

Board of Zoning Appeals Minutes
April 22, 2019 – 6:00 pm
233 South Main Street, Monroe, Ohio

The Board of Zoning Appeals of the City of Monroe met on April 22, 2019. The meeting was held at Monroe City Hall.

Call to Order

The meeting was called to order at 6:00 pm by Mr. Nerenberg. Members present were Mr. Adam and Mr. Robbins.

Also present were: Kevin Chesar, Director of Development/Zoning Enforcement Officer; Kameryn Jones, Planner; and Deana England, Deputy Clerk of Council.

Mr. Howard moved to approve the minutes from the February 12, 2019 meeting; seconded by Mr. Robbins. Voice vote. Motion carried.

Mr. Nerenberg opened the Public Hearing at 6:03pm.

Case No. 2019-1—Consideration of an application for variances regarding construction of a Kroger fulfillment center.

Mr. Chesar stated that Mr. Mark Shefchik with Ryan Companies, on behalf of The Kroger Company, has requested variances regarding a forthcoming industrial fulfillment center on Hamilton Lebanon Road. The project is for a 368,700 square-foot building that will occupy the parcels highlighted below. According to the applicant, the use will be a first of its kind operation for Kroger in the United States that will provide direct-to- customer grocery delivery. The facility will house dry and perishable food storage retrieved by an advanced automated tote system, while the frozen foods will be a manual operation. All products are to be delivered to customers via small profile (sprinter) delivery vans. A more specific description the use can be found in the application supplemental. It is also important to note the applicant is the property owner of all parcels involved, including the parcel related to variance requests 2, 3, and 4. It is Staff's understanding that the previous property owner, Mr. Greco, sold the land to the Kroger Company based on the condition that he be permitted to reside in the residential structure until he vacates it. The property is currently zoned L-1 Light Industrial and is approximately 41.5 acres. The applicant anticipates a project start date of May 2019 and completion date at the end of 2020. The applicant requests several variances in relation to this development: To allow accessory structures, normally permitted in the rear or side yard, to locate in the front yard. To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet (Mr. Greco related). To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches (Mr. Greco related). To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches (Mr. Greco related).

Mr. Chesar stated the five accessory use structures are data storage structure (CCR), van refuel station, van wash, data storage structure (CCR), and van maintenance.

Mr. Chesar stated that the variance requests consist of to allow accessory structures, normally permitted in the rear or side yard, to locate in the front yard. Section 1205.01(D)(6) of Accessory Structures and Temporary Uses outlines this requirement as the following: "Unless specifically allowed in a front yard, an accessory building may only be permitted in the front yard with a variance." To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet. Section 1204.05(D)(1), Table 1204-6 Site Development Standards for Business Districts outlines this requirement as the following: "The front yard setback shall be 150 feet when adjacent to a residential district." To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches. Section 1204.05(A)(4)(d)(iv)(A) of Site Development Standards outlines this requirement as the following: "*Industrial Uses adjacent to residential zones or uses shall comply with the following: A) Within the required 200-foot setback as specified in Table 1204-6 no outdoor storage, accessory use or structure or*

railroad facilities shall occur.” To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches. Section 1204.05(A)(4)(d)(iv)(B) of Site Development Standards outlines this requirement as the following: “Industrial Uses adjacent to residential zones or uses shall comply with the following... Access drives and employee parking shall be no closer than 100 feet to a residential zone or use.”

The following factors shall be considered and weighed by BZA to determine practical difficulty. Whether special conditions and circumstances exist which are peculiar to the land or structure involved and which are not applicable generally to other lands or structures in the same zoning district; examples of such special conditions or circumstances are: exceptional irregularity, narrowness, shallowness or steepness of the lot, or adjacency to nonconforming and inharmonious uses, structures, or conditions.

Variance 1 To allow accessory structures normally permitted in the rear or side yard, to locate in the front yard:

The site is unique in that it has two public frontages (once the distribution center and associated public road is completed this summer), which make location of accessory structures in the rear yard difficult. Location of these structures in the side yard may be possible, though it may force rearrangement of the current site configuration, which may not be practical considering that the maintenance building, wash facility, and refueling station are meant to service the delivery vehicles and not the semi-tractors that will be utilizing the northern side and eastern side yard. Furthermore, a side yard location on the west may have a higher impact on the Colonial Manor subdivision.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: An active residential use located in an industrial zone is a fairly unique condition. Further, the fact that the applicant (Kroger) now has ownership of that property but is permitting it be used for residential purposes in the near-term by the former owner of the property, Mr. Greco, who sold the land to Kroger, is also an unusual condition. While there are a few other examples of residences located in industrial zoned areas, it is uncertain whether this particular ownership arrangement is likely to occur again.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: The increased outdoor storage setback requirement is due to the existence of an active residential use directly adjacent to this proposed development. Given the user’s need for a large amount of van storage onsite, it is uncertain how this requirement would be met given the active residential use at the Greco home and the Colonial Manor subdivision to the west.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: The increased access drive setback requirement is due to the active residential use directly adjacent to this proposed development. Given the user’s stated need for multiple access points to maintain separated van, semi-tractor trailer, and auto traffic, there is a third access drive off State Route 63 that is proposed to be approximately 30 feet from the Greco home property line.

Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance.

Variance 1 To allow accessory structures normally permitted in the rear or side yard, to locate in the front yard: The property may yield a reasonable return and be of beneficial use without the requested variance.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: The property may yield a reasonable return and be of beneficial use without the requested variance.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: The property may yield a reasonable return and be of beneficial use without the requested variance.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: The property may yield a reasonable return and be of beneficial use without the requested variance.

Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures.

Variance 1 To allow accessory structures normally permitted in the rear or side yard, to locate in the front yard: This variance may be more than the minimum necessary to make use of the land.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: This variance may be more than the minimum necessary to make use of the land.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: This variance may be more than the minimum necessary to make use of the land.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: This variance may be more than the minimum necessary to make use of the land.

Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer substantial detriment as a result of the variance.

The zoning of the parcels has been industrial since at least 1997 and the Monroe Comprehensive Plan has called for this area to be industrial for a number of years. It is important to note that Code requirements are being met on the west side of the site, adjacent to the Colonial Manor Square subdivision. The essential character of the neighborhood would not be substantially altered because of these variances, as there is an existing industrial park in this area. While the former Greco property will be developed, which will alter what once was farmland, the variances are not the cause of that change. In relation to the single residential use that these variances pertain to, it is Staff's understanding that the current resident's desire (Mr. Greco) is to remain in the home for as long as is feasible until such time that he vacates the property. Mr. Greco he has agreed to the proposed screening elements to limit possible detriment to himself.

Whether the variance would adversely affect the delivery of governmental services such as water, sewer, and refuse pickup.

Variance 1 To allow accessory structures normally permitted in the rear or side yard, to locate in the front yard: The variance would not adversely affect the delivery of governmental services.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: The variance would not adversely affect the delivery of governmental services.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: The variance would not adversely affect the delivery of governmental services.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: The variance would not adversely affect the delivery of governmental services.

Whether special conditions or circumstances exist as a result of actions of the owner.

Variance 1 To allow accessory structures normally permitted in the rear or side yard, to locate in the front yard: The variance requested is specific to the site design chosen by the user and its operations.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: The variance requested is specific to the user and its operations. The property owner/user is knowingly developing an industrial site with an active residential use on it, which requires a larger setback. The setback is a special circumstance as the immediate past owner of the property (Mr. Greco) sold the overall property for the development and has knowingly requested to live on a single parcel in the middle of the industrial development even though Kroger is the present owner and is developing an industrial use.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: The variance requested is specific to the user and its operations. The property owner/user is knowingly developing an industrial site with an active residential use on it, which requires a larger setback. The setback is a special circumstance as the immediate past owner of the property (Mr. Greco) sold the overall property for the development and has knowingly requested to live on a single parcel in the middle of the industrial development even though Kroger is the present owner and is developing an industrial use.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: The variance requested is specific to the user and its operations. The property owner/user is knowingly developing an industrial site with an active residential use on it, which requires a larger setback. The setback is a special circumstance as the immediate past owner of the property (Mr. Greco) sold the overall property for the development and has knowingly requested to live on a single parcel in the middle of the industrial development even though Kroger is the present owner and is developing an industrial use.

Whether the property owner's predicament can feasibly be removed through some method other than a variance.

Variance 1 To allow accessory structures, normally permitted in the rear or side yard, to locate in the front yard: Given the needs of the user, such as large amounts of employee parking, and the constraints caused by residential uses to the west and south of the site, locating the proposed accessory structures outside the front yard may not be feasible without large adjustments to the site (reduction of building size, moving detention underground, etc.), which may still not remove the predicament and/or could cause new or additional difficulties.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: The predicament may be removed by eliminating the nonconforming residential use.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: The predicament may be removed by eliminating the nonconforming residential use.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: The predicament may be removed by eliminating the nonconforming residential use.

Whether the spirit and intent behind the code requirement would be observed and substantial justice done by granting a variance.

Variance 1 To allow accessory structures normally permitted in the rear or side yard, to locate in the front yard: The intent is for accessory structures/uses to be located out of the front yard. However, in this instance, even if the site could be adjusted, a western side yard use would most likely be more impactful to Colonial Manor from a traffic and noise perspective. An eastern side yard location would most likely impact semi-truck deliveries if the maintenance, wash facilities, and refueling station are

located. The applicant has stated the intent is to separate incoming delivery, loading, outbound delivery, and employee traffic. The use closest to the road will be set back from the State Route 63 frontage 250 feet and will be highly screened. The maintenance building is also highly screened by virtue of being located behind the outdoor storage area/fence. If the uses meet other requirements such as architectural standards, locating them in the front yard would appear to meet the spirit of the code requirement.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: The code requirement regarding front yard building setbacks would be observed with the granting of a variance if a condition of approval is to demolish the single-family home once the residence is vacated.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: The code requirement regarding front yard building setbacks would be observed with the granting of a variance if a condition of approval is to demolish the single-family home once the residence is vacated.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: The code requirement regarding front yard building setbacks would be observed with the granting of a variance if a condition of approval is to demolish the single-family home once the residence is vacated.

Whether the granting of the variance requested will confer on the applicant any special privilege that is denied by this regulation to other lands, structures, or buildings in the same district.

Variance 1 To allow accessory structures normally permitted in the rear or side yard, to locate in the front yard: The code does permit outright certain accessory uses in the front yard for industrial uses, such as a guard shack. However, the scale and type of use as proposed with this development has not previously occurred in the city. This large van-type delivery operation requires vehicles to be washed, refueled, and have minor repairs. Though likely unique to this user and its operations, the variance to allow accessory structures in the front yard would allow the applicant a privilege otherwise not typically permitted but also not currently existing in Monroe for other sites in the Light Industrial zoning district.

Variance 2 To allow a reduction of the minimum front yard building setback requirements for an industrial site adjacent to a residential use from 150 feet to 101 feet: The variance will not confer a special privilege on the applicant if a condition of approval is to demolish the single-family home once the residence is vacated.

Variance 3 To reduce minimum outdoor storage setbacks adjacent to a residential use from 200 feet to 51 feet 4 inches: The variance will not confer a special privilege on the applicant if a condition of approval is to demolish the single-family home once the residence is vacated.

Variance 4 To reduce access drive and employee parking adjacent to a residential use from 100 feet to 31 feet 6 inches: The variance will not confer a special privilege on the applicant if a condition of approval is to demolish the single-family home once the residence is vacated.

Department Comments: Public Works/ Engineering, no comment at this time. Fire Department, no comment at this time. Police Department, no comment at this time. Public Comment (to date): Aaron Wolf—120 Hollytree Drive -HOA Treasurer contacted Staff on several occasions to ask questions about which properties the variances pertained to, likelihood of approval, history of zoning of the property, and to state the neighborhood's frustration with warehousing in Monroe on a general level. While not specific to the variance requests, Staff did receive an anonymous voicemail regarding the Kroger development requesting that we should not permit any more warehouses in Monroe.

Mr. Chesar stated that it is staff's recommendation to remember a variance from the requirements of this Code may be granted by the Board of Zoning Appeals when the Board determines that such a variance will not be contrary to the public interest and that, due to special conditions, practical difficulty or unnecessary hardship exist that prevent strict application of this Code. Staff's review and recommendation are based on Code interpretations as well as the potential for precedents that could affect overall enforcement of City standards and regulations. The BZA's approval, denial, or modification is not required to be based on all the above criteria being met. No single factor listed above may control and not all factors may be applicable in each case. Each case shall be determined on its own facts.

Variance: Accessory Uses in the Front Yard: The request can be considered necessary due to onsite limitations complicated by the configuration of the lot, the remaining residential use, and the desire to have the maintenance, fueling, and washing of the delivery vans close to and separated from employee and semi-truck parking/access, both of which entail a large use area. Additionally, the applicant has indicated that the location of the proposed CCR (data storage structure) is required to be a certain distance from the main structure due to safety issues and locating the use in the side yards is not possible.

The second, third and fourth variance requests are not generally applicable to other industrial properties as: Staff is not aware of another instance in the city where a property seller conditioned that they be permitted to remain in a non-conforming residential structure essentially in the middle of an industrial development as a part of their sale agreement. It appears the seller, Mr. Greco, agreed to a screening and landscaping plan understanding the proposed use and intensity that is to surround the property. Further illustrating the generally not-applicable aspect of the variance requests is that Kroger is in a sense requesting a variance from themselves as they are they are now the owner of the residential property/use.

Staff recommends approval of the variance requests based on the following items in addition to any other BZA conditions:

1. The single-family home located at 6296 Hamilton Lebanon Road will be demolished within 365 days after it is deemed the property is no longer occupied by the current tenant, Mr. Greco. The structure shall be deemed unoccupied when Mr. Greco has not slept for at least one night in the structure within any 365-day period. It shall be the responsibility of the property owner to notify the Development Department when Mr. Greco has first vacated the home and communicate any changes in the occupancy of the single-family structure. No other renting, leasing, or occupying (other than by related health care services for Mr. Greco) to any other tenants shall be permitted on the property.

2. Discussion of architectural requirements for accessory structures (fuel station, van wash, maintenance building) proposed in the front yard.

3. The CCRs will be permitted to be screened by a fence that matches the principle structure's wood material type, is at minimum the same height as the enclosed structure, and is surrounded by landscaping where applicable as approved by Staff.

JT Whitt and Rita Williams spoke on behalf of Kroger and stated that it is Kroger's intention to demolish the Greco residence after he is no longer dwelling there. Mr. Whitt also gave background on Kroger and stated that this would be the first distribution center for Kroger in the United States.

Gerald Olson and Eric Morin with Ryan Companies went over a presentation explaining the site plan so the board could better understand the overall design and flow of the property.

John and Karen Corbin, residents on Stoneridge just wanted to clarify that the request doesn't apply to the nearby subdivision rather than just Mr. Greco's residence. They also asked what effect this development would have on property values.

Mr. Nerenberg advised that there is no way that the board would know that information at this time and stated that this property has always been zoned for this use and would eventually be used as such as Mr. Greco would not operate the farm forever.

Jason Easter, a resident also on Stoneridge also voiced concern of property values. He is also concerned about the length of time and noise value during the construction process.

Mr. Robbins moved to approve and accept the documents/exhibits as presented; seconded by Mr. Adam. Voice vote. Motion carried.

Mr. Robbins moved to close the Public Hearing; seconded by Mr. Adam. Voice vote. Motion carried.

Mr. Robbins moved to approve all four variances with the following conditions: The single-family home located at 6296 Hamilton Lebanon Road will be demolished within 365 days after it is deemed the property is no longer occupied by the current tenant, Mr. Greco. The structure shall be deemed unoccupied when Mr. Greco has not slept for at least one night in the structure within any 365-day period. It shall be the responsibility of the property owner to notify the Development Department when Mr. Greco has first vacated the home and communicate any changes in the occupancy of the single-family structure. No other renting, leasing, or occupying (other than by related health care services for Mr. Greco) to any other tenants shall be permitted on the property. Discussion of architectural requirements for accessory structures (fuel station, van wash, maintenance building) proposed in the front yard. The CCRs will be permitted to be screened by a fence that matches the principle structure's wood material type, is at minimum the same height as the enclosed structure, and is surrounded by landscaping where applicable as approved by Staff; Seconded by Mr. Adam. Roll call vote. Three ayes. Motion carried.

Mr. Robbins moved to adjourn at 7:11pm

Respectfully Submitted by,

Deana England
Deputy Clerk of Council