

**BOARD OF ZONING APPEALS
MINUTES FOR THE
January 19, 2017
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 Thursday, January 19, 2017, 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 the persons listed on Exhibit A attached hereto and incorporated by reference herein.

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

1. Smart Building Supply, 10400 Evendale Drive

Applicant has submitted an application for a variance from Schedule 1266.04(D) of the Village of Evendale Zoning Code requiring outdoor storage and fences enclosing permanent outdoor storage to be placed in the rear yard only. The purpose of this variance is to allow outdoor storage and fence in the front yard.

2. Ferguson Enterprises, Inc., 10725 Evendale Drive

Applicant has submitted an application for a variance from Schedule 1266.04(D) of the Village of Evendale Zoning Code requiring outdoor storage and fences enclosing permanent outdoor storage to be placed in the rear yard only. The purpose of this variance is to allow outdoor storage and fence in the side yard.

Section 1284.02 of the Code establishes the parties entitled to appeal to the BZA. “Any application for appeal to the Board of Zoning Appeals may be filed by any person adversely affected by an order, decision, determination, or failure to act of the Building Commissioner or the Planning Commission”.

Smart Building Supply: After hearing the testimony of Mr. Elmer and reviewing the written evidence submitted, the BZA, upon motion made by Mr. Reed, seconded by Mr. Valentine, unanimously adopted the following Findings of Facts:

1. By decision dated January 10, 2017, the Evendale Planning Commission issued a Conditional Use Permit for outdoor storage with a condition that Smart Building Supply obtains approval from the Board of Zoning Appeals for a variance to permit outdoor storage and fence in the front yard.
2. Applicant, Smart Building Supply filed an appeal dated December 5, 2016, with the Evendale Zoning Board of Appeals. A copy of said appeal is marked as Exhibit C is on file in the Building Department and incorporated by reference herein.

3. After proper notice to the required parties, the BZA held a hearing on January 19, 2017, said date being within the required time. A copy of said notice is marked as Exhibit D 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.

The Board must determine whether the proposed variance satisfies the requirements of Section 1284.05 (c) of the Code, which specifically addresses the criteria for a variance.

Section 1284.05(c) of the Code states as follows:

“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. 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.

(1) Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;

(2) Whether the variance is substantial;

(3) 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;

(4) Whether the variance would adversely affect the delivery of governmental services;

(5) Whether the property owner purchased the property with knowledge of the limitations currently imposed on it by this Zoning Code;

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and

(7) Whether the spirit and intent behind this Zoning Code would be observed and substantial justice done by granting the variance.

5. Mr. Elmer submitted the following testimony:
 - a. Because of the unusual size and the placement of the structure, this lot does not have a back yard;
 - b. The applicant is requesting less than one acre in the front yard to be enclosed for outdoor storage;

- c. Evendale Planning Commission approved a Conditional Use Permit with the following requirements:
 - i. Fencing around the outdoor storage is to be black aluminum, no higher than six feet;
 - ii. Landscaping along the fencing;
 - iii. Storage materials cannot be stacked higher than 20 feet;
 - iv. Storage area must be ten feet back from the fence;
 - v. Consolidation of the two parcels;
 - vi. BZA approval.

Mr. Schutte expressed concern that the storage may not remain organized and cleaned up.

Mr. McGregor stated that the storage of material in the front yard and along a curve will significantly change the sight line of traffic traveling on Evendale Drive.

Mr. Harwood made and Mr. Reed seconded the motion to table the issue until Mr. Koch can attend the meeting to provide testimony and the village provides the results of a sight line study for Evendale Drive. The motion passed with a 5 – 0 vote.

Ferguson Enterprises Inc.: After hearing the testimony of Mr. Trauth and reviewing the written evidence submitted, the BZA, upon motion made by Mr. Reed, seconded by Mr. Harwood, unanimously adopted the following Findings of Facts:

1. By decision dated January 10, 2017, the Evendale Planning Commission issued a Conditional Use Permit for outdoor storage with a condition that Ferguson Enterprises Inc. obtains approval from the Board of Zoning Appeals for a variance to permit outdoor storage and fence in the side yard.
2. Applicant, Ferguson Enterprises Inc. filed an appeal dated January 12, 2017, with the Evendale Zoning Board of Appeals. A copy of said appeal is marked as Exhibit C is on file in the Building Department and incorporated by reference herein.
3. After proper notice to the required parties, the BZA held a hearing on January 19, 2017, said date being within the required time. A copy of said notice is marked as Exhibit D 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. Mr. Trauth submitted the following testimony:
 - a. Ferguson Enterprises Inc. has agreed to maintain a 30 foot clearance around the building for fire safety as requested by the Village of Evendale Fire Department;
 - b. Storage materials will not be stacked higher than 20 feet;
 - c. Ferguson Enterprises Inc. will be tearing down the current building and constructing a 120,000 square foot building;
 - d. Due to the long, narrow character of the property, the rear yard (west side) does not provide adequate space for outdoor storage;
 - e. The side yard (north side), in which they are requesting outdoor storage, has trees along the property line and provides some screening of the area;

The Board must determine whether the proposed variance satisfies the requirements of Section 1284.05 (c) of the Code, which specifically addresses the criteria for a variance.

Section 1284.05(c) of the Code states as follows:

“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. 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.

(1) Whether the property will yield a reasonable return without the variance or whether there can be beneficial use of the property;

(2) Whether the variance is substantial;

(3) 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;

(4) Whether the variance would adversely affect the delivery of governmental services;

(5) Whether the property owner purchased the property with knowledge of the limitations currently imposed on it by this Zoning Code;

(6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance; and

(7) Whether the spirit and intent behind this Zoning Code would be observed and substantial justice done by granting the variance.

DECISION

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

RESOLVED, that the Board hereby accepts the application for a variance to allow outdoor storage side yard; and

RESOLVED FURTHER, that approval is subject to compliance with all conditions imposed by the Evendale Planning Commission.

The foregoing motions were accepted by a vote of 5 yes, 0 no, 0 abstentions.

A motion was made by Mr. Harwood and seconded by Mr. McGregor to approve the amended minutes of the November 22, 2016 meeting. The motion passed by a vote of 5 in favor, 0 against and 0 abstentions.

Upon a motion made by Mr. McGregor, seconded by Mr. Valentine and unanimously adopted, the meeting was adjourned at 8:15 PM.

Attest:

Al Schutte, Chairman
Board of Zoning Appeals