



**Forest Acres Zoning Board of Appeals
Minutes
February 12, 2024
City Council Chambers
6:00 PM**

I. Call to order

Pete Balthazor, acting chair, called the meeting to order at 6:00 PM.

- 1. Determination of a Quorum** – There was a quorum with the presence of Shirley Fawley, Derek Pace, Kate Usry, Jesse Smith, Will Owens, and Pete Balthazor. Robin O’Neil was absent. Shaun Greenwood, City Administrator, Keith Lindler, Building Official, and Eric Sapp, Code Enforcement Officer, were present.

II. Approval of Minutes

- 1. November 20, 2023** – Mr. Owens made a motion to approve; Mr. Smith seconded. Minutes were approved unanimously.

III. New Business

1. Appeal an action of a Zoning Official

5102 Lakeshore Drive. (McEachin); TMS 16702-05-05. Appeal of an action by a Zoning Official denying parking a food truck in a residential neighborhood (Section 21.7.2b).

Mr. Balthazor determined that the Zoning Official (Shaun Greenwood) and the Appellant/Applicant were present. He briefly introduced rules of procedure, noting that we would hear from the applicant and the Zoning Official. He invited the Appellant to describe their request and appeal.

Mr. McEachin introduced the appeal. He noted that his food truck was cited for exceeding the 19-foot limit for vehicles established in the Zoning Ordinance. He noted that his appeal is that the truck was constructed at 18 feet, but that additional length is created by the front bumper (2 extra feet) and rear bumper (3 extra feet). He noted that the front bumper is needed for the engine and the rear bumper is needed for the generator.

Mr. Balthazor, Ms. Usry, and Mr. Owens asked for clarification on which part of the truck is 18 feet. The applicant clarified that from hood to rear door (the chassis), the truck is 18 feet, but the bumpers extend it an extra 5 feet (it was the latter measure used by the city).

[Note: The applicant initially said the bumpers were together an additional 5 inches but clarified that he meant 5 feet, resulting in the 23 foot length cited]

Mr. Greenwood asked that the ZBA accept exhibit A as part of the applicant's appeal given that it wasn't included in the packet. Mr. Balthazor accepted this addition.

Mr. Greenwood went on to explain the City's position. He noted that current Code Enforcement had determined that the vehicle exceeds the 19 feet established by ordinance (for commercial vehicles parked on residential property) and measured the total at 27 feet. He noted that this was measured bumper to bumper, and the City believes this is the correct way to measure in accordance with the ordinance.

Mr. Balthazor asked who and how the measurement was made. Mr. Sapp, Code Enforcement Officer, discussed how he measured the vehicle (using a measuring wheel). Mr. Balthazor noted the large difference between 18 feet and 27 feet and the discrepancy between 23 feet (18 foot chassis and 5 foot in bumpers city by the Appellant) and the 27 feet measured by the City.

Ms. Fawley asked the Appellant/Applicant if he owned the property. He noted that he rents the property. She asked if the owner had signed a designation of agent, in accordance with requirements in the Zoning Ordinance. Mr. Greenwood noted that that would be necessary for a variance and certain other applications, but because this is the appeal of the Zoning Administrator's interpretation and that the tenant (rather than the owner of the home) is the aggrieved party, he is the appropriate appellant and doesn't need a designation of agency. Mr. Balthazor asked and received confirmation that the Appellant is the owner of the truck.

Mr. Owens asked further about the length of the vehicle. He asked if, perhaps, the 18 feet cited is just the cargo area and not the cab. Mr. McEachin noted that this may be the case.

Mr. Balthazor asked if there was any member of the public present at the meeting that wished to speak regarding the the appeal.

- John Kososki, a resident on Lake Shore, asked if the applicant could speak to how long the vehicle is on the property and how often it's used for commercial purposes. He noted his perception that the truck is almost always on the property. Mr. McEachin noted that the schedule varies but that they usually operate at night.
- Ms. Rodriguez, a resident on Lake Shore, noted her concern that if this is allowed (i.e., the measurement of the cargo area only in determining compliance with the ordinance) it will set a precedent moving forward. Mr. Greenwood noted that the City Council would have to take action to define how it's measured. He noted that the ordinance does not, for example, say "bumper to bumper" but that the City's administration interprets that to be the intent of the ordinance.
- Richard Jenkins noted that this seems to be a definitional question around the issue of "length". Mr. Balthazor confirmed that this is indeed an appeal over the length as measured and the appellant's assertion of how it should be measured. Mr. Owens noted that a determination by a previous Code Enforcement Officer was that the vehicle was in compliance. Mr. Greenwood confirmed and noted that the principle of estoppel says that,

even if the city erred in the past, we can't rely on that once the lack of compliance is revealed. We have to enforce the code.

- Heather Cairns noted her concern that the previous determination may have been made without actually measuring the truck.

Mr. Balthazor turned the floor back over to the Appellant. The Appellant thanked the board for their time.

Ms. Fawley asked that the chair state exactly what the statute requires. Mr. Balthazor read the appropriate section. He noted that the question before the board is whether the Zoning Administrator correctly interpreted and applied this section.

Mr. Balthazor noted that, absent any other language in the ordinance, his understanding would be that plain interpretation of vehicle length would be the greatest actual length that the vehicle takes up. Mr. Owens asked for clarification on what the board is considering. Mr. Balthazor noted that the request is that the vehicle stay on the property. The Zoning Administrator's determination is that it can't in that it's not in compliance with the ordinance; the board is considering whether or not to uphold this determination.

Mr. Greenwood clarified that it is indeed an up or down determination because, in accordance with state law, you can't get a variance on a matter of property use. That is why they have not requested a variance. The question is whether the board believes that the Zoning Administrator's interpretation of the ordinance (i.e., that "length" means bumper to bumper) is correct.

Ms. Fawley made a motion to uphold the Zoning Administrator's determination. Ms. Usry seconded. The motion passed 5-1 (with Derek Pace voting no).

2. Variance request

4942 Furman Avenue. (Branham); TMS 13916-08-01. Variance request to extend a non-conforming structure. The extension will result in a 14.4' encroachment into the setback along the property line on Converse Street.

Mr. Balthazor invited the applicant to present her case. Mary Beth Branham noted that she is requesting a setback variance to her corner lot. She noted that the existing structure is already non-conforming on the secondary front setback, as the house was built before current zoning was put into effect. She is requesting to be able to make an addition to her house that would extend the existing non-conformity but would not encroach any further into the setback. She noted that this would be to add a small laundry room that is desperately needed.

Ms. Fawley asked for clarification on where the addition would be. In the discussion the applicant confirmed that the addition would line up with the existing structure (i.e., not encroach further into the setback).

Mr. Lindler and Mr. Greenwood noted that the variance is needed because it's extending an existing nonconforming structure.

The applicant noted that what she's proposing is not inconsistent with the neighborhood.

Mr. Greenwood noted that there was written support in email form from the rear neighbor. Mr. Balthazor noted that there was no one present opposing the request.

Mr. Owens made a motion to approve the variance. Mr. Smith seconded. Motion passed unanimously.

3. Variance request

3200 Petigru Street. (Guthrie); TMS 14007-09-06. Variance request of 30' from secondary frontage along Beverly Drive for the installation of a swimming pool.

Mr. Balthazor invited the applicant to present his case. Mr. Guthrie noted that this request is similar to the previous one. This is a corner lot with the larger 35 foot setback on the secondary front. They are requesting a variance to install a pool. There were several letters in support from neighbors.

Mr. Balthazor noted that the property line is very far off the right-of-way, creating a unique situation. The property owner noted that he maintains the right-of-way.

Mr. Balthazor asked if there was another location on the property that could hold a pool. Mr. Guthrie noted that due to the slope of the lot and established significant gardening, the proposed location is the only viable location that's affordable. Mr. Balthazor asked if there would be another location or orientation that might minimize the variance request. The applicant noted that there are other locations on the lot but that that would involve significant expense and removal of trees. As it is proposed, there would not need to be any tree removal.

Mr. Balthazor noted that the location of the fence (in the right-of-way) plus the unusually large right-of-way makes this a unique situation. Most people would think the property line was much closer to the road than it is and that the variance would not need to be nearly as large (the owner of the property noted that they purchased the property thinking that the fence was on the property line rather than in the right-of-way). Ms. Usry noted that there were at least four letters of support from surrounding neighbors.

Ms. Fawley made a motion to approve the variance request. Mr. Owens seconded. The motion passed unanimously.

IV. Adjournment

Ms. Usry made a motion to adjourn. Mr. Owens seconded. The meeting was adjourned at 6:48 P.M.

Respectfully Submitted,
Andy Smith, Assistant City Administrator/Finance Director
(Administrative support of Zoning Board of Appeals)