

**MINUTES OF THE
CITY OF PATASKALA BOARD OF ZONING APPEALS**

Tuesday, January 12, 2021

The City of Pataskala Board of Zoning Appeals convened in Council Chambers, Pataskala City Hall, 621 West Broad Street, Pataskala, Ohio, on Tuesday, January 12, 2021.

Present were:

Alan Howe, Chairman

William Cook

Jenna Kennedy, Vice Chairwoman

TJ Rhodeback

City of Pataskala Planning and Zoning Department Staff:

Scott Fulton, Planning and Zoning Director

Jack Kuntzman, City Planner

Lisa Paxton, Zoning Clerk

Brian Zets, City Attorney

Mr. Howe opened the hearing at 6:30 p.m., followed by the Pledge of Allegiance.

Present were: Alan Howe, William Cook, Jenna Kennedy and TJ Rhodeback. Christine Lawyer was not present.

Conditional Use Applications CU-20-010, CU-20-011 and Variance Applications VA-20-018 and VA-20-19 will remain tabled.

First on the Agenda, remove from table Variance Application VA-20-020, 218 Vine Street.

Mr. Cook made a motion to remove from table Variance Application VA-20-020. Seconded from Ms. Rhodeback. Ms. Rhodeback, Mr. Howe, Mr. Cook and Ms. Kennedy voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-20-020, 218 Vine Street.

Mr. Kuntzman gave an overview of the Staff Report, noting the Applicant's request to use a former church as a photo studio. The building was originally constructed as a church and has been converted to a single-family home. The property would be used as a photo studio, serving an individual or family for photographs. Street parking is available and noted street parking is within the public right-of-way and not exclusive to property, tenants, employees or customers. Upgrading on-street parking was noted. The Applicant suggests the City review the parking situation after six months to see if additional parking in the rear yard is needed. The Future Land Use Map identifies the property as Mixed Use and, therefore, will be in accordance with the City of Pataskala's 2006 Comprehensive Plan. Aerial view and site plan were reviewed. Mr. Kuntzman read seven public comments that were received. Departmental and Agency comments were also reviewed.

A discussion was had regarding public parking, off-street parking and a proposed plan to upgrade on-street parking; however, no proposed plans were submitted with the Application.

Signage regulations and permitting were noted.

Dan Hayes, Esq., 195 East Broad Street, Pataskala, was placed under oath.

Mr. Hayes noted the Applicant's request for a Use Variance instead of rezoning the property. It was noted two different photographers will share the space. The photographer's current Gahanna location has two parking spaces and they have never had a parking issue, nor are the two photographers in the studio at the same time. It was noted the Applicant is requesting a six-month review on the parking situation, if needed.

Regina Story, 230 Vine Street, was placed under oath.

Ms. Story noted concerns regarding property values, traffic, alley use and parking.

Trenton Thorson, 3614 Headleys Mill Road, was placed under oath.

Mr. Thorson owns the apartments at 213/217 Vine Street. Mr. Thorson noted concerns regarding off-street parking, public parking, alley use and traffic.

Mr. Howe reiterated the Applicant's six-month review request.

Ms. Kennedy asked if the tenants have assigned parking.

Mr. Thorson noted having no assigned parking.

Conditional Use and Use Variance were discussed.

Parking and enforcement were discussed.

Mr. Howe inquired as to hours of operation.

Mr. Hayes noted no set hours of operation; it is by appointment only.

Further discussion was had regarding street parking.

Findings of Facts were reviewed.

Mr. Cook made a motion to approve Use Variance Application VA-20-020 with the following conditions:

1. The Applicant shall obtain all necessary permits from the City of Pataskala and the Licking County Building Department within one (1) year of the date of approval.
2. After a period of six (6) months from the date of approval, the Applicant shall either provide off- street parking in accordance with Chapter 1291 of the Pataskala Code, or request a Variance from Section 1291.02(A)(1).

Seconded by Ms. Rhodeback. Mr. Howe, Ms. Kennedy and Mr. Cook voted yes. Ms. Rhodeback voted no. The motion was approved.

Next on the Agenda, remove from table Appeal Application AP-20-002, 0 Mink Street.

Mr. Howe made a motion to remove from table Appeal Application AP-20-002. Seconded by Mr. Cook. Ms. Rhodeback, Ms. Kennedy, Mr. Howe and Mr. Cook voted yes. The motion was approved.

Next on the Agenda, Appeal Application AP-20-002.

Mr. Fulton gave a quick overview of the Staff Report, noting the three points the Board will need to consider: 1.) The Applicant is appealing the Director of Planning's decision that pick-up volleyball games on the vacant land of Intra-National Home Care, LLC, does not constitute a "use" under the Zoning Code; therefore, no zoning violations exist. 2.) The Applicant is appealing the Director of Planning's decision that Section 1287.05, Noise, under the off-site impact chapter, does not govern any sounds that come from an outdoor game of volleyball. 3.) The Applicant is appealing the Director of Planning's decision that Section 1249.05(E), Parking and Loading, and by reference Chapter 1291, does not apply to the individuals who show up and play volleyball on this vacant parcel.

Mr. Howe noted the items the Board needs to review. Mr. Howe inquired if there is any new information that wasn't available at the previous hearing.

Mr. Fulton indicated he has reached out to the property owner, encouraging them to attend the hearing, but they were under no obligation to do so, and has reached out again via email and has not heard back.

James Perko, Esq., 1010 Jackson Hole Drive, Blacklick, was placed under oath.

Mr. Perko reviewed the Brief that was previously submitted. "Use" and "structure" were reviewed, along with submitted pictures. It was noted Ms. Guttentag testified to the volleyball games occurring five, six days a week and on the weekends, including the number of cars that were on the property. Court citations were also noted.

Mark Pheister, 201 Daley Drive, Pataskala, was placed under oath.

Mr. Pheister stated concerns with noise coming from the property. It was also noted people are there on weekends from 2:00 until dark.

The Board went into executive session at 7:53 p.m.

Back on the record at 8:16 p.m.

Mr. Howe noted the Board agrees with the Director's decision: Issue No. 1, the activity does not fall under a "use" category. Issue No. 2, Section 1287.05 does not govern any sounds that come from an outdoor game of volleyball. Issue No. 3, Section 1249.05(e) parking and loading, and Section 1291, does not apply to the individuals that show up and play volleyball.

Mr. Howe made a motion to approve the Applicant's Appeal Application, AP-20-002, pursuant to Section 1211.11 of the Pataskala Code, because a pick-up game of volleyball on this vacant parcel constitutes a "use" under the Zoning Code, and the Planning and Zoning Department should have investigated the complaints accordingly. Seconded by Mr. Cook. Mr. Cook, Mr. Howe, Ms. Kennedy and Ms. Rhodeback voted no. The motion failed.

Next on the Agenda, Variance Application VA-20-023, 295 Mill Street Road SW.

Mr. Kuntzman gave an overview of the Staff Report, noting the Applicant's request for four variances; two to

allow for the construction of an Accessory Building prior to a Primary Structure and for the Accessory Structure to be in front of the Primary Structure, and two to allow for reduced setbacks of the Primary Structure. It was noted the property owner is proposing to construct a single-family home and an 1,152-square foot accessory building to the west of the primary structure. The Applicant has not determined the exact home to be constructed and will be situated within the building envelope. Aerial view and proposed site plan were reviewed. Departmental and Agency comments were noted along with Health Department comments.

Daniel Cox, 5933 Babbitt Road, New Albany, was placed under oath.

Mr. Cox had no comments.

Ms. Rhodeback noted concern with allowing construction of an accessory building prior to construction of a primary structure.

Mr. Fulton indicated the Board has, in the past, approved accessory buildings prior to primary structures.

Mr. Howe noted having no concerns.

Mr. Cox stated he was not aware of the zoning restrictions when he purchased the property at a Sheriff's sale. Mr. Cox also noted his goal is to build both structures at the same time; however, he is requesting two years to obtain permits.

A discussion was had regarding allowing the Applicant two years to obtain all necessary permits.

Findings of Facts reviewed.

Ms. Rhodeback made a motion to approve variances from Sections 1225.05(C)(1), 1225.05(C)(3), 1221.05(D)(4) and 1221.05(D)(1) of the Pataskala Code for Variance Application VA-20-023, with the following conditions:

1. The Applicant shall obtain all necessary permits from the City of Pataskala and the Licking County Building Department within two years of the date of approval.

Seconded by Mr. Cook. Mr. Cook, Ms. Kennedy, Mr. Howe and Ms. Rhodeback voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-20-024, 6357 Summit Road SW.

Mr. Kuntzman gave an overview of the Staff Report, noting the Applicant's request for three variances; to allow for a garage not meeting the front yard setback, a reduced rear setback of an Addition, and to allow a porch to not meet the front yard setback. Area map and site plan were reviewed. Departmental and Agency comments were noted.

Gary Pennington, 6357 Summit Road SW, was placed under oath.

Mr. Pennington noted the garage needing replacement, along with upgrading the home. Mr. Pennington stated he has owned the home for 43 years, prior to the merge with Pataskala.

Findings of Facts were reviewed.

Ms. Kennedy made a motion to approve variances from Sections 1229.05(C)(1), 1229.05(C)(4), and 1221.09(b) of the Pataskala Code for Variance Application VA-20-024, with the following conditions:

1. The Applicant shall obtain all necessary permits from the City of Pataskala and the Licking County Building Department within one (1) year of the date of approval.
2. The Applicant shall address all comments from the City Engineer.
3. The Applicant shall not impair any public utilities with the proposed improvements.

Seconded by Ms. Rhodeback. Mr. Howe, Ms. Kennedy, Ms. Rhodeback and Mr. Cook voted yes. The motion was approved.

Next on the Agenda, Variance Application VA-20-025, 5643 Summit Road SW.

Mr. Kuntzman gave an overview of the Staff Report, noting the Applicant's request for three variances; to allow an Accessory Building that will not meet the required side yard setbacks and will be in front of the Primary Structure. The property is currently on two separate parcels. The Applicant would like to construct a 1,500-square foot addition to the existing Accessory Building. Setbacks and right-of-way were noted. Elevations were reviewed. Area map and site plan were reviewed. Departmental and Agency comments were noted.

Kevin Ramey, 5643 Summit Road SW, was placed under oath.

Mr. Ramey noted the variance was more cost effective compared to having it resurveyed and combined. It was also noted if the properties were sold, they would be sold together. Mr. Ramey noted not being aware of the zoning requirements when purchasing the property.

Findings of Facts were reviewed.

Mr. Cook made a motion to approve variances from Sections 1221.05(E)(1), 1221.05(E)(2), and 1221.05(D)(1) of the Pataskala Code for Application VA-20-025, with the following conditions:

1. The Applicant shall obtain all necessary permits from the City of Pataskala and the Licking County Building Department within one (1) year of the date of approval.

Seconded by Ms. Rhodeback. Ms. Kennedy, Mr. Howe, Mr. Cook and Ms. Rhodeback voted yes. The motion was approved.

Next on the Agenda, Findings of Fact.

Variance Application VA-20-020:

- | <u>Yes</u> | <u>No</u> | |
|------------|-----------|--|
| ✓ | | a) <i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;</i> |
| ✓ | | b) <i>Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i> |
| ✓ | | c) <i>Whether the variance requested is substantial;</i> |

- ✓ d) *Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;*
- ✓ e) *Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;*
- ✓ f) *Whether the variance, if granted, will be detrimental to the public welfare;*
- ✓ g) *Whether the variance, if granted, would adversely affect the delivery of government services;*
- ✓ h) *Whether the property owner purchased the subject property with knowledge of the zoning restriction;*
- ✓ i) *Whether the property owner's predicament can be obviated through some other method than variance;*
- ✓ j) *Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,*
- ✓ k) *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*

In addition to the factors to be considered pursuant to Section 1211.07(A)(1) of the Pataskala Code, the BZA also considered the following factors pursuant to Section 1211.07(B) of the Pataskala Code when determining whether the use variance requested should be approved, approved with supplementary conditions, or disapproved. Consistent with the BZA's discussions and deliberations during the public hearing, and as set forth in the hearing minutes, the BZA finds as follows:

- ✓ a) *The applicant / owner created the alleged hardship; or*
- ✓ b) *The Board finds that the application is primarily made for purposes of convenience or profit; or Whether there are unique physical circumstances or conditions that the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;*
- ✓ c) *A substantial ground offered in support of an application for use variance is the existence of other non-conforming use of neighboring lands, structures, or buildings, in the same zoning district or in other zoning districts.*

Mr. Howe made a motion to approve Findings of Fact for Variance Application VA-20-020. Seconded by Mr. Cook. Mr. Howe, Mr. Cook, Ms. Rhodeback and Ms. Kennedy voted yes. The motion was approved.

Variance Application VA-20-023:

- | <u>Yes</u> | <u>No</u> | |
|------------|-----------|--|
| ✓ | | a) <i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;</i> |
| ✓ | | b) <i>Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i> |

- ✓ c) *Whether the variance requested is substantial;*
- ✓ d) *Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;*
- ✓ e) *Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;*
- ✓ f) *Whether the variance, if granted, will be detrimental to the public welfare;*
- ✓ g) *Whether the variance, if granted, would adversely affect the delivery of government services;*
- ✓ h) *Whether the property owner purchased the subject property with knowledge of the zoning restriction;*
- ✓ i) *Whether the property owner's predicament can be obviated through some other method than variance;*
- ✓ j) *Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,*
- ✓ k) *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*

Mr. Howe made a motion to approve Findings of Fact for variance Application VA-20-023. Seconded by Ms. Rhodeback. Ms. Kennedy, Mr. Howe, Mr. Cook and Ms. Rhodeback voted yes. The motion was approved.

Variance Application VA-20-024:

- | <u>Yes</u> | <u>No</u> | |
|------------|-----------|--|
| ✓ | | a) <i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;</i> |
| ✓ | | b) <i>Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i> |
| ✓ | | c) <i>Whether the variance requested is substantial;</i> |
| ✓ | | d) <i>Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;</i> |
| ✓ | | e) <i>Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;</i> |
| ✓ | | f) <i>Whether the variance, if granted, will be detrimental to the public welfare;</i> |
| ✓ | | g) <i>Whether the variance, if granted, would adversely affect the delivery of government services;</i> |
| ✓ | | h) <i>Whether the property owner purchased the subject property with knowledge of the zoning restriction;</i> |
| ✓ | | i) <i>Whether the property owner's predicament can be obviated through some other method than variance;</i> |

- ✓ j) *Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,*
- ✓ k) *Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.*

Mr. Howe made a motion to approve Findings of Fact for variance Application VA-20-024. Seconded by Ms. Rhodeback. Mr. Cook, Mr. Howe, Ms. Kennedy and Ms. Rhodeback voted yes. The motion was approved.

Variance Application VA-20-025:

- | <u>Yes</u> | <u>No</u> | |
|------------|-----------|--|
| ✓ | | a) <i>Whether the property in question will yield a reasonable return or if there can be a beneficial use of the property;</i> |
| ✓ | | b) <i>Whether there are unique physical circumstances or conditions that prohibit the property being developed in strict conformity with the zoning regulation such that a variance is necessary to enable the reasonable use of the property;</i> |
| ✓ | | c) <i>Whether the variance requested is substantial;</i> |
| ✓ | | d) <i>Whether the essential character of the neighborhood would be substantially altered or the adjoining properties would suffer a substantial detriment as a result of the variance;</i> |
| ✓ | | e) <i>Whether the variance, if granted, will substantially or permanently impair the appropriate use or development of adjacent property;</i> |
| ✓ | | f) <i>Whether the variance, if granted, will be detrimental to the public welfare;</i> |
| ✓ | | g) <i>Whether the variance, if granted, would adversely affect the delivery of government services;</i> |
| ✓ | | h) <i>Whether the property owner purchased the subject property with knowledge of the zoning restriction;</i> |
| ✓ | | i) <i>Whether the property owner's predicament can be obviated through some other method than variance;</i> |
| ✓ | | j) <i>Whether the variance, if granted, will represent the minimum variance that will afford relief and represent the least modification possible of the requirement at issue; and,</i> |
| ✓ | | k) <i>Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.</i> |

Mr. Howe made a motion to approve Findings of Fact for variance Application VA-20-025. Seconded by Mr. Cook. Ms. Rhodeback, Mr. Howe, Ms. Kennedy and Mr. Cook voted yes. The motion was approved.

Next on the Agenda, Approval of Minutes from the November 10, 2020 Regular Meeting.

Mr. Howe made a motion to approve the minutes from the November 10, 2020. Seconded by Mr. Cook. Ms. Kennedy, Mr. Cook, Mr. Howe and Ms. Rhodeback voted yes. The motion was approved

Next on the Agenda, Approval of Minutes from the December 8, 2020 Regular Meeting.

Mr. Howe made a motion to approve the Minutes of the December 8, 2020 regular meeting. Seconded by Ms. Kennedy. Mr. Cook, Mr. Howe, Ms. Rhodeback and Ms. Kennedy voted yes. The motion was approved.

Next on the Agenda, Other Business.

No other business was given.

Mr. Howe made a motion to adjourn the meeting. Seconded by Mr. Cook. Ms. Kennedy, Ms. Rhodeback, Mr. Howe and Mr. Cook voted yes. The meeting was adjourned at 9:13 p.m.

Minutes of the January 12, 2021 regular meeting were approved on

_____, 2021.
