

CITY OF BEXLEY

Bexley City Council

Decision

Application No: 18-002 CC
Ordinance No: Ordinance 39-18
Application: The applicant is seeking area variances from Bexley Code Section 1252.09, the development standards in the district regulations for an R-3 District, to permit the subdivision of a single lot located at 387 S. Parkview Avenue (Parcel No. 020-000560) into two lots. If the existing single lot is subdivided, neither of the proposed new lots will meet all the development standards in the R-3 District.
Owner: Paymax Properties, LLC
Applicant: The Tuckerman Home Group
Agent: Michael Shannon, Attorney for Applicant
Property/Location: 387 S. Parkview Avenue (Auditor's Parcel No. 020-000560)
Zoning District: Medium Density Single-Family Residential District (R-3)

This matter came for hearing before City Council of the City of Bexley, Ohio on January 15, 2019 on the Application for variances for the property located at 387 S. Parkview Avenue. The Applicant and Property Owner (collectively "Applicants") were represented by legal counsel, Michael Shannon. The opponents were represented by legal counsel, William Loveland. Neighboring property owner Margaret Hedden testified independently and filed a brief. At the hearing, each party was permitted to call witnesses and all witnesses were sworn and subject to cross-examination. Interested individuals were also permitted to testify.

The property before Council for consideration is located at 387 S. Parkview Avenue and is a single 'through' lot oriented east/west that is 133 feet wide and 250 feet deep. The front lot line of the existing lot as developed is east and adjacent to S. Parkview Avenue. The rear lot line of the existing lot is west and adjacent to Westland Avenue. The existing lot is improved with a single family residence constructed in the early 1900s that faces S. Parkview Avenue. The existing structure does not meet the current minimum yard requirements for the north side yard or the west rear yard. All other yard requirements are met.

The Applicants desire to split the existing lot into two new smaller lots creating: (1) a new vacant lot from the eastern portion of the original lot adjacent to and fronting S. Parkview Avenue ("New Parkview Lot"); and (2) a new lot improved with the existing residence from the western portion of the original lot adjacent to and newly fronting Westland Avenue ("New Westland Lot"). The two new lots would have a common rear lot line. Applicants have requested variances to the minimum lot depth required in the R-3 District for each new lot. The Applicant is also seeking

variances from the minimum yard requirements for the New Westland Lot. Proposed variances are as follows:

New Parkview Lot: Applicants requested a 20' variance from the minimum 160' lot depth requirement in the R-3 District for the New Parkview Lot, to allow the new lot to be 140' deep and remain 133' wide. If granted, the new lot would exceed the minimum lot area required in the district and future development would have to comply with the Bexley City Code including all other R-3 development standards.

New Westland Lot: Applicants requested four variances for the New Westland Lot, two that result from the lot split and two relating to existing conditions. If granted, this new lot would exceed the minimum lot area required in the R-3 District. The proposed variances are:

1. A 50' variance from the 160' lot depth requirement, to allow the west lot to be 110' deep and remain 133' wide. If granted, the new lot would meet the minimum lot area required in the district.
2. A 31' variance from the 40' rear yard setback requirements in the R-3 District to allow the existing residence to be 9' from the rear (east) property line of the new lot. This is a new circumstance that is created by the proposed lot split. The front of the existing residence would be oriented toward and 9' from what is now the common rear lot line of both new lots and would face the rear of any newly constructed residence on the proposed New Parkview Lot.
3. A 27.4' variance from the 30' front yard setback to allow the existing structure (attached garage) to remain 2.6' from the west (new front) property line. This variance is for an existing condition that does not result from the lot split.
4. A 7' variance from the side yard (north) setback requirements, to allow the existing structure (attached garage) to remain 5' from the north property line. This variance is for an existing condition that does not result from the lot split.

South Parkview Avenue is an old single family residential neighborhood with many of the homes built more than a century ago. The neighborhood was platted as the Rownd and Knauss subdivision in 1887 with platted lots 133' wide by 250' deep. The subject property is lot 4 of the Rownd and Knauss subdivision. The subdivision was developed at the turn of the 19th century with a variation in parcel widths at least in significant part before zoning was first adopted in the City of Bexley in 1923. Some of the lots were developed as originally platted, including the three lots across the street from the subject property, that are the same 133' width and 250' depth as 387 S. Parkview. The widths of many of the platted lots were divided and developed as narrower parcels typically about 66' wide and 250' deep, including the two parcels north and four parcels south of the subject property. Many of the neighboring property owners opposing the application own and reside on such narrower parcels. A few lots were less typically divided by depth or otherwise and developed.

The Applicant and Owner have the burden to prove, by a preponderance of the evidence, that they have met the criteria of BCC 1226.11 for the area variances they are requesting. The Applicant must show that the literal enforcement of the BCC will result in practical difficulty and

the granting of a variance complies with the purpose and intent of the code. BCC 1226.11(b) and (c). A property owner encounters practical difficulties whenever an area zoning requirement unreasonably deprives the owner of a permitted use of his property. That is, whether the area zoning requirement, as applied to the property owner, is reasonable. In determining practical difficulties, Council must consider and weigh the seven non-exclusive factors in BCC 1226.11(c)(1)-(7). No single factor controls and Council must determine whether the variance complies with the purpose and intent of the Bexley Planning and Zoning Code rather than the strict letter of the zoning ordinance.

Upon due consideration of the application, record, testimony, admitted exhibits, arguments presented at the hearing, and briefs submitted by both parties and Margaret Hedden, and based upon a preponderance of the substantial, reliable and probative evidence on the whole record, applying the standards for area variances set for the BCC 1226.11 including the seven factors of BCC 1226.11(c)(1)-(7) below, City Council makes findings of fact and conclusions of law:

- (1) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;

Council finds that the Applicants failed to prove that the subject property could not continue to be used as a single family residence or that it would not yield a reasonable return in its present condition. While applicants desire to take advantage of the size of the lot and capitalize their return on the property, the standard before council is 'reasonable return,' not making the highest and best use of the property.

- (2) Whether the variance is substantial;

Council finds the variances are substantial in some respects and not others. No variance is requested for lot area or the density permitted in the R-3 District. The west and north yards on the Westland Lot are existing conditions and any required variance is not considered substantial. However, many other factors make the variances substantial. As to lot depth, there is no lot depth permitted in any single family residential zoning classification in the City of Bexley that is less than 120' deep, and the Westland Lot is proposed to be 110' deep. This more shallow lot depth necessitates a substantial (31') variance from the rear lot line of the New Westland Lot reducing the required 40 foot rear setback by 77.5%.

The widths of many of the surrounding and adjacent lots have been divided and are less than the 90' minimum width required in the R-3 district, but all meet the 250' minimum lot depth. There was no evidence that zoning had been adopted in Bexley at the time these properties developed; what, if any zoning standards applied at the time of their development; or that any of these properties were granted variances to allow the division of the platted lots or construction of single family residences on them. The city was aware of these existing conditions when the development standards in the R-3 district were established.

The proposed split to the depth of this through lot creates a New Westland Lot where the existing structure is not oriented toward the adjacent street and will face the rear of

any future residential structure that may be built on the New Parkview Lot, just 9' from the common property line. The new front yard of the New Westland Lot will be a driveway and the side of an existing garage parallel to Westland Avenue and 2.6 feet from the property line. The garage is attached to the house with a covered walkway. The rear of the existing house will become the new front of the house facing the only adjacent street, Westland Avenue.

- (3) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;

Council finds that overall the essential character of the neighborhood would be substantially altered. The existing structure and lot are part of an established original homestead and historic community that was developed at the turn of the 19th century in Bexley. The location and orientation of the existing home and sizable front yard are part of that history. In addition, the neighborhood would be substantially altered by creating a new lot that would necessitate reorienting the rear of the New Westland Lot to front the only adjacent street, Westland Avenue on its western boundary, while the front of the existing house and structures on that new lot actually face east to Parkview Avenue with only a nine foot yard from the face of the house to the eastern property line. The fronts of homes in this neighborhood face the adjacent street. All lots that are adjacent and across the street from the subject property are 250' deep with varying widths. Its essential character would also be altered by permitting the construction of a second residence in front of the existing home obscuring the existing residence and having the rear of any new residence built on the New Parkview Lot face the front of the longstanding home on the New Westland Lot. The proposed development is contrary to the character of the existing neighborhood.

Council further finds there was not sufficient evidence for it to find adjoining properties would suffer a substantial detriment by the variances. Adjoining property owners have no vested right to the view they have enjoyed by the sizeable front yard of the property or the preservation of the status quo of the property at 387 S. Parkview Avenue. Various witnesses speculated on the adequacy of current and future drainage and stormwater on the property but such evidence is not substantial or reliable. Any future development of the property would be required to comply with all city, state and federal regulations including subdivision regulations, stormwater, grading, construction, architectural review and all other permits and standards.

- (4) Whether the variance would adversely affect the delivery of governmental services (e.g., water, sewer, garbage);

A preponderance of evidence does not support a finding that government services would be adversely affected. The city can deliver governmental services to one more single family residence in this developed neighborhood.

- (5) Whether the property owner purchased the property with knowledge of the zoning restriction;

It is undisputed that the property owner purchased the property with knowledge of the zoning restriction. Council recognizes that this, alone, is not a sufficient basis to deny a variance and considers it as one of the factors it must weigh.

- (6) Whether the property owner's predicament feasibly can be obviated through some method other than a variance;

The owner desires to develop an additional single family residence on its property in the R-3 District. The owner's lot cannot be subdivided or split to permit such development through any method other than a variance because at least one of any of the new parcels created from the originally platted and developed lot could not meet either the minimum lot depth or the minimum lot width required in an R-3 District. The owner admitted in its brief that no other method may be taken to eliminate the necessity of the requested variances in order to split the lot for the development of an additional single-family residence as desired by the owner.

- (7) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance.

Council finds the proposed variances do not meet this criterion. Much of the neighborhood and its divided lots were developed before the City of Bexley adopted a zoning code. The city adopted a comprehensive zoning code update that became effective January 1, 2017 that included the current R-3 zoning standards. The creation of nonconforming lots in the city is discouraged by the zoning code and variances from the minimum lot requirements in any zoning district can only be granted by City Council.

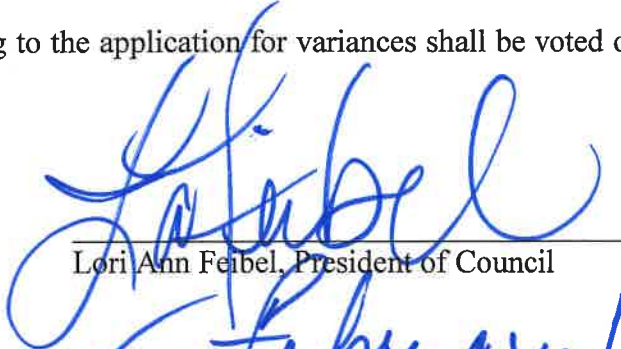
The spirit and intent behind the zoning code and R-3 zoning standards are to conserve and protect the integrity and character of the city's neighborhoods and preserve areas of existing single-family residential development in a manner consistent with principles of community and land use planning. This is particularly significant in historic neighborhoods such as the neighborhood in this case. While a purpose of the city code is to allow flexibility for unique conditions and innovative development, the proposed lot split in this case does not meet that purpose or community or planning principles.

Substantial justice will not be done by granting a large single family lot in the R-3 district that conforms to the minimum lot width and depth requirements a variance to create two lots that do not conform to minimum lot depth requirements in order to permit a second residence to be built, creating a new lot with the rear of an existing house facing the only adjoining street, and creating lot depths that are out of character with the adjacent and immediately surrounding properties. The owners are not being unreasonably deprived of the permitted use of their property for a single family residence.

Upon weighing the facts and evidence before it, and considering and weighing the seven factors set forth in BCC 1226.11(c)(1)-(7), the purpose and intent of the zoning code, and whether the owner has encountered practical difficulties and is unreasonably deprived of a permitted use

of its property, Council finds that Applicants have failed to prove, by a preponderance of evidence, that they are entitled to the requested variances and the applications for variances must be denied.

Proposed Ordinance No. 39-18 relating to the application for variances shall be voted on in accordance with this Decision.



Lori Ann Feibel, President of Council

Dated: _____

February 19, 2019



Richard Sharp
Acting Zoning and Development Chair

Dated: _____

2-19-2019