

CITY OF HURON
BOARD OF BUILDING AND ZONING APPEALS
February 8, 2021 Regular Meeting - 4:03p.m.

Chairman Frank Kath called the regular meeting to order at 4:03 p.m. on Monday, February 8 2021, in the Council Chambers of the City Building, 417 Main Street Huron, Ohio. Members in attendance: Jim Shaffer, JoAnne Boston and Lisa Brady. Members absent: Jenine von Krumreig.

Also in attendance: Christine Gibboney, Zoning Administrative Assistant, Todd Schrader & Gary Ebert of Seeley Savidge Ebert & Gourash, Mayor Sam Artino. Assistant to the City Manager, Mike Spafford joined the meeting in progress.

New Business

Seeley Savidge Ebert & Gourash- Training Q & A- (Gary Ebert & Todd Schrader)

Mayor Artino thanked members for the opportunity to meet, sharing that in the past he had also served on the BZA and understands the challenges of the board. He commented that those that serve on city boards/committee are valuable to the community and stressed the importance specifically of the Planning Commission, Safety Committee, and BZA to ensure the safety of citizens and their property. He thanked all members for their service and invited members to contact him at any time with any questions. Members thanked Mayor Artino for attending.

Mr. Todd Schrader introduced himself and shared his background and experience and provided introduction of Mr. Gary Ebert- noting his 40+ years of municipal experience. He explained they would like to provide information to this board and also address any questions that members may have. Ms. Boston commented this is the first time anyone from Council has come to speak to the BZA and thanked Mayor Artino for doing so. Mr. Ebert referenced his familiarity with Huron and noted this board as well as the Planning Commission determines the future development of the city, stressing the importance of these boards and their decision making. He noted the importance of the BZA members in carrying out their responsibilities pursuant to the charter and codified ordinances of the city. He referenced the handouts which included Charter Section 7.02 and Zoning Code Section 1139.02 as well as an informational rules and procedures document (attached) and reviewed these. Items of discussion/note:

- Conflict of interest: Members advised to recuse themselves in the event of any conflict (financial interest, etc.), Mr. Ebert explained that if any case could affect a member's property/financial interest, this would be a conflict. Mr. Schrader noted that physical departure from the meeting is recommended when abstaining. Mr. Schrader also advised that a member with a conflict should not be speaking with any neighbors about the case. Members were advised to be as transparent as possible and to have no communication with neighbors/community members.
- Members advised to consider each application on a case-by-case basis.
- Mr. Ebert noted conditional use variances do not run with the land- when granted they are only valid with the applicant.
- Referenced #4 Hardships on the handout and reviewed the three (a,b,c) listed criteria to apply when considering a case.
- Reviewed the role and types of decision making of the BZA board.


- Members advised they can call on legal with any general questions, or ask that legal attend a meeting if they feel a case is complex. It was noted legal cannot advise the board how to vote, but can provide information.
- Ms. Boston noted she has received questions from residents about BZA application direction/process in the past and wondered if she should be communicating with them. Members were advised to direct inquiries to the Zoning Department and not to engage in discussion.
- Tabling a case: Members advised of the option to table cases if members desire more information and/or feel they need legal input. The importance of getting the acknowledgement of the applicant on the record relative to the tabling was noted.
- In response to a question about BZA agendas being reviewed by legal. Mr. Schrader confirmed that they are provided agenda packets and Zoning Administration generally notifies legal if they feel a legal review is necessary or if legal attendance at the meeting may be needed.
- Lack of a full body at the meeting: Discussion of advising applicants when not all members are present and providing the option to table explaining that three votes in the affirmative are needed for passage. Members noted that this is standard practice. Legal advised that in the event that an applicant is denied, and he/she wishes to re-apply- there would have to be substantial changes made to the application. It cannot be the same request or insignificant change from the original.
- Members advised that they can and should add restrictions into motions when the board identifies the need in certain cases. Mr. Ebert provided an example of a case for a backyard improvement where the board restricted lighting in the backyard so as not to affect neighbors. Members were advised to add restrictions to motions when needed.
- Mr., Ebert inquired if applicants are required to tell the board what the actual practical difficulties or hardships are. Mr. Kath referenced the application which requires the applicant to answer these questions. Mr. Ebert asked to have the application provided for review.
- Mr. Ebert referenced a case where a mistake was made by the Building Department and issued permits in error, construction was underway and the matter had to then go to the BZA for setback variance consideration. He advised of the importance of the Building Department and their knowledge of the code. He noted the BZA must apply the same criteria in decision making in these types of cases and consideration of adjacent property owners, adjacent property, valuation of property, and future development on the street. He referenced a similar case the city had recently.
- Brief conversation about lighting issues, specifications and ordinances ensued.
- Mr. Schrader asked the board about their decision-making process, commenting there must be times of thoughts as to what administration may think or other concerns. He advised that members still have to make decisions based on the particular facts in each case and apply the same criteria in all cases. Mr. Kath commented he believes that there is a reason for a BZA board and there is some give and take, and each case must be considered separately, the criteria applied, safety issues examined and neighbor statements considered. Members voiced their agreement. Ms. Boston noted her agreement with Mr. Kath and expressed her opinion of an obligation to encourage people to invest in the community and while the BZA may not be able to approve something, she commented she likes to share this message with the applicant and thank them. She commented that she believes the board has done a good job in working with applicants and the board tries to provides options and allow them to amend their application or table tabled. She noted she likes to leave people with the impression that the BZA appreciates

them investing here and the board just wants to make sure it's done in a thoughtful way and satisfies the code requirements as well as meet the community's needs. Mr. Ebert acknowledged this is the thought of a good board. A brief discussion about tabling or withdrawing an application ensued. Mr. Schrader referenced that staff does contact legal when a unique inquiry comes about before a BZA application is submitted and provided some examples.

- Ms. Boston initiated discussion on the topic of the uniqueness of Huron with cottage neighborhood complexities and pre-existing non-conforming properties and the difficulty in the changing fabric of the community in some cases. She referenced the board often faces the consideration of applications to take a small cottage and turn it into a large home and how this changes the character of these existing neighborhoods. She asked for legal input on this topic. Mr. Ebert referenced the evolution of architecture and new fads that contribute to this issue. He referenced while this board cannot consider the type of architecture and the effect it has, but acknowledged it does change the character of the area. Discussion of the anticipated growth of the city ensued. Mr. Spafford referenced the many subdivision plats that are pre-city establishments and noted the demand is great for people looking for property here.
- Site visits: Members were advised that they are able to go to the site but are not to engage with property owner/applicant other than an introduction. They were advised to go individually or less than a quorum together. It was confirmed that the application does contain a consent to enter onto the property.
- Ms. Brady asked about homeowner's associations. Members were advised that homeowner association by-laws rule the applicant. Mr. Kath commented that the city only enforces the city code, applicants need to adhere to their association rules. Mr. Schrader agreed that the city only enforces the city ordinances and it is the property owner who needs to adhere to their own association by-laws or deed restrictions.
- Mr. Schrader referenced some unique cases the board recently had and asked for Mr. Ebert's input. Mr. Ebert advised members that while they are a board of the city, they are an independent body. He acknowledged that in some cases there will be judgement calls and cautioned members that even though they are to consider each case on an individual basis, they need to stand in support in the future. He advised, members need to consider the degree of the variance, and whether it is a major or minor request. He added that in most cases, BZA decisions are upheld in court as long as due diligence was done. Members were encouraged to contact legal with any cases questions in the future. Ms. Boston referenced a use variance case that was particularly difficult and her struggle with the case, a brief discussion ensued relative to the case.

Mr. Ebert and Mr. Schrader invited all members to contact them in the future on any questions or matters of concern. Members thanked Mr. Ebert and Mr. Schrader for the presentation.

With no further business, the meeting was adjourned at 5:02p.m.



Jim Shaffer
Board of Building and Zoning Appeals Secretary

ADOPTED: March 8, 2021

JS/cmg

Board of Zoning Boards

The Rules and Procedures of **Boards of Zoning Appeals**:

1. All meetings of the Board of Zoning appeals shall be open to the public. The Board of Zoning appeals shall keep minutes of its proceedings showing the vote of each regular or alternate member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board of township trustees and be a public record.
2. Appeals to the board of zoning appeals may be taken by any person aggrieved or by any officer of the township affected by any decision of the administrative officer. Such appeal shall be taken within twenty days after the decision by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds. The officer from whom the appeal is taken shall transmit to the Board of Zoning appeals all the papers constituting the record upon which the action appealed from was taken.

The Board of Zoning appeals shall fix a reasonable time for the public hearing of the appeal, give at least ten days' notice in writing to the parties in interest, give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing, and decide the appeal within a reasonable time after it is submitted. Upon the hearing, any person may appear in person or by attorney.

3. **Appointment.** (1139.02)(a) There is hereby created a Board of Building and Zoning Appeals consisting of five members who shall be residents who hold no other City office or employment, selected by Council, one each year for overlapping terms of five years. It shall have all the power and authority conferred upon boards of zoning appeals by state law and such other duties as may be imposed upon it by state law. Its members shall serve without compensation.
4. **Hardships.** Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the provisions of this Zoning Code, on appeal from a decision of the Building Director the Board shall have the power in a specific case, to vary or modify the application of any such provisions in harmony with the general purpose and intent of this Zoning Code so that the public health, safety, morals and general welfare may be secured and substantial justice done. In granting a variance, after public notice, the Board may require appropriate conditions and safeguards that they deem necessary to protect, promote and improve the surrounding properties and neighborhood. Such variance shall be limited to specific cases where the following conditions also exist:

- a. The practical difficulty or unnecessary hardship inheres in and is peculiar to the premises sought to be built upon or used because of physical size, shape or other characteristics of such premises or adjoining premises which differentiate such premises sought to be built upon or used will create a difficulty or hardship caused by a strict application to the provisions of this Zoning Code not generally shared by other lands or structures in the same district.
- b. Refusal of the variance or modification appealed for will deprive the owner of the premises sought to be built upon or used of substantial property rights.
- c. Granting of the variance or modification appealed for will not be contrary to the purpose and intent of the provisions of this Zoning Code. No harm to public interests.

Unnecessary hardship is present when compliance with the ordinance would do one of two things:

- unreasonably prevent the owner from using the property for a permitted purpose. For example, if a lot is zoned residential, would complying with the ordinance prevent the lot from being used for a home. If a property owner is already living in a home on the lot, then they're not prevented from using the property for residential use.

or

- be unnecessarily burdensome in a view of ordinance purposes

When appealing for a variance or modification, the appellant shall state and substantiate his claim that each of the three conditions listed and the Board shall make a finding on each of such three conditions as they apply in each specific case as a prerequisite for the granting of the variance or modification.

Role of Zoning Board

The primary role of a zoning board is to review and decide cases where a relaxation of the ordinance is sought or where there is an alleged error in a zoning decision.

Zoning boards may be authorized to participate in three types of decision-making:

- **Variance.** A relaxation of a dimensional or use standard specified in the zoning ordinance.
- **Administrative appeal.** A legally contested order or decision of the zoning official (usually associated with a contested map or text interpretation).

- **Special exception/conditional use.** A use or dimensional exception listed in the zoning ordinance that is not permitted by right but may be granted if certain conditions are met. Zoning boards do not have this authority unless authorized by local ordinance. A conditional use, is not suited to all locations in a zoning district, but may be allowed in some locations if it meets specific conditions set out in the zoning ordinance and is not contradictory to the ordinance's general purpose statement. These conditions generally relate to site suitability and compatibility with neighboring land uses due to noise, odor, traffic, and other factors. In short, conditional uses must be custom tailored to a specific location. A conditional use must be listed as such in the zoning ordinance, along with the standards and conditions which it must meet.

Zoning boards must look to several sources for guidance on proper procedures including: 1) state statutes, 2) local ordinances, 3) zoning board bylaws or operating rules, and 4) case law.

Types of Variances

- **Area variance** provide an increment of relief (normally small) from a physical dimensional restriction such as a building height or setback.
- **Use variances** permit a landowner to put a property to an otherwise prohibited use. Use variances are prohibited in various zoning districts.