

MADISON CITY BOARD OF ZONING APPEALS

Minutes

February 10, 2020

The Madison City Board of Zoning Appeals held a regular meeting on Monday, February 10, 2020 at 6:30 p.m. in City Hall. Scott Baldwin, chairman, presided over the meeting with the following board members present: Nancy Burkhardt, Bob Waller, and Rick Farris. Also present: Brian Martin, Building Inspector; Devon Sharpe, attorney; and Louann Waller, secretary. Absent: Brandon Taylor, board member.

Minutes:

There were no additions or corrections to the minutes of the previous meeting. N. Burkhardt made the motion to approve minutes – seconded by R. Farris – roll call – all ayes.

Minutes stand approved as recorded and distributed.

Renewals:

- Mike and Melissa Hess – Conditional Use permit for a mobile home.

Location: **318 W. Fifth St.**

Zoned: Historic District Residential (HDR)

One-Year Renewal

Renewal fee received; No complaints. N. Burkhardt made the motion to approve renewal – seconded by B. Waller – roll call – all ayes.

Renewal approved as advertised.

- Harold Perry, Jr. – Conditional Use permit for a mobile home.

Location: **212 Sixth St.**

Zoned: Hillside (HS)

One-Year Renewal

Renewal fee not received; no complaints.

S. Baldwin made the motion requesting D. Sharpe to send Mr. Perry a past due letter advising Mr. Perry if renewal fee is paid before the next BZA meeting the renewal will be approved. Seconded by N. Burkhardt.

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- Miller Automotive – Conditional Use permit for Retail – Motor Vehicle Sales and Automotive Repair.

Location: **1215 Clifty Dr.**

Zoned: Light Industry (M-1)

One-Year Renewal

Renewal fee received; no complaints. N. Burkhardt made the motion to approve renewal – seconded by B. Waller – roll call – all ayes.

Renewal approved as advertised.

- Dick and Sandy Freeman – Conditional Use permit for two (2) lodging/guest houses.

Location: **308 W. Second St.**

Zoned: Historic District Residential (HDR)
One-Year Renewal

Renewal fee received; no complaints. N. Burkhardt made the motion to approve renewal – seconded by B. Waller – roll call – all ayes.

Renewal approved as advertised.

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S. Baldwin said he would like for the board to first hear the Waller application. All board members were in agreement.

Tabled Application:

- Robert M. & Paula J. Waller – Variance from Development Standards (Road Lot Width) – Applicants desire to deviate from the Madison City Zoning Ordinance requirement of 150-ft. of road frontage for two (2) adjoining landlocked parcels (I.D. #39 08 11 000 004 011 006 containing 9.482 acres and I.D. # 39 08 11 000 004 012 006 containing 11.787 acres). Property access to be via 40-ft. wide easement of south neighboring property of 4571 N. Graham Rd. (Parcel I.D. 39 08 11 000 004 010 006). Said easement recorded in Warranty Deed dated June 18, 2003 and recorded in the Jefferson County Recorder’s office April 23, 2004, File # 2004-02368.

Location: **4585 N. Graham Rd.**

Zoned: Residential Agriculture (RA)

S. Baldwin told Mr. & Mrs. Waller they did not need to present to the microphone; board received all the documents from the last meeting. Board members confirmed they had reviewed the documents. No questions or comments from the board or audience members to the applicant.

Findings of Fact

- Will approval of this application will be injurious to the public health, safety, morals, and general welfare of the community?

Yes	No	Why?
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- N. Burkhardt No, I don't believe so. They have spoken with the neighbors. They have worked with us in getting us the documents that we wanted, so no, I don't think so.
- B. Waller I would share member Burkhardt's comments.
- R. Farris I agree. I think the key factor here is going to be that the neighbor's came forward and spoke positively about their impact and agreement and I don't think there will be any reason to think this it is going to be injurious to public, health, safety, morals or general welfare.
- S. Baldwin I am in agreement. Public health or safety or so forth, I don't think are really considerations here.

- Will the use and value of the area adjacent to the property included in the variance will be affected in a substantially adverse manner?

Yes	No	Why?
N. Burkhardt	Again I will say no. This was a family plot and the family decided to break these plots up, so I don't think it will be adversely affected.	
B. Waller	And I don't believe so either. I think this is kind of keeping with what the original owner of the property and what the family had planned on doing as part of the building.	
R. Farris	I agree with board member Waller's comments that this was already in the plan and that the current landowners are all aware of the situation and have publically commented that they have discussed openly. I believe there is nothing to really be concerned here with.	
S. Baldwin	The intent of the applicant is to build a house on this property. There are other houses in the neighborhood. It was divided originally, I understand, for family members to have houses, so I think there will be no harm to adjacent properties.	

- The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property.

Yes	No	What are the practical difficulties?
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- N. Burkhardt Yes, I think strict application would result in practical difficulties because they wouldn't be able to build any structure there because they don't have access to the road.
- B. Waller I think that was well stated. That was my concern and I think it's been met.
- R. Farris I agree with previous board member's comments.
- S. Baldwin The practical difficulty obviously is that it is a landlocked property and there's no way to get to it so you can't use it without a variance from the 150-ft. road frontage requirement. I think that one is met.

- Is this request contrary to public interest?

Yes **No** **Why?**

N. Burkhardt No, I don't believe so. Their neighbors are in agreement with the plan of building.
 B. Waller I agree with her comments. I cannot see any reason it would be contrary.
 R. Farris I agree as well. Again, I will come back to the fact that the adjoining landowners have come forward and made public announcement of their agreement to move forward, so I don't see any issues here.
 S. Baldwin I agree. There are houses in the Agriculture district and this is just going to be another one. There are houses in that neighborhood. The neighbors have no objections. I don't see that this is contrary to public interest.

- Are there conditions peculiar to the property?

Yes **No** **What are the peculiarities?**

N. Burkhardt Yes. I think as we've stated. It's a landlocked area.
 B. Waller I agree with that comment.
 R. Farris I agree as well. That seems to be the big one.
 S. Baldwin Of course that is the big one. It is a landlocked property with no road frontage. When it was laid out back in 2004, I believe, there was provision for an easement to get to it. The owners have met with their neighbors and have reached an agreement, which we have, indicating there will be no restrictions. This agreement designates that maintenance of said road will be shared equally by the owners of 4579 N. and 4580 N. Graham Road and that no restrictions to access of said property will be attached. That agreement has been made. I think these are certainly conditions that are peculiar to this property. I think that one is met.

- Are the peculiarities to the property a result of the applicant?

Yes **No** **Why/Explain**

N. Burkhardt No. I think the way that these lots were divided and sold from the family property by the family resulted in this. It's not the applicant.
 B. Waller I would use part of the applicant's statement that the applicant and current owners were not responsible for what we are looking at today. I think they are fine.
 R. Farris I agree as well. I think the explanation that the land was acquired with the thought that there was access I think that is not the result of the current landowner or the applicant.
 S. Baldwin I agree. The lots were landlocked when you bought them. He didn't do that. I think that one is met.

- Will owner sustain an unnecessary and undue hardship?

Yes **No** **What is/are the hardship(s)**

N. Burkhardt Yes. They wouldn't be able to build.
 B. Waller I would agree – they wouldn't be able to build.
 R. Farris I can't add anything to what the previous board members have said so I agree.
 S. Baldwin Without this arrangement they wouldn't even be able to get to the property. I think that one is met.

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S. Baldwin made the motion to approve a variance from the 150-ft. frontage requirement which is found in Section 6.28 and that this variance be granted. Seconded by N. Burkhardt. Roll call – all ayes.

Variance application approved.

New Application:

- Terry Sparks – Variance from Development Standards (Setbacks) for construction of a one-story garage 50-in. from east and south property lines.

Location: **128 Fairmount Dr.**

Zoned: Medium Density Residential (R-8)

Mr. Sparks said he is building a garage/workshop for pottery and stuff like that. Asking for the variance on the setback. There is a wall already on the border, a brick wall. This setback when his first garage was built, got a setback on the east side and that he just wanted to match it on this one of well. Further stated there is a wall about “this tall.” Everything will be built inside that wall. He further explained that one portion of this will be one-story, another portion is two-story.

N. Burkhardt asked Mr. Sparks if the garage he was talking about is the existing building that is on the drawing where he has a garage now. Yes, per Mr. Sparks adding that he just wants to match the same setback as that building. B. Waller asked Mr. Sparks if that is more of an aesthetic thing. Mr. Sparks said aesthetic #1 and there’s not enough room if he has to - asked what is the normal setback – 15-ft? S. Baldwin noted it is 10-ft. N. Burkhardt then asked Mr. Sparks if the wall he was talking about is on his property line. Mr. Sparks stated it is actually about 6-in. off the property line. (Mr. Sparks provided a picture of the fence to the board members.) N. Burkhardt noted that she had been to the property – saw the fence. Mr. Sparks reviewed the site plan with board members.

S. Baldwin told Mr. Sparks when asking for a variance he is asking the board to waive certain requirements. Wasn’t saying that he doesn’t have a case, but “this” is what you gave us. Didn’t even bother to write out an answer, just said no it is residential property, no it won’t be, I won’t be able to do it, lot not big enough. S. Baldwin noted that he had been by the place, saw the lot. Said that Mr. Sparks provided a document showing the existing building, shape of the lot, doesn’t show where the lot begins to drop off down the hillside, and when he checked on the GIS it looked like there is a house and it looks like there is a tannish color driveway and parking lot kind of a place in the middle. But, said for him if Mr. Sparks had provided a sketch of what’s there – this one doesn’t even have the other building on it – the house or whatever that is. If Mr. Sparks had given a sketch showing the dimensions and what could actually be used on the property, he personally would have been much more impressed. Told Mr. Sparks this is frankly the worst one he had ever seen. Mr. Sparks apologized stating this is his first time to do this – thought it was sufficient. Added that he didn’t have a problem having an architect draw the complete lot and show everything where it’s at – thought he had met the standards.

N. Burkhardt asked Mr. Sparks – so the existing building he now has, did he get a variance for that one? Did he build that one? Yes ma'am about 25 years ago per Mr. Sparks. He assumed he needed a variance for that one, thought the contractor did it. S. Baldwin told Mr. Sparks that he should be in possession of that paperwork or at least know when it was so L. Waller could look it up. Mr. Sparks said he didn't know the exact year. L. Waller volunteered to research. Mr. Sparks explained that the existing garage replaced an old garage that was there when he bought the property. S. Baldwin asked Mr. Sparks if he was saying that the existing building on the drawing provided is a garage presently. Mr. Sparks said, yes, this is the existing garage that was built 25 years ago that replaced the garage that was there when he bought the property.

S. Baldwin asked the board members for questions or comments, were they satisfied with the presentation? Not really, per R. Farris and added that he would like to see drawings or renditions of what it is that Mr. Sparks is planning exactly. Drawings then provided by Mr. Sparks.

S. Baldwin explained to Mr. Sparks for the purpose of granting a variance the board has to have some reason to say that his property has a strange peculiarity about it that makes it practically difficult. Need

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a sketch of the lot where the elevations change, how the arrangement is right now, doesn't have to be fancy. Mr. Sparks said that the new garage will face the existing garage/workshop.

R. Farris told Mr. Sparks that it looks like a house. Mr. Sparks responded saying he was just trying to make it look nice. He described the floor plan of showing a kiln for pottery on the first floor and a sewing area for his wife in the loft and an area for wood finishing.

S. Baldwin told Mr. Sparks that he would like a lot more documentation specially documentation of the layout of the property. Right now he seems to have a L-shaped garage that is on the northeast corner, house, place to park (driveway) – wants a sketch showing how this is laid out and where the drop off begins because part of the property drops down the hill. Frankly he was personally in favor of tabling this until receiving better documentation.

B. Waller made the motion to table application until receiving the documents requested. Motion put on hold to allow for public comment.

Audience member, Merritt Alcorn, 148 Fairmount, said the reason he wanted to look at the drawing was because he was totally in the dark on this. The plan was shared with him but he had no idea whether that matched what the board has. Explained that he and his wife live to the east and they would ask the city to enforce the maximum setback. They own property on Fairmount Drive. He has owned property on Fairmount Drive for 43 years at least and they have some of the road frontage that is undeveloped on Fairmount Drive that he thought was very important to them and they would not like that space to be crowded. Further stated he was not sure if it is a 10-ft. setback or more, not sure if this is a one or two-story building. His diagram shows a two-story building. And said his last comment to the board members was that there is a brick wall that is built on the property line. Mr. Alcorn said to D. Sharpe

that he was not sure but thought there is a 3-ft. limit on the height of a wall. Asked D. Sharpe if that to be correct. D. Sharpe said he was not sure. Then Mr. Alcorn said he thought it to be Section 6.10 (4) and thought that a wall between properties cannot exceed 3-ft. and believed this brick wall that had been constructed exceeds 3-ft. Didn't think there to be a variance for it. Said he wanted to point that out because knew that L. Waller was going to do research regarding the other variance so if there is a variance for the wall thought it needs to be found and if not, the wall needs to come down or at least get in compliance before this board would consider further projects from Mr. Sparks. In any event, he objects to any type of variance from the standard city setback as adjoining property owners. B. Waller asked Mr. Alcorn if the wall was built while he was on his land. Per Mr. Alcorn – yes, absolutely, lived there for 43 years, prior to Mr. Sparks living there. S. Baldwin said to Mr. Alcorn – so, the wall was built during the time he has lived there? Did he object to it then? Mr. Alcorn noted that it has been a long and contentious relationship he's had with Terry (Sparks) over the years so frankly did not push the issue. Mr. Alcorn said now talking about building again and that he wanted to point out to the city that he believed the wall to be in violation, just a factor for this board to consider.

No further questions or comments from board or audience members.

B. Waller repeated his motion to table this application until requested documents are provided to the Planning Dept. – seconded by N. Burkhardt – roll call – all ayes.

Application tabled until requested documents are provided to the Planning Department.

S. Baldwin told Mr. Sparks that his application is tabled until he provides definite plans of what he intends to do and layout of his property.

Mr. Sparks noted that the wall has been in place for 30 years. Did not know that is an issue. And, asked for clarification of what the board wants – a diagram of the property lines and also the elevation? S. Baldwin confirmed this – would like to see a plat view where can look down on it and see where the L-shape garage is, where he wants to put the new one, where house is and certainly where on the property it begins to drop off. Mr. Sparks said there might be a 50-ft. drop from the east border to the west border. S. Baldwin said it appears to be fairly level where the house, L-shape garage and driveway are. Mr. Sparks asked S. Baldwin if he was concerned about the rear where the construction is. Yes, per

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S. Baldwin. S. Baldwin added he would like anything that proves the case of needing a variance because of certain peculiarities to the property.

Mr. Alcorn asked about receiving notice for the new meeting – when rescheduled. L. Waller said it will be in the newspaper legal notice – scheduled for Monday, March 9th which is the second Monday – 6:30 p.m. Mr. Alcorn said his second question – would he have a chance to exam the material presented to the Zoning office? Yes, per L. Waller.

Mr. Sparks requested that the drawing be provided to the BZA and shown to Mr. Alcorn.

Business – Old or New:

Old Business –

S. Baldwin reviewed that there were three (3) Conditional Use renewals from the last meeting that were not paid. L. Waller noted two (2) have paid, still dealing with one (1). Upon the recommendation of D. Sharpe personal service by B. Martin and an officer, if needed, to be done. That way will know renewal notice is received because first letter was returned “Unclaimed.”

S. Baldwin made the motion instructing D. Sharpe to arrange for delivering another notice – seconded by R. Farris – all ayes.

D. Sharpe to draft letter, B. Martin and an officer, if needed, to personally deliver to residence.

No further business to be brought before the board.

R. Farris made the motion to adjourn – seconded by B. Waller – all ayes.

Meeting adjourned at 7:02 p.m.

BY ORDER OF THE MADISON CITY BOARD OF ZONING APPEALS

Scott Baldwin, Chairman

Louann Waller, Secretary