

**BEFORE BEXLEY BOARD OF ZONING AND PLANNING**

IN RE: APPEAL OF ARCHITECTURAL REVIEW  
BOARD DECISION IN APPLICATION  
NO. 24-9 FOR THE DEMOLITION OF THE  
RESIDENTIAL STRUCTURES AT  
236 N. COLUMBIA AVENUE.

**BZAP Case No. 24-14**

Appeal of ARB Case No. 24-9

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND DECISION OF BZAP**

This matter comes before the Bexley Board of Planning and Zoning (“BZAP”) upon the appeal of Yoaz Saar, an owner of the real property located at 236 N. Columbia Avenue, Bexley, Ohio (“Appellant” or “Saar”) pursuant to Section 1226.18 of the Codified Ordinances of the City of Bexley (“Bexley City Code” or “BCC”). Saar appealed the “Decision and Record of Action - May 9, 2024 Meeting” (“Decision”) of the Architectural Review Board (“ARB”) denying a Certificate of Appropriateness (“COA”) to demolish an existing home and improvements designed by architect Noverre Musson for Charles Lazarus (the “Residence”) and replace it with a new home. The Appellant appeared at the hearings before both ARB and BZAP and was represented by legal counsel at BZAP. No person or their legal counsel appeared in opposition to the COA or the proposed demolition at ARB or BZAP.

**FACTS BEFORE THE BOARD**

The Board had before it and reviewed the record of the proceedings before the ARB including: all filings; the testimony and evidence presented by the Appellant, John Behal, the project architect for the proposed new residence and the Applicant at ARB; registered Architect, Joseph Kuspan who has restored and renovated five homes, including two houses designed by Noverre Musson; and neighbor, Ronald Kauffman; and future neighbor, John Wirchanski. The Board also reviewed the reports of Robert S. Livesey, FAIA, FAAR, Professor and Director Emeritus of The Ohio State University Knowlton School and registered architect with preservation experience and Bernardus Kooi, a registered structural engineer (S.E.) and professional engineer (P.E.), along with the video of the ARB proceedings and the Decision of ARB.

The Board also considered the additional evidence presented to it at the hearing on appeal. Architect Livesey supplemented the letter he submitted to ARB (Rec. 029-030) providing testimony on the historical and architectural significance of the Residence and whether it was worthy of preservation. Engineer Kooi provided testimony to supplement his Structural Letter and assessment of the condition of the Residence and necessary renovation and repair of the Residence. (Rec. 084-096). Mr. Kooi identified measures that in his opinion should be taken to address the existing conditions and damaged structural components of the Residence for its preservation, necessary restoration, renovation and repair and the probable cost of those measures and restoring the Residence.

Architect John Behal supplemented the application and his testimony before ARB with additional testimony and an affidavit documenting his professional opinions and the estimated costs associated with Mr. Kooi's recommendations and alternatives for restoration, renovation and repair of the Residence. Samuel D. Koon, a witness with more than 40 years in the real estate business as an appraiser, developer, consultant and real estate agent, submitted an Affidavit and testified that, in his opinion, if the Residence is not permitted to be demolished, it will result in a substantial reduction of the economic value of the property and be a substantial economic hardship. Finally neighbor, Holly Kastan, testified in support of the COA and impact of the demolition and proposed new structure on the neighbors and neighborhood.

### DEMOLITION STATUTES

BCC 1223.05(c) establishes the process that ARB (and BZAP on appeal) must follow in deciding applications for certificates of appropriateness for the demolition of a residential structure. BCC 1223.05(c) provides:

(c) Process for Review. The Board, in deciding whether to issue a certificate of appropriateness approving the demolition or removal of an existing building or structure, shall determine the following:

- (1) That the structure to be demolished or removed is not historically or architecturally significant *and* worthy of preservation or;
- (2) If it is historically or architecturally significant *and* worthy of preservation, that denial of a certificate of appropriateness would cause:
  - i. A substantial economic hardship, or;
  - ii. That demolition is justified by the existence of unusual and compelling circumstances.

The two conditions in BCC 1223.05(c)(1) are conjunctive and the Board must apply the criteria in BCC 1223.05(d) to determine the preservation significance of the Residence, which provides:

(d) Criteria to Determine Preservation Significance. The following criteria shall be used by the Board in determining whether a structure is historically or culturally significant and worthy of preservation:

- (1) The age and condition of the structure.
- (2) The quality of the structure's architectural design, detail, use of materials or construction.
- (3) The importance of the structure to the character and quality of the neighborhood.
- (4) The significance of the design or style of the structure to the historical, architectural or cultural development of the City, central Ohio, the State or nation; or
- (5) The impact on the City's real property tax base of restoration versus replacement and/or removal.

If ARB (and BZAP on appeal) finds the residence at 236 N. Columbia Avenue *is not both* 1) historically OR architecturally significant *and* 2) worthy of preservation, its review ends

and a certificate of appropriateness approving the demolition of existing buildings must be granted.

Conversely, if ARB (and BZAP on appeal) find *both conditions* of BCC 1223.05(c)(1) and (2) *are met*, it must proceed to consider whether the denial of a certificate of appropriateness would cause *either* (i) a substantial economic hardship *or* (ii) there are unusual and compelling circumstances that justify demolition. BCC 1223.05(c)(2)(i) and (ii). The Board must apply the criteria in BCC 1223.05(e) [substantial economic hardship] and BCC 1223.05(f) [unusual and compelling circumstances] to make that determination.

It is only when *both conditions* of BCC 1223.05(c)(1) are met and *either condition* of BCC 1223.05(c)(2)(i) or (ii) is met that a certificate of appropriateness approving demolition can be denied. It is within this framework that BZAP reviews and considers the record and decision of ARB, and the additional evidence presented to this Board.

### DECISION

The ARB considered the first factor of BCC 1223.05(c)(1), “determine[d] the existing structure is historically and architecturally significant” and found:

“the following criteria from Bexley City Code Section 1223.05 (d) criteria to determine preservation significance have been met: Criteria (2): the building is a unique midcentury modern home. Criteria (4): The architect, Noverre Musson, was a contributing and significant local designer and the home was commissioned and occupied by the Lazarus family, a prominent and longtime Bexley family.”

However, the ARB made no findings or decision on whether the Residence was “worthy of preservation.” Instead, it proceeded directly to the BCC 1223.05(c)(2) criteria to consider and determine whether economic hardship or unusual or compelling circumstances would justify demolition of the Residence. R.C. 1223.05(c)(1) requires the decisionmaker to also determine whether a historically or architecturally significant home is “worthy of preservation.”

The undisputed testimony of both architects was that this house is not an exemplar of the prairie style or a mid-century modern structure or noteworthy of the architectural style and designs of Noverre Musson. Architect Kuspan has owned, restored, renovated and lived in two Noverre Musson homes, including Musson’s own house at 2115 Clifton Avenue in Bexley, assisted with renovations of another Musson home in Upper Arlington and is an expert in Musson architecture and its restoration. Mr. Kuspan testified before ARB that the Residence was not “a stellar example of [Musson’s] work,” did not show a strong influence of Frank Lloyd Wright and was not made of quality materials or construction. He also testified that, although he is a strong advocate for preservation and anti-demolition, he did not believe the Residence is a ‘posterchild’ for mid-century modern architecture so in terms of its architectural significance, in his opinion it does not meet the criteria of the Bexley demolition ordinance.

Architect Livesey testified before BZAP that while Noverre Musson was the first person to bring prairie style architecture to central Ohio and had designed many notable homes in

Columbus that are identified and recognized in academic literature, including the Bexley home at 2115 Clifton Avenue, this Residence is not one of them. Architects Kuspan and Livesey both testified that this Musson home is not one of Musson's better designs or projects, had lesser architectural quality, design and materials, many atypical design features, flawed construction and has limited, if any, historical or architectural significance. While there are significantly better examples of midcentury modern homes and the works of Noverre Musson in Bexley and Columbus, this Residence is one of the least significant examples.

Bernardus Kooi, a registered structural engineer (S.E.) and professional engineer (P.E.), testified the construction of the home was an atypical design that is tragically flawed, particularly at the foundation, and both architects agreed that fixing the construction flaws would ruin the essential design of the house, compromise the integrity of any historical significance it may have and undermine its critical architectural design considerations, particularly the close relationship of the first floor to the surrounding grade. Both architects and experts in their field testified this house is not 'worthy of preservation' and there was no significant opposing evidence presented in this case on this issue. Not one person from the public with standing appeared and testified at the ARB or the BZAP hearing in support that the property was "worthy of preservation."

BZAP recognizes that the Lazarus family was a prominent and longtime Bexley family, has some cultural significance in the region and Charles Lazarus had the Residence designed and built and lived in it with his family. However, a former residence of the Charles Lazarus family that was built by a notable architect in Bexley cannot be the sole criteria for preserving the structure, particularly when the uncontroverted expert testimony is that it is not a noteworthy structure of Noverre Musson, of a prairie style or a mid-century modern architectural design, it did not have exceptional details or use of materials and it was not worthy of preservation.

Upon due consideration of all of the evidence before it and the decision of the ARB, BZAP finds that while there was some evidence to support the historical and architectural significance of a prairie style and a mid-century modern structure designed by Noverre Musson for the Lazarus family in Bexley, there was not a preponderance of substantial, reliable and probative evidence on the whole record that the existing building or structures themselves are worthy of preservation. Having determined that the Residence is not worthy of preservation, BZAP does not need to consider the criteria in BCC 1223.05(c)(2) that only applies if a certificate of appropriateness is denied.

BZAP reverses the decision of ARB and determines that the ARB shall issue a Certificate of Appropriateness permitting the demolition of the Residence and structures at 236 N. Columbia Avenue when the remaining conditions of demolition in BCC 1223.05(b)(3) that require the approval of the proposed replacement structures, landscaping, and a time schedule for the replacement project have been met. Since the ARB denied the COA for demolition, it did not make any determination of these factors, which is both required for a COA for demolition and within the jurisdiction and expertise of ARB to determine. Therefore, BZAP holds that the Appellant must return to ARB for final determination of these remaining conditions and the issuance of a COA by ARB approving the demolition and the replacement project.

Date: \_\_\_\_\_

\_\_\_\_\_  
Brian Marsh  
Acting Chair

**MOTION AND DECISION:** On August 22, 2024 at the regularly scheduled meeting of BZAP, Chair Behal recused himself from consideration of this appeal and BZAP member(s) \_\_\_\_\_ who were not present for the hearing on the appeal abstained from any participation or vote on the appeal.

\_\_\_\_\_ made a motion to adopt these Findings of Fact, Conclusions of Law and Decision of BZAP. \_\_\_\_\_ seconded the motion.

The Motion to adopt these Findings of Fact, Conclusions of Law and Decision of BZAP was \_\_\_\_\_ by a vote of \_\_\_\_ yeas, \_\_\_\_\_ nays by BZAP members who heard the appeal with 1 recusal and \_\_\_\_\_ abstention(s).

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Matthew Klingler  
Director, Building and Zoning

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Karen Bokor, Design Consultant