**VILLAGE OF EVENDALE**

**BOARD OF ZONING APPEALS**

Minutes from the September 17, 2020 Meeting

Municipal Building, 10500 Reading Road, Evendale, Ohio

Pursuant to written notice, the meeting of the Board of Zoning Appeals was called to order by Chairman David Harwood at 6:00 pm on Thursday, September 17, 2020, in Council Chambers. In attendance were BZA members Doug Lohmeier, Rhett McGregor, and Thomas Shanks. Supporting the BZA were Timothy Burke (Village Solicitor) and Andrew E. Rodney, AICP (Building, Planning, & Zoning Manager).

Those present recited the Pledge of Allegiance to the Flag of the United States of America.

Mr. Harwood read the Opening Statement.

Those present who intended on providing testimony were duly sworn in by Mr. Harwood.

Prior to the start of business, Mr. Rodney announced that New Business Item #2, a Variance application at 3677 Moorhill Drive (EDB20-14), was withdrawn by the Applicant and would not move forward this evening due to opposition from neighboring property owners.

**OLD BUSINESS:**

1. EDB20-6: John & Peggy Altman, 3655 Sherbrooke Drive. Appeal of a Notice of Violation. *CONTINUED FROM JUNE 30, 2020 REGULAR MEETING*.

Applicant is appealing a Notice of Violation for parking on a non-paved surface in violation of Chapter 1468.05(f)(1) of the Property Maintenance Code at 3655 Sherbrooke Drive (Parcel #611-0011-0080) in an R, Residential zoning district.

Mr. Altman appeared before the Board.

Mr. Rodney summarized the two cases before the Board for the evening’s proceedings involving the subject location: an Appeal and a Variance. He also explained the differences between the two types of cases for the audience.

Mr. Harwood noted receipt of citizen letters submitted for the record.

Mr. Rodney provided the letters to Mr. Altman.

Mr. Altman requested time to review the letters.

Mr. Harwood granted Mr. Altman’s request.

Mr. Harwood requested additional clarification regarding the Variance requests.

Mr. Rodney explained the three variance requests to permit parking and storing of vehicles on an unpaved surface. He noted all variances were needed to fully encompass the uses proposed by the Applicant.

Mr. McGregor requested clarification of the term “paved” as listed in the zoning code.

Mr. Rodney referenced use of the term “paved” in Chapter 1246 of the zoning code.

After having reviewed the citizen letters, Mr. Altman requested the Variance application be addressed first.

Mr. Burke asked Mr. Altman if he intended to complete the Appeal process in the event the Variances were denied.

Mr. Altman responded in the affirmative.

There was no further Old Business on the agenda.

**NEW Business:**

1. PUBLIC HEARING – EDB20-11: John & Peggy Altman (Applicant), 3655 Sherbrooke Drive.

Applicant proposes to park on an unpaved surface at 3655 Sherbrooke Drive (Parcel #611-0011-0080) within a R, Residential zoning district. The Applicant is requesting the following Variances from Chapter 1246 and 1266 of the Village Codified Ordinances:

Variance #1 – To park a motor vehicle on an unpaved area adjacent to a paved driveway. Per Chapter 1246.09(f)(4), no vehicle shall be parked on any unpaved area.

Variance #2 – To store a motor vehicle on an unpaved area adjacent to a paved driveway. Per Chapter 1266.09(d)(1)(C)(i), no motor vehicle shall be stored in any unpaved area.

Variance #3 – To store a motor vehicle on an unpaved area adjacent to a paved driveway. Per Chapter 1266.09(d)(1)(C)(ii), no vehicle shall be stored except on an asphaltic or cement pavement surface, except if approved by Planning Commission.

Mr. Altman summarized the basis for the variance requests, including the receipt of a Notice of Violation and the manner in which the area in question is used for temporary parking. He referenced the standards of approval for a Variance, specifically the belief that the spirit and intent of the code could be met by approving the requests. Mr. Altman stated that parking issues are created when visitors or family members are at the premises. He stated a belief that permanent paving is aesthetically unappealing as opposed to leaving the area grass and using for parking only temporarily. Mr. Altman noted that future owners may decide to permanently park in the subject area, including parking of unattractive vehicles, if the area were paved in accordance with the code. He noted the elevation difference between the street and the home creates difficulty traversing between a parked vehicle on the street and the home. Mr. Altman also stated that vehicles parked on the street are subject to damage and vandalism. He questioned the spirit and intent of the code was being met by requiring all parking areas to be paved when such pavement could be considered visually unappealing. Referencing the citizen letters, Mr. Altman expressed disagreement that property values would fall as a result of allowing temporary parking on an unpaved surface. Mr. Altman reviewed the standards of approval for a variance, noting his assertion they can all be met.

Mr. Shanks requested clarification regarding a previous statement by Mr. Altman that he would have no issues if his neighbors parked their vehicles on unpaved areas in a similar manner.

Mr. Altman stated he could have an issue with it depending upon the nature of the situation, such as the type or condition of the vehicle or location in the yard.

Mr. Shanks referenced data showing no incidents of vandalism and only one (1) incidence of damage to parked cars on Sherbrooke Drive over the past five (5) years.

Mr. Altman responded that past statistics can be referenced for past patterns of behavior but they may not be a predictor of future occurrences.

Mr. Shanks responded that an approval of the appeal would allow all other homeowners the same right to park on unpaved surfaces.

Mr. Altman responded his belief that would be incorrect because he had established a prior legal use of the unpaved area for parking.

Mr. Lohmeier noted in June that Mr. Altman was attempting to locate prior owners to establish legal use of the unpaved area for parking. Mr. Lohmeier requested an update.

Mr. Altman responded that he received a phone call encouraging him to apply for a variance so he did not attempt to locate prior owners of the property.

Mr. Shanks asked for the elevation difference between the home and the street.

Mr. McGregor stated it was approximately 15 feet.

Mr. Shanks responded that he could not see the portion of the driveway at the top of the lot from the public street. He asked Mr. Altman if he thought the unpaved area, if paved, could be seen from the street.

Mr. Altman responded that the neighbors would be able to see the paved area from their property.

Mr. Shanks asked given the existing pavement in the area if adding more pavement would be unaesthetic.

Mr. Altman responded in the affirmative, stating it would also be environmentally unfriendly. He noted it would also encourage parking of vehicles in the area permanently, whereas the grass promotes only temporary parking.

Mr. Shanks noted there are other paving materials that could be considered, such as grass paver blocks.

Mr. Rodney responded those materials would not meet the definition of the “pavement” under the zoning code.

Mr. McGregor referenced the Notice of Violation and asked Mr. Altman to describe the nature of the language in the letter he received.

Mr. Altman responded the letter was received without prior warning.

Mr. McGregor asked Mr. Altman if the letter referenced a fine.

Mr. Altman stated a belief he would not be subject to a fine in this instance given the letter was a warning. He noted that if he were to repeat the action that a fine could be levied.

Mr. Harwood asked Mr. Altman if he had concluded his comments.

Mr. Altman responded in the affirmative.

Daniel Hayes, 3645 Sherbrooke Drive, addressed the Board. He noted living at the property behind the subject location for 31 years. Mr. Hayes stated he has never seen a neighbor park on the grass. He noted when large gatherings occur in the neighborhood that guests park on the street. Mr. Hayes stated a belief that property is devalued and the neighborhood is harmed by allowing parking on unpaved surfaces. He concluded by stating that he paved additional area on his lot to accommodate additional vehicles when his children reached driving age, even though there was ample grass on which to park.

Mr. McGregor asked who authors the variance request language.

Mr. Rodney responded the language comes from the variance requests by the applicant.

Mr. McGregor asked if the Board has the right to modify the requested variances.

Mr. Rodney stated the Board may only rule on those variances requested and advertised to the public.

Mr. Harwood noted the approval of a variance can be conditioned by the Board.

Mr. McGregor asked which of the variances can be approved.

Mr. Rodney responded the Board can approve all, none, or a portion of those variances requested.

Mr. Lohmeier asked what the benefit would be of approving a portion of the variances given their interrelatedness.

Mr. Harwood noted that approval of Variance #1 would allow parking on an unpaved surface for 24 hours or less, while approval of both Variances #2 and #3 would be required to allow storage of a vehicle for longer than 24 hours.

Mr. Lohmeier stated a belief that approval of any variance would set a precedent for parking on an unpaved surface Village-wide.

Mr. McGregor noted the Village permits temporary parking on unpaved surfaces at the Municipal Complex during special events. He questioned why the same courtesy could not be extended to a property owner.

Mr. McGregor continued by noting his preference for alternative means of communicating a potential code violation other than a notice in the mail.

Mr. Rodney responded that the Mayor has ordered code enforcement to be conducted without unnecessary personal contact with the public. Mr. Rodney further noted had a phone or email contact for Mr. Altman been available at the time, that he would have used one of those communication methods rather than send a letter in the mail.

Mr. Harwood requested individual motions on the variance requests.

Motion by Mr. Lohmeier to approve Variance #1.

Mr. McGregor requested a condition be added to limit parking of a vehicle on an unpaved surface to no more than 24 hours.

Motion by Mr. McGregor was seconded by Mr. Lohmeier to add the condition as requested. There was no further discussion. The motion passed by a 4-0 voice vote.

Motion by Mr. McGregor was seconded by Mr. Lohmeier to grant Variance #1 with a condition that parking of a vehicle on an unpaved surface shall not exceed 24 hours. There was no further discussion. The motion failed by a 1-3 voice vote.

Motion by Mr. Lohmeier was seconded by Mr. Shanks to grant Variance #2. There was no further discussion. The motion failed by a 0-4 voice vote.

Motion by Mr. McGregor was seconded by Mr. Shanks to grant Variance #3. There was no further discussion. The motion failed by a 0-4 voice vote.

**OLD BUSINESS (Continued):**

1. EDB20-6: John & Peggy Altman, 3655 Sherbrooke Drive. Appeal of a Notice of Violation. *CONTINUED FROM JUNE 30, 2020 REGULAR MEETING*.

Applicant is appealing a Notice of Violation for parking on a non-paved surface in violation of Chapter 1468.05(f)(1) of the Property Maintenance Code at 3655 Sherbrooke Drive (Parcel #611-0011-0080) in an R, Residential zoning district.

Mr. Altman appeared before the Board.

Mr. Harwood requested Mr. Altman address the Board with any new information.

Mr. Altman asked Mr. Rodney if he were notified that parking would occur temporarily on an unpaved surface what would be the response.

Mr. Rodney responded that in such a situation it is unlikely continued enforcement would have occurred provided the property owner agreed to refrain from doing so again in the future. He continued by referencing a similar situation at a property on Glendale Milford Road where deference was granted after an initial violation, and henceforth the Owner continued to disregard the regulation and therefore received a formal citation. Mr. Rodney continued that, in this instance, had a communication from Mr. Altman been received the violation most likely would not have been further pursued.

Mr. Altman continued by asking Mr. Rodney how he would enforce a variety of code violation situations.

Mr. Rodney responded that each instance of a violation comes with its own set of circumstances and a response to that violation is dependent upon those unique circumstances.

Mr. McGregor asked Mr. Altman if he was aware of the regulation prior to receiving a notice of violation.

Mr. Altman responded in the negative, noting surprise upon receiving the notice given the activity had been occurring for years.

Mr. Burke addressed Mr. Altman’s prior statement that the vehicle was to be parked there for 27 hours, but Mr. Altman later noted his son would be using the area for parking throughout the summer upon returning from medical school. Mr. Burke noted the summer is longer than 27 hours.

Mr. Altman stated he stands by his statements and the purpose of altering the timeline was to better understand the Village’s criteria for issuance of a citation for this type of violation.

Mr. Shanks ask for clarification from Mr. Altman that he has used the unpaved area for parking for approximately seven years.

Mr. Altman responded in the affirmative, noting his concern that code enforcement is not being conducted fairly.

Motion by Mr. Shanks was seconded by Mr. Lohmeier to grant the appeal in this case. There was no further discussion. The motion failed by a 0-4 voice vote.

Mr. Lohmeier suggested the Village collect contact information for property owners to contact them via phone or email regarding code violations to ease the tension often associated with receiving a Notice of Violation in the mail.

Mr. Rodney responded by sharing changes made to the notice letter to soften the language to provide a less threatening form of communication, noting that of approximately 100 similar notice letters sent to date this is the only letter which received such a response from the recipient.

Mr. Shanks expressed his frustration the property owner in this case was bent on having the law apply differently to him, but at the expense of similar enforcement throughout the Village.

**INternal Business:**

1. Approval of the minutes from the meetings of June 30, 2020 and July 22, 2020.

Motion by Mr. Lohmeier was seconded by Mr. Shanks to approve the meeting minutes of June 30, 2020 as submitted. There was no discussion. The motion passed by a 4-0 voice vote.

Motion by Mr. Shanks was seconded by Mr. Lohmeier to approve the meeting minutes of July 22, 2020 as submitted. There was no discussion. The motion passed by a 4-0 voice vote.

Mr. McGregor requested the Board adopt a regular meeting schedule to allow Board members to better accommodate meeting dates in their personal calendar.

The Board expressed general agreement with setting a standard monthly date to conduct their meetings.

Motion by Mr. Lohmeier was seconded by Mr. Shanks to hold regular meetings of the Board of Zoning Appeals on the third Thursday each month starting October 15, 2020.

There was no further discussion. The motion passed by a 4-0 voice vote.

Motion by Mr. McGregor was seconded by Mr. Lohmeier to adjourn the meeting. There was no discussion. The motion passed by a 4-0 voice vote.

The meeting adjourned at 7:08pm.

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

David Harwood, Chairman

Board of Zoning Appeals

Meeting Minutes prepared by Andrew E. Rodney, AICP, Building, Planning, & Zoning Manager.