

## **Building and Zoning Appeals Minutes**

Stow City Hall Boards and Commissions, Monday, July 8, 2019, at 6:00 p.m.

Members Present: Mike Svasta, Randall Roberts, Charles Obendorf, and Robert Knight.

Members Absent: Edward Franks.

Also Present: Becca Zak and Eric Cucuz, John Gourley, John Kelley, Tony Catalano and Mary Botts

Meeting called to order by Robert Knight at 6:00 p.m.

Swearing of New Member: Charles Obendorf was sworn in as a member of the Building and Zoning Appeals Commission by Mayor Pribonic.

Approval of Minutes: Motion to approve the minutes of the May 13, 2019, meeting by Mike Svasta, seconded by Robert Knight, all yea's, no nay's, motion passed 4-0.

### **Case #19-005**

This is a request by Ms. Rebecca Zak, property owner, property located at 3817 Highland Avenue, for approval of a variance of 10 feet to construct an addition to the existing residence located at 3817 Highland Ave. The existing residence is located 26.5 feet from the Highland Ave. right of way. The house was constructed in approximately 1948 and is considered a legal nonconforming use in regard to the front setback requirement.

The applicant is proposing to construct an enclosed front porch to the front of the house that will be located 16.5 feet from the Highland Ave. right of way. A stoop was previously located in the front of the dwelling. The proposed addition will total approximately 130 square feet in area and will extend the nonconformity by 10 feet. Upon review of the immediate neighborhood, there are several dwellings located less than the required setback in the R-3 District.

The property is zoned R-3 and the minimum front setback is 40 feet according to C.O.S. Section 1143.04.

Ms. Zak introduced herself and her partner Eric Cucuz. Mr. Cucuz is the primary builder. We designed it together but I will let him speak. Mr. Cucuz stated that he was not aware of the need for a variance so right now we are requesting the variance to continue the project to add value to the house and put the enclosed porch on and complete this project, if approved. I guess it is unfortunate that we are in this situation and had we known the

process prior to getting the permit that we got, construction would not be where it is right now. Mr. Knight said so basically you are increasing the square footage of the property to increase the property value. Mr. Cucuz said the stoop that was on there before was in poor condition and the steps were rotting, so it was pretty much unusable at that point and we decided that we wanted to add basically a porch. It is not a living space. It is not a heated space. Mr. Knight said so it is a vestibule. Ms. Zak said it is meant to be a place where people take their shoes off and hang coats. It is not really living space.

Mr. Svasta had a question for Mr. Catalano. Mr. Svasta said he went out and looked at this site. It does not look like the addition is tied into the house in any way, it is free standing. So is it more like an accessory building than an addition to the house? Mr. Catalano said he asked the appellant if they had planned to tie it together because there was a noticeable gap so the plan was to continue a new roof across the existing home and then across the addition and tie them in together. I don't exactly have plans for that yet. Mr. Knight asked if Mr. Cucuz had any plans prior to this for tying this in. Mr. Cucuz said no. Mr. Catalano said they initially got a permit for a front porch and then I can't even remember how I found out about this, I must have received a call about it. Her partner had constructed this so that is where we are at. They had subsequently submitted some plans but we have to deal with the variance but I am confident we can get there. Mr. Knight said we have a mortgage survey which was presented in the packet and typically that is from the right of way line so that is not the pavement edge, that is not the center of the roadway. That is where the property differentiates between the right of way and the street so we are 26.5 feet back to the existing dwelling. I had a hard time with this sketch here and these numbers but it looks like the porch is 10 feet out so that makes the setback from the right of way which is where it is to be measured 15.5 feet and the setback is supposed to be 40 feet. Mr. Cucuz said since this was nonconforming to begin with, would we just be extending it? Mr. Knight said just because it is nonconforming, doesn't automatically grandfather it into a nonconformance. When you start making changes, the codes apply so yes you had that condition previously but that doesn't give you the right to infringe upon that even further. Mr. Cucuz said my question to proceeding with the original permit, does that with the variance request, how does that not tie into the original permit that we received (Mr. Cucuz was speaking about the zoning permit he had already received for a deck). Ms. Zak said we got a permit for a front porch and we were not aware that at the time, enclosing it made it not a porch so that is why we went forward with our plans. Mr. Cucuz said he did not know it would be considered an addition. Mr. Knight said the permit said "project is front porch under 30 inches". Ms. Zak said she was not sure if that 30" meant from above grade or above that. Mr. Knight said we are trying to work with you here but you

are in violation of this permit by building anything above the 30", you built up above the deck. Once you went above 30" you were in violation of this permit. Ms. Zak said we were aware it meant above that and I submitted for that. Mr. Knight said when you submitted for this, you must have explained where the 30" from was from you folks told the people issuing this permit that you were going to put a deck out there, not exceeding 30" in height. That is how it happened to be like this. A porch is not a walled structure. Ms. Zak said so if we didn't put the walls on it, is that still a porch or is that 30" total. Mr. Knight said you are allowed to put a level deck on no bigger than 30" in height to grade. That is what this was permitted for. You didn't build that, you built something nonconforming. Now you are here asking for a variance. Ms. Zak said I did not take it as 30" total, I just took it as the floor.

Mr. Gourley, who lives at 3832 Moreland, said the fact that this house originally set back 37 feet from the right of way, that goes back to laws that were established for setback back in the 40's and by bringing this building out to within 10 feet of the road, I think that it does more harm than it does good. The permit called for a deck and the permit was not followed and ignorance of the law is no excuse. It does not enhance the property, I think it does quite the opposite. I think it brings the home values of the neighborhood down. I have submitted a paper from additional neighbors in the area that object to this also. There is no doubt in my mind that if I asked to build a house today on a vacant lot in that area, you are going to require me to put a 40' setback. That is a big difference than having a 10' setback, it is too close to the road. Mr. Svasta said so you live on Moreland. There are a bunch of existing structures that are not in compliance with the setback and I do understand what you are saying about reducing the home values right now because I think it's because it is unfinished but if the addition were to go forward and if Mr. Cucuz and Ms. Zak would finish it like they are planning to, I kind of think it would look acceptable to the neighborhood. I really don't think it would take anything away from it. Mr. Gourley said my question would be would you want to live next to it? Mr. Svasta said I actually have a situation next door to me where someone doesn't keep their house up and it tends to drag down the neighborhood properties. We would not allow an accessory structure in the front yard so that would be a totally separate appeal request. So if you would tie in this addition into the remaining house and this would be an addition to the building. Mr. Cucuz said if approved and we can work it out with the planning and building departments, we would tie into the house. Our plan, long term for the house is to improve everything so we want to put a new roof on, we have scheduled an electrician to come out to move the electric from the front of the house to a mast and we have that being done in under two weeks. I understand it is your opinion to say what you want about the porch and we have to stop construction since it was clear to us that it was in

violation so we haven't added anything to it since that point but I think, just like any citizen, we want to improve the value of our property. We want to improve the value. Ms. Zak said I bought this house three years ago knowing that it needed a lot of work and I wanted to do it, I wanted something small and below my means and we both work full time and we need time and money and we don't have a lot of that so this project has taken awhile but we like crafting things on our own. Of course we want to be in compliance with zoning. We apologize, we have this grand plan for sorts for what we want to do with our entire property, not just the house. Mr. Svasta said if the appeal does not go forward and you do not get the variance, you are going to have to tear that off the house. I think in the end it is going to look worse. Mr. Knight said you would be able to leave the deck there, that is what you got approved, but you wouldn't be able to have the structure there. Mr. Knight said I am in agreement with the audience member. I don't like the situation, I agree, ignorance of the law, I understand you didn't know what to look for that or whatever the circumstances are, you created a situation that is out of compliance and this Board is here to try to maintain a certain level of compliance with the zoning codes in the City and I would have to say at this point in time, I am not in favor of approving this request. Mr. Cucuz said I would like to separate any emotions that might be into the process but we want to be in compliance, we would put the money and time to be in compliance. Mr. Knight said it is not an issue of emotion, you understand you have to be in compliance with the zoning certificate you received. Even if this appeal hadn't taken place, zoning could have come out and had you taken that off because you are out of compliance with the permit that you received so that is where we stand, and again, I think building out towards the street, I don't know what other opportunities you have with the house, whether you can build to the south or north of the house but that is not our position to deal with here, we can only deal with what has been presented to us.

Mr. Roberts said my question to the owners is, the original porch that was there that was in poor condition, what was its visible size to begin with approximately? Ms. Zak said it was probably 2' x 4', it was 3 wooden steps up and there was an aluminum awning on top and it was all rusty and falling apart and it had no pavers leading up to it, just the porch and steps to get up and two rails and then into the house. Mr. Roberts said my comments are going to be similar to our Chairman. Our responsibility is this book (Zoning Code Book) and that is what you saw this gentleman (Mr. Oberdorf) take an Oath for tonight, so within reason, we have to take a look at everything and setting aside the fact that you made a mistake, and I get that, in my business I see a lot of that in this industry. You are willing to say you made a mistake and are willing to fix the problem but at this moment, I would concur with the chairman that if we took this back down to just the deck on the front, of the size that is permitted, not to be 30" or

higher off grade without the roof and everything else and I don't know, listening from this document, I don't know if we have that information, of the physical size of the deck. Mr. Roberts asked when they started this and Mr. Cucuz said last summer so it is an ongoing project. Mr. Roberts said so as long as this certificate, based on the start date of this, is compliant with what was erected for the floor part but not the roof and walls above. I think I would concur with our chairperson, although it will look fine when done, that is not the issue. Esthetic value, architectural value is not the problem. My concern is the extreme reduction in setback to continue something even more egregious against the code, I couldn't formulate that as an addition, I would have to vote against it myself. Mr. Cucuz said so the existing step was around 4' out so we assumed when we put in for that, we submitted a site plan (10 x 13') that it was o.k. Mr. Knight said so when that was issued, there was no problem with what you proposed. If there had been an issue with the code at that point in time, they would have advised you that you needed a variance for what you originally planned, otherwise, they said it was o.k. with what you were planning and gave you a permit. You changed what you were planning and what the permit was granted for. That is the issue.

Mr. Svasta said when you started this last summer, if we would grant the variance, what is your construction schedule and target completion date? Mr. Cucuz said we stopped May 13<sup>th</sup> when we received the notice that it was out of compliance and we stopped and we were around 90% complete so the exterior is painting and continue the paint and trim throughout the rest of the house minus the electric which is in the process for the 18<sup>th</sup> of July.

Mr. Roberts asked was electric planned for the porch as well? Porch lights outside? Mr. Cucuz said no electric to the porch as of right now. If that was something in the future, that would be a question for Mr. Catalano. Mr. Roberts said having an egress with porch and stairs would you need a light outside? Mr. Catalano said yes, you would need a coach light outside. Mr. Roberts said Mr. Catalano, with this being attached to the house as an addition, would you look at energy compliance? Mr. Catalano said no, it is non-conditioned space.

Mr. Cucuz said the structure itself, it is a timber framed structure so being that it is 6 x6, that is dove tailed together, there is a little bit of difficulty disassembling that so basically to disassemble it, it would just have to be completely wrecked and chopped and trashed from that point. It was built with craftsmanship in mind so to take it down it would need a saws all to cut all the braces.

Mr. Svasta said on your street (Moreland) I would not approve this variance but on Highland, there are a number of non-compliant properties out there.

I don't see where this addition is going to impact the neighborhood on Highland.

Motion to approve Case #19-005 by Mike Svasta, seconded by Robert Knight. Motion to approve variance was denied 2-2.

Adjournment: With no further business to be discussed, motion to adjourn by Randall Roberts, seconded by Mike Svasta, meeting was adjourned at 6:40 p.m.

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Robert Knight, Chairman

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Mary Botts, Secretary