, and north of Route 9. The City of Bloomington annexed the property in 1998. In 2009 council approved a Preliminary Plan which has since expired. Interest in the area, initiated the need to reapprove the Preliminary Plan. The site is zoned B-1, Highway Business District and B-2, General Business District. The proposed use is medical offices, which is a use permitted in both of the zoning classification. Ms. Rivera stated when looking at variance request to keep in mind the general purpose and intent of the meeting, and considerations like visual impacts, property values and neighborhood character. The 6 foot strip west of the property will still hold some landscaping. The sidewalk will improve walkability and enhance pedestrian accommodations which is a goal of the comprehensive plan. The annexation agreement required the property owner to dedicate a 45 foot wide strip of land for the construction of Airport Rd, however the road was overbuilt. On October 25, 2017 the Planning Commission approved the Preliminary Plan, and recommended that the Zoning Board of Appeals approve the variance request for the 6 foot reduction in landscaping setback. On behalf of the Planning Commission, and there may be more variance petitions in the future for development, none have been received yet. Ms. Rivera stated the City is requesting this easement to accommodate pedestrian access on Airport Rd, since the road is overbuilt it lacks adequate parkway to accommodate the 5 foot sidewalk. This is a compromise between the city and the landowner. The sidewalk will connect the street and the building complies with all other yard setbacks. Staff is recommending in favor of case Z-30-17.

Acting Chairman Butts opened the floor for discussion or a motion. Mr. Brown motioned to adopt the finding of facts in the staff report, seconded by Ms. Meek. The variance request was **approved** 4-0 with the following votes cast: Mr. Brown –yes; Acting Chairman Butts –yes; Ms. Meek –yes; Mr. Schultz –yes.

Acting Chairman Butts asked if there was any new Business. Seeing none he opened the floor for a motion to adjourn.

ADJOURNMENT:

Mr. Brown motioned to adjourn; seconded by Mr. Schultz. Approved by voice vote. The meeting was adjourned at 5:00P.M. by voice vote.

Respectfully submitted

Izzy Rivera, Assistant City Planner