

APPROVED
SEPTEMBER 11, 2023

**CITY OF WIXOM
ZONING BOARD OF APPEALS MEETING
49045 PONTIAC TRAIL
MONDAY, AUGUST 14, 2023**

The meeting was called to order by Chairman Caplan of the Zoning Board of Appeals at 7:30 p.m. at which time allegiance was pledged to the American flag.

BOARD: Jeff Caplan (Chairman); Roy Thorsell; Michael Schira; Steven Winters; Jim Hutchens

ABSENT: None

OTHERS: Laura Kreps (Carlisle Wortman & Associates), Planner; Drew Benson, Assistant City Manager, and Director of Economic Development; and Mona Freiburger (Recording Secretary)

Determination of a Quorum:

A quorum of the Zoning Board of Appeals was present for this meeting.

Agenda:

No additions or changes were made to the agenda.

Approval of the April 10, 2023 Zoning Board of Appeals Meeting Minutes:

MOTION and seconded by Board Members Winters and Cousineau to approve the April 10, 2023 Zoning Board of Appeals Meeting Minutes, as amended.

VOTE: **MOTION CARRIED**

CORRESPONDENCE/INFORMATION

July 11, 2023 City Manager Update
July 25, 2023 City Manager Update

CALL TO THE PUBLIC

There were no comments made by the public.

OLD BUSINESS:

None

NEW BUSINESS:

1. **PUBLIC HEARING FOR VARIANCE REQUEST #PZBA23-003: 4072 CAMERON COURT, WIXOM, MI. 48393:** The applicant is seeking a total of one (1) non-use variance Section 18.03.050, Height and Placement Requirements, to permit a front yard setback of 15 feet rather than the required 35 feet.

Section 18.22.03 E. Dimensional and Other Non-use Variances, gives the Zoning Board of Appeals authority to grant variances when it can be shown that ordinance standards cannot be met and a practical difficult exists. The property is zoned R-3, One Family Residential. The parcel number is 17-31-151-035.

Discussion:

The applicant proposes to construct a home on the parcel. The parcel is bisected by overhead power lines, has a shallow depth and odd frontage arrangement along Cameron Court. Aerial photo included in packet.

Considerations for the Proposed Variance; Practical Difficult/Substantial Justice; Impact on Surrounding Neighborhood; Public Safety and Welfare; Not Self-Created are summarized in Carlisle Wortman Associates Variance Analysis dated August 9, 2023 is included in the packet, as well.

Mr. Alan Stephens, 439 N. Wixom, Wixom, MI, introduced himself and representing the landowner. Mr. Stephens indicated he is the real estate broker and salesperson. He built three homes on Cameron Court and helped a friend of sell one of the homes. This is the last vacant lot that is on Cameron Court.

Mr. Stephens commented after meeting with the Planning Commission and the Building Department, they discussed how a house could be built similar to the existing homes in the neighborhood. There are powerlines that run through the property and the property is split down the middle with the power lines. The building envelope is approximately 20 feet x 66 feet. Mr. Stephens stated a 20-foot-deep piece of property is very difficult to build a home similar to most properties in Wixom and this area. By adding a few feet, either in the front or the back of the property, it would help conform to be a nicer project. The power lines in the middle makes it very difficult to build a house large enough with a 20-foot envelope. After reviewing with their engineer and the fact that the property has been approved for a building site years ago, they are finally to the point where it is time

to sell the property. The landowner would like to sell the property and there is a gentleman present tonight that would like to purchase it and build a home.

Chairman Caplan inquired if the hardship in this case would be the power lines and the depth of the lot. Mr. Stephens answered the depth of the building envelope, and the lot is fine. The lot is 188 feet by 90 feet, approximately. The lot, itself, is fine, but the lot is turned the wrong way. If it was turned like the other lots on the street, it would be very similar. This lot is a difficult lot to conform exactly with the rest of the neighborhood. Mr. Stephens indicated he is a builder, as well, and built three of the homes on this street.

Board Member Winters inquired when the property was originally purchased. Mr. Stephens answered the developer started developing the land in 2004. Right after 2004, they bought this in 2006. They started developing by putting in water, sewer, etc. Then they purchased this lot but the lot is not part of the condominiums.

Board Member Winters inquired if the power lines were there in 2004. Mr. Stephens assumed the power lines were there. Mr. Stephens did not know who did the split of the lot, but it was understood that the lot was a buildable site. The lot has an address and sidwell number.

Board Member Winters inquired if the power lines run down the middle of the lot, how could the lot be buildable. Mr. Stephens indicated to ask the Building Department how it is a buildable lot when they approved the split. In his mind, there is enough square footage, 188 feet x 80 feet. The lot meets the zoning and square footage requirements for the home.

Board Member Cousineau indicated he had several questions. Board Member Cousineau asked for the history of how the property was developed, Cameron Court. He indicated he did some research online, Oakland County Property Gateway, it shows all the lots, but it doesn't show a condominium layout. Board Member Cousineau asked if Mr. Stephens was familiar on how this parcel was created and how Cameron Court was developed. Mr. Stephens stated if they give you an address and a sidwell number, they do a split, it usually means that you have a viable, buildable lot. Mr. Stephens indicated there are eight units in the condominium which go around the cul-de-sac. The lot was purchased in 2006. The lot was part of a split. It is Mr. Stephens understanding the lot belonged to the people on Maple Road; the corner of Maple Road and Cameron Court.

Board Member Cousineau asked Ms. Kreps if she would consider this a non-conforming lot; he could not believe this lot would meet the zoning ordinance standards in terms of depth. Ms. Kreps indicated there is no depth for a parcel. There is a lot area and a lot width, lot frontage. This is not a non-conforming lot; it is a legal, buildable lot.

Board Member Cousineau indicated he was surprised the City building official would approve this split with all the encumbrances, but they may have realized it is a conforming lot and had no basis not to approve it.

Ms. Kreps explained when they look at lot splits, there are several factors to be considered. They look at the land division act to see if it meets those criteria but there is lot width, the lot area. It must have frontage on a public or private road, which this, technically, does. Those are the factors that planning considers. The easement would be noted but if the parcel meets those criteria, it is good. Board Member Cousineau restated there was no reason to deny the split, and deny approval of this lot because, technically, it does conform to the underlying zoning ordinance requirements. This lot was created before Cameron Court.

Assistant City Manager Benson commented the decisions they made in 2004 are difficult to reconcile because the parties in play aren't present. By today's ordinances, which govern the case at this point, meet the general standards to be a buildable lot in terms of size and width but it has its challenges. Also, an easement was granted to this property from the original developer to provide access onto Cameron Court.

Mr. Stephens commented when the split occurred or at the time they were developing, they made sure there were proper easements to get to the property with a driveway. They also wrote an easement for the utilities for water, storm sewer, electric, gas, etc. The developer also turned over the roads and the maintenance of the storm system to the City. Wixom has control of those items. Cameron Court is a public road. This lot in question was created before Cameron Woods condominiums. The residents of the condominium would have had the opportunity to review all adjacent parcels including this lot.

Board Member Cousineau commented there was a gentleman in the audience who is interested in purchasing this lot and building a home. Part of the Board Members' packet included elevations and conceptual layouts in terms of the position of the home on the lot. The proposed home would be to the easterly side of the lot. Board Member Cousineau inquired if there was any consideration given to moving the home to the westerly portion of the lot to mitigate the impact of the potential variance to the adjacent unit number #1 of Cameron Court. Mr. Stephens answered they have gone around and around to fit the house from a practical standpoint and look at what would work for everyone concerned. When the house is on the west side, there are issues with neighbors, the houses next door, the driveway, the pine trees, etc. There are more pine trees on the western side than the other side. Either way, there will be issues. Mr. Stephens stated he is also a builder, and this is a difficult situation because of the lot.

Board Member Hutchens indicated there is conversation about a buildable lot, but he was wondering in what context is this defined. Houses come in all sizes and shapes, and he could not believe that simply saying it is a buildable lot would be all inclusive for any structure that you would like to build. Mr. Stephens stated, currently, it is a

buildable lot and that's based on the City and their approval. There is a 20 feet x 66 feet envelope on one side of the power lines and similar to the other side. They can build a house. The house is not the issue, it is trying to conform with the rest of the neighborhood, the city, and the other houses in the area. Mr. Stephens added if it is not too intrusive, they can make it work for the neighborhood and for the betterment of the City by adding a few feet to the setbacks. If not, then they have every right to build on the lot the way it is.

Board Member Schira indicated the utility lines are, obviously, in the middle of the lot. He asked Mr. Stephens if they considered moving the Detroit Edison lines. Mr. Stephens answered they have considered it, but it was taken off the table for time and cost. Detroit Edison does not allow to build under the lines.

Chairman Caplan stated Mr. Stephens mentioned in his opening statement that he would be considering a variance to the front or the rear, but they are only asking for a variance to the front. Chairman Caplan indicated as far as the homeowner's perspective; the left side would be a lot better for them as far as their line of vision. Mr. Stephens indicated, personally, he probably would have split it; 7.5 feet in the front; 7.5 feet in the back. He indicated part of the decision was because of the driveway and the garage to have a flow. There is not an easement past the pine trees to come in for a driveway. There is an easement for utilities but not for the driveway. That is part of the reason why he liked it out more towards the front.

Board Member Schira indicated the letter misstates the requirements. Ms. Kreps stated it is the front yard setback.

Board Member Thorsell confirmed there is a satellite of the lot and then there is the site plan. In the satellite image, there is a sliver of land that is, potentially, this property. Board Member Thorsell asked if the sliver of land was considered on this site plan. Mr. Stephens stated in some places it says 90 feet and other places it says it is 89 feet. When they talked to the engineer, the measurement doesn't come out exact; then they look at the irons where they are located. Technically, it is 90 feet.

Ms. Kreps stated anything developed on this property would get the variance. The front yard setback would be reduced to 15 feet for all structures on the property.

Mr. Stephens asked if the Board would consider splitting it and doing 10 feet and 10 feet in the front and rear setbacks.

Open public comments.

Mr. Mark Greenwald, 4064 Cameron Court, Unit #1, stated he submitted a letter to the Board. Mr. Greenwald summarized his letter and indicated the proposed home would not conform and he would see the side of the house. Mr. Greenwald stated there is a buildable area without a variance, but he understood it was difficult because of the

power lines, but he did not see a hardship to get a variance. Mr. Greenwald stated he was not in favor of the variance for the items indicated in his letter.

Chairman Caplan read letters into the record in reference to the variance request. One letter was signed by all eight residents on Cameron Court which were strongly opposed to the granting of said variance and asked the ZBA to take their opposition into consideration.

Letter dated August 9, 2023 from Mark and Kelly Greenwald, 4064 Cameron Court was read into the record by Chairman Caplan. Mark and Kelly Greenwald opposed the variance and asked the ZBA to reject this variance.

Ms. Tammy Inch, 4061 Cameron Court, indicated they purchased their house eight years ago from a different builder. In summary, Ms. Inch opposed the variance, and the home would change the aesthetics of the neighborhood.

Chairman Caplan indicated the lot was purchased before the sub was developed and it gave everyone an opportunity to know that the piece was potential, as also brought up by Board Member Cousineau. Chairman Caplan indicated the lot split was done from the gentleman on Maple Road; split off the back of his property.

Board Member Thorsell stated he understood their concern of having the house built too close to the road because that would be out of conformance and aesthetics of the neighborhood but if they forced him to build within the current offset requirements, their house would be only 20 feet which may also look out of place in the neighborhood. If there was a compromise and splitting one way or the other, where their house is more conforming in appearance to the rest of the neighborhood, Board Member Thorsell asked if that would be something more acceptable. Ms. Inch stated she did not know; it is an odd lot; and is it truly buildable? She stated there would have to be a lot of accommodations made to make the rest of the neighborhood feel comfortable with their homes, and their investments and the by-laws that they follow.

Assistant City Manager Benson commented he understood in his conversations with Mr. Stephens that the access easement, originally, both this individual lot and the parcel that became Cameron Court were owned by the same people, or some people that at least had some sort of relationship, and that's how the easement was granted. Mr. Stephens stated the easement was granted from the original engineer and the developer. When they decided to turn over to new ownership, they made sure they had the easement along with the utilities, water, sewer, gas, electric, etc.

Mr. Josh Howard, 4046 Cameron Court, stated they have a unique perspective because they have kids and walk their kids every single day to the stop sign and back. There is no sidewalk there, but the houses are set far enough back. The proposed home would look out of place so close to the actual street. The proposed home would visually look better if it were on the westerly side, not the eastern side.

Public hearing closed.

Chairman Caplan stated the Board has a lot of options and it is a tough lot.

Ms. Kreps made some observations to the Board. The applicant has requested, specifically, a front yard setback variance. If in the Board's deliberation they are considering some other setback, such as rear yard or a rear yard/front yard combination variance, this would have to be re-noticed. This would also have to be agreed upon by the applicant.

Ms. Kreps indicated a survey of the property was provided. It demonstrates that with a 15-foot front setback, the home would be on the eastern side, would be 55 feet from the back of curb. There is a weird right of way along the frontage, and it varies from ten feet on the western side and extends as Cameron Road curves southward. The cross hatch on the survey in the front shows where the easement is for the access, which is about ten feet from the property line, which is the rectangle area to the right of way of Cameron Court. In the drawing, the pink line is Cameron Court right of way. The yellow highlighted is 55 feet to the back of curb. That's where the front building would start. It would be 55 feet from the back of curb where Cameron Court dips. The front of the house would 32 feet from the right of way of Cameron Court. This would be a little bit closer to Cameron Court than the other houses along Cameron Court, but it has been established it is not part of the condominium association. It is a unique parcel. There are several unique factors to consider such as the shallowness of the lot, the overhead power lines, the right of way. Without the easement, this road had no frontage onto Cameron Court. There are some practical difficulties in developing this lot. Ms. Kreps stated one of the letters indicated the hardship. This is not a use variance, so none of that applies. This is strictly a non-use dimensional variance situation for practical difficulty, not a hardship.

Chairman Caplan thanked Ms. Kreps for this information.

Board Member Cousineau stated in their discussion, the easement, and the actual right of way of Cameron Drive, there is a significant area which is not part of the lot but could be considered part of the setback. Typically, in a subdivision, the setback lines start at the right of way line of the road which is the purpose line on the survey. Ms. Kreps indicated the pink line is the right of way. The right of way sometimes comes into the property if it is from the center line of the road; or sometimes the property lines run alongside of the right of way. In this case, the right of way, and then a no man's land where the property line starts.

Assistant City Manager Benson indicated there are inconsistencies between the unofficial/official maps that Oakland County makes official and that we use on a day-to-day basis and then what they found when doing the survey and looking for the irons. On the survey, the property line, the yellow line, runs along the fence line. Then there is

a parcel. This is part of the homeowner's association. Assistant City Manager Benson showed where the easement was granted and gives it access to the right of way. On the other side of the line, this is not an uncommon tactic, there are blocks to provide common areas; the easement goes across this, but the no man's area is the open area on the south side. The hatched area is the access easement.

Mr. Stephens explained the 15.43 feet wide area which is undefined. He indicated the engineer said when you were engineering years ago and they were building Maple, which is between Milford and Commerce at that time, when you were dealing with swamps and dirt roads, etc., there are numbers that don't quite add up exactly, and then they catch it later and catches up to splits in lots and divisions down the road. In this case, it is Mr. Stephens understanding that when they plotted the condominium sub, that's what was left over from other history surveys.

Board Member Cousineau indicated this is a very significant issue. He thought the easement went across the entire frontage of the lot in question. Now it is only the westerly portion. The easterly portion, there is land we have no idea who owns it.

Mr. Stephens stated the easement of the utilities is on the east side. The utility easement has been written to accommodate that. The reason they wrote the driveway easement on the other end was for the driveway and maybe utilities as well, but that was before the drive access.

Board Member Cousineau stated he would like to get some clarification. Mr. Stephens indicated the eastern portion does not have a driveway ingress/egress easement; it is the utility easement. The applicant is asking for the driveway on the west side.

Board Member Thorsell indicated this is a case where both extremes are not acceptable. The full deviation in the offset is probably not acceptable. On the other end of the spectrum, restricting the owner to 20 feet also would not be in the same aesthetic theme as the rest of the neighbors. Both extremes are not acceptable, and some compromise would need to be involved to make something happen here.

MOTION and second by Board members Schira and Cousineau to table **VARIANCE REQUEST #PZBA23-003: 4072 CAMERON COURT, WIXOM, MI. 48393:** The applicant is seeking a total of one (1) non-use variance Section 18.03.050, Height and Placement Requirements, to permit a front yard setback of 15 feet rather than the required 35 feet; for further reconsideration and until this can be appropriately scheduled.

VOTE:

MOTION CARRIED

CALL TO THE PUBLIC:

No public comments.

STAFF COMMENTS:

Assistant City Manager Benson indicated it was nice to see everyone. They continue to move forward on the Renton redevelopment.

If there are any training opportunities that the Board would be interested in, to inform Assistant City Manager Benson, and he would be happy to facilitate.

COMMISSION COMMENTS:

Chairman Caplan thanked everyone for a good Board meeting today; the audience was respectable and there was good dialog.

ADJOURNMENT:

The meeting of the Zoning Board of Appeals was motioned and adjourned at 8:55 p.m.

Mona Freiburger
Recording Secretary