

Approved 4/21/2022

Casco Township
Zoning Board of Appeals
April 7, 2022; 7 PM

Present: Vice Chair Paul Macyauski, Secretary Sam Craig, Alex Overhiser, and Matt Super

Absent: Chairman Matt Hamlin

Also Present: Zoning Administrator Tasha Smalley, Recording Secretary Janet Chambers, and applicant Sean Murphy, Dan Fleming, Isaac Fleming and Bill Chambers.

1. **Call to Order:** Meeting was called to order at 7:02 PM by Vice Chair Paul Macyauski in Hamlin's absence.
2. **Approval of agenda:** Variance request by Matt Hamlin is postponed (Item 4 B).
3. **Public comment (non-agenda items):**
4. **New Business:** Notice of Public Hearing (Attachment #1).
 - A. Sean Murphy and Jeff Murphy of Chicago IL have petitioned for a dimensional variance at 65 Pershing Ave. (0302-604-019-00) to construct a new dwelling and garage. Required front setback is 25 ft.; request is for 20 ft. of relief from Wilson Street (for both house and garage):

Open Public Hearing:

- **Applicant explain request; ZA Staff report** (Application and information Attachment #2)
Murphy purchased the land with his father at auction. The dwelling was run down with not much to salvager. He would like to build a new house. When he purchased the property he was not aware that Wilson Street right-of-way existed. It is currently a drainage right-of-way.

Macyauski said if Murphy's property was next to him, he would raise cane. The property is a mess.

Murphy said they are cleaning it up and have a contract with Compton's to clean it up starting the week of April 18th.

Macyauski read through standards answering as follows:

1. It is a corner lot in a platted subdivision. Wilson Street will not be developed next to his property. The road right-of-way was converted to a drain right-of-way. The spirit of ordinance is there.
2. Goes along with it. Two front yard frontages, but Wilson will never be developed. On a corner, platted lot of record that is 50 + ft.
3. True. Improvement will be a bonus to neighborhood

4. No. Years ago, the PC came up with Section 3.28 for non-conforming lots of platted subdivisions.
 5. There are technically three road frontages, although Wilson will not be developed, requiring 3 road frontages. It is one parcel made up of two lots side by side. Exceptional narrowness.
 6. Part of the lot was sold to Mike Workema, prior to Murphy owning it.
 7. There before Murphy bought it.
 8. If granted it would be a minimum variance. It is a reasonable request.
 9. No more land is available
- **Correspondence:** Letter from Robert Hubbird in support of Murphy's variance request.
 - **Audience for / against:** Bill Chambers said it looks like the ZBA is hitting the rules correctly but wants to be clear that the circumstances are different with 50' lots that were previously developed as opposed to 60' requirements in 3.28 lots of record. This will come up again. Chambers said the ZBA should not go against the referendum when 50' non-conforming lots of record were rejected by citizens. In 2006 if a parcel was 52' and the owner had one lot, he could build on it so as not to create a hardship. Section 3.28 B is only referring to the 50' lots. Section 3.28 3 refers to the undeveloped 25' lots must be a minimum of 3 lots put together. If someone now purchases only two 25' lots where 60' is required, he is creating his own hardship which disqualifies him from a variance. It is important the minutes reflect this difference between these different circumstances because it will come up again.
 - **Any further discussion:** He meets the Pershing and Euclid setbacks. The setback from the platted, but undeveloped Wilson Street is 25 ft. (front yard setback). The applicant would like it to be 5 feet from the undeveloped Wilson Street (20' relief).

Close public hearing: 7:20 pm

- **Discussion / decision of variance request:** A motion by Super, supported by Overhiser, to grant the variance request. All in favor. Variance granted.
- B. Matthew Hamlin variance request cancelled
- C. **Zoning Administrator requests an interpretation for existing non-conforming parcels and existing non-conforming buildings then if / when a variance is required for expansion of the non-conforming structure.**

The public hearing was opened at 7:20 PM. Smalley said Section 3.28 is not being interpreted the way it is worded.

Macyauski said the spirit and intent is there. You can twist it back and forth to change the meaning. He said people are getting a variance to build on an existing non-conforming dwelling but adding onto a different side of the house. The front yard setback is 25', and they are beyond

the 25'. Macyauski said to adding to the front would be ok. To be more non-conforming they would have to build onto the back of the building.

Smalley said he is within the rear setback. Adding on would be increasing the non-conformity.

Discussion continued with all commissioners saying a variance is not necessary and the Zoning Administrator saying a variance would be necessary. Smalley continued stating her belief that the variance is needed until such time as commissioners understood that the addition, although on the front of the house, is completely within the rear yard setback. At that point all agreed with the Zoning Administrator that technically the ordinance requires a variance in that circumstance.

Fleming said the whole house is within the rear setback but felt the reason for a rear setback was to keep from encroaching on the rear lot line. The addition would not even be seen from the back of the home.

Super brought up variance requests coming from farmers who buy up land to farm but has an existing homestead on the property. The farmer only wants the farmland, not the homestead. They come in for a variance to divide off the homestead and keep the farmland. Super suggested changing the ordinance to allow this. If the township wants to allow this, they should change the standards. We are dealing with rules given. Interpret as we see them. It's happening on a regular basis. We need a standard.

Macyauski agreed with Super. He added an existing homestead divided off from farmland is different than dividing acreage for new construction. If someone wants a new home, it should be 2.5 acres.

Macyauski said in section 3.28 he stresses the applicant must not build on over 25% of the lots size. Most variances are in the platted subdivisions.

Macyauski said technically adding onto a home that is within the setback would need a variance, but the spirit and intent of the ordinance was to not encroach on that rear lot line.

Isaac Fleming said since we agree with the spirit and intent of the ordinance, there are no neighbors in the back, there is no practical encroachment, he felt it should be allowed.

Discussion ensued about a possible amendment concerning non-conforming structures.

Fleming asked about building "up" on a non-conforming structure.

Fleming gave a statement (email Attachment #5) pertaining to the rear lot line setback. It is to prevent encroachment on the rear lot line. It comes down to Section 2.24 Yards. In the definition and in Section B it is referred to as "open space" and "open area". Fleming said since

his home is a grandfathered structure there is no way to have that open space. That open space will not exist whether he adds on or not. The grandfathered building redefines the property line and the setbacks.

Smalley said Fleming's words, "*The grandfathered building redefines the setback.*" Is a very good language if the PC would like to make a change in the ordinance.

Isaac Fleming asked, "If the wording were to be changed, what is the timeframe?"

Smalley said if the wording were changed, it would be done by the PC. This could take a couple of months. By the time it is decided and noticed, it would at least be May.

Close public hearing: Public hearing closed at 8:25 PM

5. Old Business:

A. **Anything else that may come before the ZBA:** There will be a ZBA meeting on April 21st.

6. Public Comment:

7. Approval of previous minutes – January 3, A motion by Super, supported by Overhiser to approve minutes as presented. All in favor. MSC.

8. Adjournment 8:25 PM.

Attachment #1: Notice of public hearing

Attachment #2: Murphy application and information

Attachment #3: Letter of support from Hubbird

Attachment #4: Support information for Smalley's request for interpretation

Attachment #5: Email from Dan Fleming, 4/7/22, Re: Rear lot line setback

Next meeting April 21, 2022, 7 PM

Minutes prepared by Janet Chambers Recording Secretary