

**BOARD OF ZONING APPEALS  
MINUTES FOR THE  
August 3, 2015**

Pursuant to written notice, a public meeting of the Board of Zoning Appeals (the "BZA") was called to order by Chairman Al Schutte at 7:30 PM on Monday, August 3, 2015, in the Council Chambers of the Village of Evendale Municipal Building. Attending in person were Chairman Al Schutte, members Dave Harwood, Lynn McCarthy and Mike Reed. Because of a work obligation, Ken Valentine arrived late to the meeting. Supporting the BZA was Pam Morin (staff). Also present were Stiney Vonderhaar (resident), Diane Redden (resident), Chuck Melampy (Applicant), Robert S. Brown, Trustee (Applicant) and Sean Suder, Esp. (legal counsel for Mr. Brown).

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

**Chuck Melampy  
9693 Otterbein Road  
Applicant has submitted an application for a variance from Schedule 1246.07 of  
the Village of Evendale Zoning Code requiring side yard setback of 10 feet in the  
Residential District.  
File #V-15-03**

On February 5, 2014, Mr. Melampy appeared before the BZA to request a five foot variance from the side yard setback to build a similar carport in the same location. The BZA denied Mr. Melampy's initial application. Since the first variance request, Mr. Melampy's neighbor has had a survey done on their property. This survey provided him with a more accurate side yard property line. With the new survey, the proposed carport will encroach on the side yard setback two feet, eight inches instead of the five feet proposed earlier.

Chairman Schutte read into the record the seven justifications provided by Mr. Melampy.

**Finding of Facts:**

After hearing Mr. Melampy testimony, reviewing the documents filed and listening to the seven justifications read into the record, the BZA adopted the following Findings of Facts:

WHEREAS, the application for a variance was filed on or about June 29, 2015;

WHEREAS, the BZA has the power to grant variances;

WHEREAS, a public hearing was set for 7:30 PM on August 3, 2015 and notices were sent to adjoining landowners;

WHEREAS the only response was in favor of granting the variance; and

WHEREAS consideration of the factors set forth in Section 1284.05(c)(1 - 7) of the Evendale Code occurred. It was found that all seven criteria were satisfied.

NOW THEREFORE, upon a motion made by Dave Harwood and duly seconded by Mike Reed, it was

RESOLVED, that a variance be granted upon the condition that the support posts for the carport are moved back eight inches so the encroachment in the side yard setback would be reduced to two feet rather than two feet eight inches as requested by Applicant.

The motion passed with a vote of 4 – 0.

The next order of business was consideration of the Appeal filed by Robert S. Brown, Trustee and he was represented by Sean Suder, Esp.

**Robert S. Brown, Tr.  
10825 Reading Road  
Applicant is seeking a variance from the minimum lot size requirements of  
Schedule 1248.07 of the Village of Evendale Zoning Code in the “HC” Heavy  
Commercial District.  
File #V-15-04**

Mr. Suder summarized Mr. Brown’s submittal. He stated that after the lot split, the two lots would result in one 1.0649 acre parcel (“the AutoZone Parcel”) and remaining parcel would be 2.6890 acres. According to Mr. Brown, the Ground Lease Investor for Autozone is not interested in purchasing a larger parcel. Mr. Suder referenced the 2009 Village Of Evendale Master Plan stating that the Master Plan suggests that north end of Reading Road should be pedestrian friendly. He pointed out that smaller lots, similar to the lots on the east side of Reading Road, would lead to that type of development. Mr. Suder also argued that though Mr. Brown is requesting a 47% variance, this variance will not change the character of the region.

In addition to this parcel, Mr. Brown owns an adjoining 11 acre parcel located in Sharonville. The only access to these acres is through the remaining parcel.

Chairman Schutte read into the record the seven justifications provided by Mr. Brown and Mr. Suder.

### **Finding of Facts:**

After hearing the testimony of Mr. Brown, Mr. Suder’s summation, reviewing the documents filed and the seven justifications for granting a variance, the BZA adopted the following Finding of Facts:

WHEREAS, this body is authorized by Section 1284.01 of the Village of Evendale, Ohio Code of Ordinances, (the “Code”) to hear and decide appeals and grant variances from the provisions and requirements of this Zoning Code which will not be contrary to the public interest or the general purpose and intent of this Code, and only in those specific instances defined by that chapter and based upon the standards set forth in this chapter;

WHEREAS, on or about June 23, 2015, the Village received an application for variance and a public hearing was set for this August 3, 2015, was noticed to all required parties, and conducted by the Board of Zoning Appeals in accordance with Chapter 1278 of the Code;

WHEREAS, the hearing was held within 60 days of the receipt of all required information, as required by Code Section 1284.03;

Whereas Section 1284.05(a) (Permitted Variances), states in part that “subject to the prohibitions set forth in this Chapter and proof by the applicant of each of the standards for variances, the BZA may vary the provisions of this Code. **The variance procedures are intended to provide a means by which relief from dimensional, numerical or locational standards may be granted from a particular application of the Zoning Code that is unreasonable and creates practical difficulties**” (emphasis added). The relief sought is from a dimensional or numerical standard so that portion of the test has been satisfied.

WHEREAS, the second criterion of whether the standard creates an “unreasonable and practical difficulty”. The minutes from the December 21, 1994 Planning Commission meeting, in which the original Autozone site was reviewed, explicitly shows that there was concerns by the Planning Commission members at that time of the construction of this one building for this entire lot;

WHEREAS, Mr. Suder states that the Village had failed to update its Zoning Code since the time the Master Plan was adopted and that the members of the BZA have the opportunity to correct the situation by granting the variance. In reality, the Zoning Code was reviewed, amended and revised as of March 12, 2013, approximately four years after adoption of the Master Plan. The fact that no change in the zoning for the area in question was adopted at the time of the adoption of the current code may be interpreted as meaning that the Village has not decided to change the zoning of this particular site. The BZA members do not feel that it is in their purview to change the character of the zoning code. Moreover, the Master Plan, per the language of the stature, is just a guide for future zoning and “recommendations contained within that plan for the adoption of zone changes will not become effective unless and until such recommendations are separately considered and specifically by ordinance”;

WHEREAS, the BZA members agree that request for almost 50% variance in the required lot size is substantial;

WHEREAS, the variance if granted, would not adversely affect the delivery of governmental services;

WHEREAS, the property owner did purchase the property with knowledge of the limitations currently imposed on it by the Zoning Code;

WHEREAS, other than a change in zoning, the property owner’s predicament feasibly cannot be obviated through some method other than a variance;

WHEREAS, the spirit and intent behind this Zoning Code would not be observed and substantial justice would not be done by granting the variance. The spirit and intent of the Zoning Code, as evidenced by its express language and the failure of the Village to rezone the property in the intervening five years since the adoption of the Master Plan indicates that the spirit and intent of the Zoning Code is to maintain the status quo in terms of zoning for the time being. In terms of substantial justice, allowing one owner to benefit financially while holding others similarly situated to the same rules, all for the sake of the financial gain of the owner does not seem to be consistent with substantial justice;

WHEREAS, a change of the magnitude in an area, at least on that side of the four lane street, would be substantially different from the neighboring sites.

THEREFORE, a motion was made by Mr. Reed and seconded by Ms. McCarthy to deny Mr. Brown's request for a variance.

The motion passed with a vote of 4 – 0, with Ken Valentine abstaining as the result of his arrival part way through the presentation.

A motion to approve the minutes of the March 24, 2015, meeting was made by Ms. McCarthy and seconded by Mr. Schutte. There was no discussion. The motion passed with a 5 – 0 vote.

There being no further business, Ken Valentine made and Dave Harwood seconded a motion to adjourn the meeting. The motion passed with a vote of 5 – 0. The meeting was adjourned at 8:30 PM.

Attest:

Al Schutte, Chairman  
Board of Zoning Appeals