

Draft

MINUTES

**The Lexington Board of Zoning Appeals
Monday, September 9, 2019 – 6:00 p.m.
First Floor – Community Meeting Room
Lexington City Hall**

Board of Zoning Appeals:

Presiding: Jim Gianniny, Chair
Present: Gail MacLeod, Vice-Chair
Robert Hull (arrived 5 minutes late)
Ross Waller

Absent:

City Staff:

Arne Glaeser, Planning Director
Bonnie Tombarge, Planning Admin. Asst.

CALL TO ORDER:

J. Gianniny called the meeting to order at 6:00 p.m.

MINUTES:

The 11-12-18 Board of Zoning Appeals Minutes were approved (3-0) as presented (R. Waller/G. MacLeod).

NEW BUSINESS:

A. Election of Chair

- R. Waller moved to nominate J. Gianniny as Chair of the BZA. G. MacLeod seconded and the motion carried (3/0).

B. Election of Vice-Chair

- R. Waller moved to nominate G. MacLeod as Vice-Chair of the BZA. J. Gianniny seconded and the motion carried (3/0).

BZA 2019-01 – A variance request for the property located at 206 South Randolph Street.

- **Staff Report** – A. Glaeser provided background, as follows:
 - The applicants desire to build a noncommercial greenhouse up to 11 inches from the side property line that is shared with the parcel located at 204 S. Randolph Street. The lot requirements table in Section 420-4 of the Zoning Ordinance requires a minimum 10 foot side yard setback for all structures in the R-1 zoning district.
 - Board Questions to Staff – G. MacLeod asked if there was another board that could possibly take on this request. A. Glaeser said that it was not possible. Planning Commission only had the authority to approve Conditional Use Permits.
 - Applicant Statement – Mr. Shank started with stating his appreciation for the Board considering their application. He addressed the areas where staff said the application was non-compliant. First he says that it would not unreasonably restrict usage of the property if it were to be denied. He says that while there is physical

space elsewhere are the property that is the space that they are trying to benefit by having the greenhouse. That area is where they have gardens and receive the best sunlight, so there would be no purpose to having the green house in that space. They did have a sunlight study done on their property which looked at the different available areas for the greenhouse. The primary spot is where the garden is already located. The other areas would not receive sufficient sunlight to make the greenhouse practical. The neighbors are completely satisfied with the location of the greenhouse and it does not impede their property. There was a former structure there, and that has since been taken down. R. Hull asked for clarification on the difference between the former structure and the proposed greenhouse, and Mr. Shank pointed out a few pictures included in the application. The second point was that this was not so general or recurring of a request that a change in the zoning ordinance would not make sense. Mr. Shank said that, in his view, putting a building back where a structure was does not require changing the zoning regulations. R. Waller said that that could be the change. Allowing the rebuilding of a structure within a certain period of time after the pervious structure has been taken down. Mrs. Shank said that this would not be a commercial greenhouse. It would be a small private greenhouse, and they have made efforts to ensure that it would be very attractive to see. All of their neighbors have been pleased with the idea, as it should show off nicely for the whole neighborhood. G. MacLeod asked if the easement on the property goes all the way to the greenhouse, and Mr. Shank confirmed that was so. G. MacLeod then verified that the neighbor would have some rights to the land under the greenhouse, and Mr. Shank said that was correct. He also mentioned that the neighbors had written a letter in support of the greenhouse as it does not impede their ingress or egress onto their property. That letter is included in the application. R. Waller said that while the current neighbor might not mind the greenhouse, a future neighbor may not feel the same. Mr. Shank said that if that were to happen, they could negotiate with the neighbor to change the easement. R. Waller asked who owned the easement. Mr. Shank said that the easement is on their property. G. MacLeod asked if the previous structure was possibly built under any sort of permit. A. Glaeser said that that was unknown as the City only has building permit records going back approximately ten years.

- Public Comment – None
- **Commission Discussion and Decision** –R. Hull said that he feels that the Board goes into these applications with the intent to strike them down, and that is doing a disservice to the community. He does not see how the greenhouse will have any negative impact on the property. He believes that it will enhance the value of the property and the neighborhood. While this does not check all the boxes for approval, there have been previous applications approved that did not check those boxes either. He is in support of approving the application. G. MacLeod said that she agrees with the staff analysis that the strict application of the terms of the ordinance would not unreasonably restrict the utilization of the property. She is not sure why having the greenhouse back with the garden is not viable. The sunlight there would grow plants in the greenhouse as well as the garden. Mr. Shank said that if that happened, there would be no space to plant what was grown in the greenhouse. G. MacLeod said the easement is also concerning to her. R. Waller

said that he feels there is possibly a remedy through the ordinance, that is was should be done. The board is there to apply the rules, so the board should go by the rules. J. Gianniny said that being 11 inches from the property line when the ordinance requires ten feet is concerning. He asked if it was possible to move the garden to the proposed spot for the greenhouse. He said that he is aligned with the staff on their recommendations in this application. Mrs. Shank said that it would look terrible for the neighbors to move the garden to a more visible spot. The greenhouse would look much more aesthetically pleasing. Mr. Shank said that swapping the two would mean that they would lose the ability to keep the garden beautiful as they would have to contend with shade from trees on other properties. If the greenhouse was narrow and longer it would block their garage doors, and if it were smaller it would not be useful. Mrs. Shank said that they planned it to look beautiful from all angles of viewing the property. Mr. Shank also pointed out that it would increase the property value which would increase the tax revenue to the City. **G. MacLeod moved to deny the variance request as it does not meet the requirements for approval. R. Waller seconded and the motion passed (3/1) with R. Hull voting against.** R. Waller reiterated that he thought a zoning ordinance amendment could be formulated.

BZA 2019-02: A variance request for properties located at 104 Tucker Street and 116 East Henry Street.

- Staff Report – The owners of 104 Tucker Street have their parcel listed for sale and it was discovered that a portion of their dwelling encroaches over the property line shared with 116 E. Henry Street. The requested yard setback variances are needed prior to a boundary line adjustment to correct the building encroachment and the boundary line is proposed to be moved seven (7) feet to the south. With the proposed boundary line adjustment, the relocated property line will be three (3) feet from the dwelling located on 104 Tucker Street and will be sixteen and 4/10 tenths (16.4) feet from the deck that is attached to the dwelling located on 116 E. Henry Street. A seven (7) foot reduction of the required 10 foot side yard setback is therefore requested for 104 Tucker Street and a eight and 6/10 tenths (8.6) foot reduction of the required 25 foot rear yard setback is requested for 116 E. Henry Street. The lot requirements table in Section 420-4.7 of the Zoning Ordinance requires a minimum ten (10) foot side yard setback and a minimum twenty-five (25) foot rear yard setback for main structures in the R-1 zoning district. Decks are accessory structures that cannot be located in the yard setbacks while stairs are specifically exempted from setback requirements and can therefore be located in the setbacks.
- Board Questions to Staff – J. Gianniny asked if either of the property owners were involved in the encroachment on the property line. A. Glaeser said that he did not know the history of the property. R. Waller verified that no new violation was being created, this would just change the nature of the violation. J. Gianniny said that often in the older neighborhoods the zoning ordinances don't work due to how the lots are. A. Glaeser said that is part of the variance criteria as it references things that existed before the adoption of the current zoning ordinance. He said it is quite likely that the house and the addition were building before the current ordinance.
- Applicant Statement – Pierson Hotchkiss said that there is a property line going through the house, and this is a house being managed by David Stull at Sterling Properties. It was

used as a rental. The house next door belongs to Mildred Anderson, and currently her daughter lives there. Ms. Anderson does not want the fence or the hedge next to it, and is willing to sell that part of her property to fix the problem. Mr. Hotchkiss said that the property is in violation now, and will be in violation after the change, but this will make a bad situation slightly better.

- Public Comment – None
- Board Discussion and Decision – R. Hull moved to approve the variance application, and R. Waller seconded. The motion passed unanimously (4/0).

OTHER BUSINESS

None

ADJOURN:

The meeting adjourned at 6:34 p.m. with unanimous approval.

Jim Gianniny, Chair, Board of Zoning Appeals