

**BOARD OF ZONING APPEALS
MINUTES FOR THE
NOVEMBER 22, 2016
MEETING**

Pursuant to written notice, the meeting of the Board of Zoning Appeals (the "BZA") was called to order by Chairman Al Schutte at 7:30 PM on Monday, November 22, 2016, in the Council Chambers of the Village of Evendale Municipal Building. Attending were Chairman Al Schutte, members Dave Harwood, Rhett McGregor, Mike Reed, and Ken Valentine. Supporting the BZA was Pam Morin (staff). Also present were Nan Roy (resident), Ron Back (resident) and Tommy Reed (Atlantic Sign Company).

After all those present who planned on giving testimony were duly sworn in by Chairman Schutte, the following appeals were heard:

**Nan Roy
3300 Twilight Drive
Applicant has submitted an application for a 26 foot variance from the required 35 feet rear yard setback in the Residential District as set forth in Schedule 1246.07 of the Village of Evendale Zoning Code.
File #V-16-06**

Mr. Reed asked if Mrs. Roy applied for the appeal in the required two week period. Mrs. Morin explained that because of the confusion as to whether the appeal would be heard by the BZA or Council, Mrs. Roy was told to wait to file her appeal. The BZA members agreed that the two week requirement should be waived.

The Board, upon motion made by Mr. Reed, seconded by Mr. Harwood, unanimously adopted the following Findings of Facts.

RESOLVED, that the following Findings of Fact are hereby adopted:

1. By letter dated August 22, 2016, Don Mercer, Building Commissioner of the Village of Evendale, Ohio, denied applicant, Nancy Roy's request for a Building Permit. A copy of said declination shall be marked as Exhibit A on file in the Building Department and incorporated by reference herein.
2. Applicant, Nancy Roy filed an appeal dated August 25, 2016 with the Evendale Zoning Board of Appeals. A copy of said appeal is marked as Exhibit B on file in the Building Department and incorporated by reference herein.
3. After proper notice to the required parties, the Zoning Board of Appeals held at hearing on October 10, 2016. A copy of said decision is marked as Exhibit C on file in the Building Department and incorporated by reference herein.
4. Nancy Roy filed a second application with the Board, dated November 7, 2016, seeking reconsideration of its earlier decision. The Zoning Board of Appeals has subsequently come to the conclusion that its earlier decision finding that the BZA did not have the authority to hear the matter was erroneous, resulting in public notice being sent to the required parties and a new hearing on the matter before the Board on this 22nd day of

November, 2016, starting at approximately 7:30 p.m. A copy of said notice is marked as Exhibit D on file in the Building Department and incorporated by reference herein.

5. Applicant submitted a drawing to the Board showing that the proposed structure would increase the extent of the encroachment, but nonetheless the enlarged structure would still be between 61 and 65 feet from Carpenters Creek Drive. The Village of Evendale owns the strip of land between the public road commonly known as Carpenters Creek Drive and the applicant's property (the strip of land between the road and applicant's property being referred to herein as the "Buffer").
6. The Board must determine whether the proposed variance is a "Permitted Variance" or "Prohibited Variance", as set forth in Section 1284.05 (a) and (b) of the Code. Since the proposed variance is not (i) intended as a temporary measure only; (ii) greater than the minimum variance necessary to relieve the particular hardship or practical difficulty demonstrated by the applicant; or (iii) a change in land use resulting in the establishment of a use not normally permitted in the applicable use district, it is not a Prohibited Variance. Since the proposed variance is intended to provide a means by which relief from dimensional, numerical or locational standards may be granted, it is a Permitted Variance.
7. The Board must next determine whether the proposed variance satisfies the requirements of Code Section 1284.05 (c), a portion of which is set forth below:

Standards for Variances Other than Sign Variances: The Board shall not grant a variance as authorized by § 1284.05 unless it can determine that there are practical difficulties encountered by the applicant in complying with this Zoning Code (emphasis added). The evaluation shall include, but is not limited to, the following criteria, which need not all be met in order to grant the requested variance.

- a. Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;
 - b. Whether the variance is substantial;
 - c. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
 - d. Whether the variance would adversely affect the delivery of governmental services;
 - e. Whether the property owner purchased the property with knowledge of the limitations currently imposed on it by this Zoning Code;
 - f. Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and
 - g. Whether the spirit and intent behind this Zoning Code would be observed and substantial justice done by granting the variance.
8. Therefore, the question before the Board is whether there are practical difficulties encountered by the applicant in complying with this Zoning Code. Applicant submitted the following testimony and other evidence of practical difficulties in complying with the Zoning Code:
 - a. Though the proposed patio will be nine feet from the property line, it is 60+ feet to the curb of Carpenters Creek Drive.

- b. There is a landscaped buffer along Carpenters Creek Drive. The buffer, located on Village property, currently contains a stand of trees visually separating the applicant's land from the public road. Mrs. Roy stated that there has always been co-operation between the Village and her family in keeping the landscaped area along Carpenters Creek Drive well maintained.
 - c. The portion of the roadway behind Mrs. Roy's property is a public roadway, but not a dedicated roadway with easements.
9. The BZA also considered and answered the following questions:
- a. Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;
 - b. Whether the variance is substantial;
 - c. Whether the essential character of the neighborhood would suffer a substantial detriment as a result of the variance;
 - d. Whether the variance would adversely affect the delivery of governmental services
 - e. Whether the property owner purchased the property with knowledge of the limitations currently imposed on it by this Zoning Code.
 - f. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
 - g. Whether the spirit and intent behind this Zoning Code would be observed and substantial justice done by granting the variance.
10. The Board found this testimony and evidence to be persuasive.

DECISION

NOW, THEREFORE, in light of the foregoing Findings of Fact and the application of the facts to the applicable law, the Board, upon motion made by Mr. Reed and duly seconded Mr. Valentine, unanimously adopted the following resolution:

RESOLVED, that the Board hereby accepts Mrs. Roy's application for a 26 six foot variance from the rear yard setback, placing the proposed deck expansion nine feet from the property line and 60+ feet from the curb along Carpenters Creek Drive. Mr. Schutte made a motion to amend the motion to read the undedicated portion of Carpenters Creek Drive. Mr. Harwood seconded the motion. The amended motion passed with a vote of 5 yes, 0 no.

Worldwide Equipment

10649 Evendale Drive

Applicant has submitted an application for a fifteen foot variance from the maximum allowable height of 35 feet for a pole sign in the Industrial Truck Center (ITC) District.

File #V-16-07

1. By letter dated October 19, 2016, Don Mercer, Building Commissioner of the Village of Evendale, Ohio, denied applicant, Worldwide Equipment's request for a Building Permit to install a sign. A copy of said declination shall be marked as Exhibit 1 on file in the Building Department and incorporated by reference herein.
2. Applicant, Worldwide Equipment filed an appeal dated October 18, 2016 with the Evendale Zoning Board of Appeals in a writing filed within the required 14 days following

the denial of the applicant's request. A copy of said appeal is marked as Exhibit 2 is on file in the Building Department and incorporated by reference herein.

3. After proper notice to the required parties, the Board held a hearing on November 22, 2016, said date being within the required time. A copy of said notice is marked as Exhibit 3 is on file in the Building Department and incorporated by reference herein.
4. The Board must determine whether the proposed variance is a "Permitted Variance" or "Prohibited Variance", as set forth in Section 1284.05 (a) and (b) of the Code. Although the proposed variance is not (i) intended as a temporary measure only and (ii) is not a change in land use resulting in the establishment of a use not normally permitted in the applicable use district, which would mean it is a Prohibited Variance, if found to be greater than the minimum variance from dimensional, numerical or locational standards necessary to relieve the particular hardship or practical difficulty demonstrated by the applicant, it is a Prohibited Variance. Notwithstanding the foregoing, Section 1284.05(e) of the Code permits the Board to reduce the extent of the variance sought to the minimum required, which would make it a Permitted Variance.
5. The Board must next determine whether the proposed variance satisfies the requirements of Code Section 1284.05 (d), which specifically addresses the criteria for a sign variance. Code Section 1284.05(d) is set forth below:

Standards for Sign Variances: In order that the public welfare may be guarded and substantial justice done, variances from the sign requirements of may be recommended for the following reasons:

 - (1) Where the literal application of Chapter 1262 would result in an unnecessary hardship peculiar to the property involved and not based on conditions created by the owner. As used in this decision, "unnecessary hardship" does not include reduction of economic advantage. (Emphasis added).
 - (2) Where the granting of a variance will not unduly injure adjoining or neighboring property.
6. Therefore, there are two questions before the Board. The first question is whether "the granting of a variance will not unduly injure adjoining or neighboring property" and the second question is whether "the literal application of Chapter 1262 would result in an unnecessary hardship peculiar to the property involved and not based on conditions created by the owner. As used in this division, "unnecessary hardship" does not include reduction of economic advantage.
7. Applicant submitted the following testimony and other evidence that the granting of a variance will not unduly injure adjoining or neighboring property:
 - a. Worldwide will remove existing pylon sign;
 - b. The proposed sign will be placed on the west side of the property placing it along I-75. This portion of the property sits 15 – 20 feet below I-75;
 - c. There are a line of trees between I-75 and the proposed sign location;
 - d. The proposed sign will not be as high as the existing Teamster sign, also placed along I-75.
8. The BZA members questioned the need for the 15 foot variance and asked Mr. Tommy Reed how they determined the new sign height. Mr. Tommy Reed stated that

Worldwide Equipment wants that the proposed sign to help the traffic on I-75 to identify and locate their business.

The BZA members and Mr. Tommy Reed have agreed to perform a flag test within the next several weeks. Mr. Schutte agreed to witness the test. Mr. Mike Reed made and Mr. Schutte seconded the motion to table the decision on this variance until after the flag test.

A motion was made by Mr. Reed and seconded by Mr. Harwood to approve the minutes of the October 10, 2016 meeting. The motion passed with a 4 – 0 vote; Mr. McGregor abstained because he was in attendance at that meeting.

Upon a motion made by Mr. Harwood and seconded by Mr. Valentine and unanimously adopted, the meeting was adjourned at 8:00 PM.

Attest:

Al Schutte, Chairman
Board of Zoning Appeals