

# **Board of Zoning Appeals**

**May 21, 2018**

Mr. Emch called the meeting to order at 7:10 PM

**Roll Call:** Paul Emch- present, A. J. Bissell– present, Al Tolchinsky – present

**Council Representative:** Tom Blair - present

Visitors: Todd Hicks, Cory Brown, Dawn Tolchinsky, Rick Gruber, Nick Fishbach, Bev Fishbach, Tom Erickson, Sally Erickson, Tom Clark, Bill Clarke, Margaret Bechter, Nora Chartier, Lisa Hernandez

Mr. Emch asked Mr. Hicks to swear in all the visitors; Mr. Hicks also advised those present that if and when they speak, to please state their name and address.

Mr. Tolchinsky moved to approve the April 26, 2018 meeting minutes, seconded by Mr. Bissell. By voice vote, the motion passed.

## **Discussion:**

Mr. Cory Brown appeared before the Board of Zoning appeals in a continuation of the Public Hearing that was held on April 26, 2018, regarding a possible lot split at his property, located at 14004 E. Center Street. The reason for the continuation is to consider additional proposals from Mr. Brown. Mr. Brown came before the board with several separate proposals. Proposal #1 would include variances. Mr. Brown is open to any ideas that come about. In his second proposal, he is not asking for a variance. In this situation, he would have a home that had no setback, and would take off the back addition of his home. This would be the least desirable of the ideas he proposes.

Ms. Bechter of 14024 E. Center Street, approached the board with pictures she had taken, showing the proximity of Mr. Brown's current home to her home. Mr. Brown noted that every home in the subdivision has a home right on the lot line. Each lot was originally intended to be 1.1 acres, but is only 80 feet. Mr. Gruber, Burton Village Zoning Inspector, agreed that all the homes in that subdivision have frontages of only 80 feet, with the exception of Mr. Brown's. In addition, Mr. Gruber noted that that this scenario is not unusual in the Village, with many homes having lots that are smaller than 100 feet. Many properties range from 60-90 feet of frontage in the Village. Ms. Bechter asked what the current zoning code is. Mr. Gruber said that it is 100 feet.

Mr. Gruber said that if Mr. Brown were to sell the other parcel, the new buyer could build on that other lot, and still meet all zoning requirements. The current issue at hand is that the existing house encroaches on the other property line. This is why Mr. Brown is seeking a variance.

Mr. Fishbach, 13595 E. Center Street stated that the last time that the zoning regulations were changed was in 2001. Mr. Fishbach agreed with what Mr. Gruber stated. Mr. Fishbach noted that some of the homes in the Village are too close.

Mr. Brown would like to use proposal #1. The lot size would be 70' x 109', which is only a 10' difference from the existing lot. If it were a 100' sized lot, the zoning request would be for 30'. But since it is only an 80' lot, it is only 10' different.

Ms. Bechter noted that those smaller lot sizes were most probably grandfathered in.

Mr. Brown stated that he is not planning to build anything at this time.

Mr. Hicks noted that in terms of Proposal #1, if a variance is granted, Mr. Brown would need to have everything settled with the Planning Commission within a year, or the variance is lost. Mr. Hicks asked when the lots were purchased, and what the total purchase price was. Mr. Brown said that he purchased them a year and a half ago, for \$134,000. Mr. Hicks asked if the lots were purchased separately, or if they were marketed as two separate lots. Mr. Brown said the lots were sold as one, but noted that when he looked at the renderings on Geauga Access, it is not clear that it is only one lot.

Ms. Bechter asked if the Board had to accept any of the proposals. Mr. Hicks stated that they did not have to accept any of the proposals.

Mr. Brown suggested that Proposal #2 does not need any approval, since it would involve Mr. Brown removing part of his home so that it is no longer encroaching on the other lot. Mr. Brown could then sell the vacant lot, and the buyer of that vacant lot could build a house on that lot, citing a non-conforming use, and taking advantage of more minimal requirements set forth in section 1147.02 of the Zoning Code.

Mr. Fishbach asked if Mr. Brown were intending to build a home as a rental property. Mr. Brown said that if he built anything, it would be a garage.

Jacob Bechter asked if similar variances like this been made since the new zoning laws have been put into place. Mr. Emch was not aware of any.

Mr. Hicks noted that the burden is on the applicant to show that there is an undue hardship on him; Mr. Hicks reminded the Board that they need to focus on that. Mr. Hicks then explained what constitutes a hardship in this case.

Ms. Bechter expressed concern that having a home that close to her would infringe on her privacy.

Mr. Fishbach asked where a driveway would be placed on this proposed lot. Mr. Gruber said that a driveway could go any way along the width of the parcel, there are no setbacks for driveways.

Mr Tom Clark 14042 and 13999 E. Center Street, stated that the regulation is 100 feet right now, and the lot being discussed is 63' feet wide. Mr. Gruber corrected that statement, and said that currently the lot is 80 feet wide - one lot is 80, one lot is 100 feet.

Mr. Tom Clark then remarked that even if Mr. Brown were to remove some of the existing house, which would leave 100' on the upper lot, Mr. Brown still wouldn't have 100' lower lot. Mr. Gruber answered that according to the existing modifications in Zoning, that would be an acceptable lot.

Mr. Hicks reminded everyone that if there were to be a variance granted tonight, the Planning Commission also needs to approve this. Mr. Hicks further stated that there is

always the risk that the Planning Commission would refuse to approve a lot split that will create a lot that complies even less with zoning, than the existing lot.

Tom Erickson 13982 E. Center Street, spoke next. Mr. Erickson feels very strongly that while there are differences in lot sizes, his neighbor was granted a lot that is very small. It makes Mr. Erickson's life very uncomfortable. Mr. Erickson hopes that mistake will not be made again.

Mr. Brown did not feel it was relevant that other people have this situation, and it is not fair that they impose their beliefs on this situation. Mr. Erickson was offended by that remark.

Mr. Hicks noted that if Mr. Brown were to sell the bottom lot to a 3<sup>rd</sup> party, providing that 3<sup>rd</sup> party didn't mind an encroachment on their property - as long as they were willing to take on a 6' foot encroachment, they could build a home on that lot. The house would only need to be 8' away from the other property line.

Mr. Emch and the Board then entered into deliberation, so the Board could discuss the matter privately.

After leaving deliberation, Mr. Hicks explained that a majority of the 5-member Board needs to vote to grant a variance, and since there were only 3 members present, all would need to vote in the affirmative for a variance to be granted. Mr. Hicks suggested that the motion should be to approve both variances spelled out in proposal #1, which includes a 7' foot side yard variance, and a 30' foot frontage variance. Mr. Bissell made the motion; seconded by Mr. Emch. A roll call vote was held: Mr. Emch – no; Mr. Tolchinsky – no; Mr. Bissell – no. The requests for the variances is denied.

**Adjournment:**

Mr. Tolchinsky made a motion to adjourn; seconded by Mr. Emch. By voice vote, the motion passed. The meeting was adjourned at 8:18 pm.

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BZA Chairman

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Clerk