

**Board of Zoning Appeals
February 28, 2024
Meeting Minutes**

Meeting called to order:

Chair Feick called the meeting to order at 4:30 pm. The following voting members were present: Mr. Delahunt, Chair Feick, Mr. Harris, Mr. Peugeot, and Vice Chair Semans. Alec Ochs represented the Community Development Department, Stewart Hastings represented the Law Department, and clerk Quinn Rambo was present, as well. Commission Liaison, Kate Vargo notified Staff in advance that she was unable to attend the meeting.

Review of Minutes from January 18, 2024:

Chair Feick called for a motion on the minutes from the January 18th meeting. Mr. Delahunt moved to approve the minutes as presented. Vice Chair Semans seconded the motion. All voting members were in favor of the motion and the minutes were approved unanimously, as presented.

Chair Feick swore in all parties that were present to speak about adjudication agenda item.

Adjudication Hearing:

- 1. 515 Cedar Point Road- An area variance to Zoning Code Section 1145.15(a) to allow the construction of an accessory structure in the "front yard" and allow setbacks of less than three feet in a R1-75 - Single Family Zoning District.**

Chair Feick introduced the application and asked for Staff report. Mr. Ochs stated the applicant was in the pre-process of replacing a lakefront accessory structure on his property. Cedar Point Road separated the secondary part of the parcel from the main part of the parcel. The proposed structure would be a 14' x 20' pavilion/deck on the lakefront / secondary parcel. The zoning code required that all accessory structures were permitted only in the rear yard. Accessory structures were permitted in a rear yard must also comply with a 3-foot setback from the side and rear property lines. The variances requested were to allow an accessory structure in the "front yard," and to allow an accessory structure to be located less than 3 feet from the property lines. The variances sought for this property would result in a built condition that fits within the neighborhood. Staff observed a street perspective from 2011 showing a structure in a similar location to what was proposed. Staff pulled half a dozen files from previous cases on Cedar Point Road like this from historic files. All the single-story structures in the pulled files were approved. Staff assumed that the structure would be the same 14-foot width as the parcel's 14-foot width, therefore putting the structure on the western and eastern property lines, but it was not clear. It was also unclear to staff what the northern setback would be, if any. Staff requested an updated site plan showing the proposed setbacks on February 6th, 2024. It was further suggested on February 9th, 2024, by Staff that the applicant receive a survey to confirm the location of the property lines. The requested information had not been given to Staff as of February 21st, 2024. Planning Staff suggested one of two options: 1. The Board of Zoning Appeals approved the variances requested at 515 Cedar Point Road parcel (55-00129.000) with the following conditions upon approval: a- all applicable permits must be

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obtained through the Building Department, Engineering Department, Division of Planning and any other applicable agency prior to any construction, b- before permits were issued, a survey would be provided to Staff showing that the structure was not encroaching onto Cedar Point Road or surrounding properties, c- the foot print would not expand beyond what was proposed, and no other accessory structures were built in the front yard unless a separate variance was obtained. Option two recommended by Staff, was that the Board of Zoning Appeals tabled the application until a survey and site plan were done simultaneously on the same document and brought back to the Board.

Chair Feick asked if there was anyone present to speak about the request. The applicant, Mr. John Tillery, came forward to speak. He explained that they were just replacing the existing deck and adding a larger footprint pavilion and requested that the Commission would allow him to build before a survey was completed. Mr. Tillery added that he was unaware Staff was asking for a survey until recently but did not want to hire a surveyor if the variance were not granted. Chair Feick asked if there were any questions from the Board. Mr. Peugeot asked what the plans for the structure were specifically. Mr. Tillery stated a pavilion, which would include a roof with six posts on a concrete block foundation. Vice Chair Semans asked Staff if there was a chance for encroachment on Cedar Point Road. Mr. Ochs stated that was why Staff was requesting a survey/ site plan because it was unclear where the structure would be in reference to property lines. Mr. Ochs stated that Staff was not concerned about the accessory structure in the front yard but were concerned about the setbacks for where the structure was being placed. Chair Feick asked the applicant what the timeline was for this project. Mr. Tillery stated there wasn't a firm date. Chair Feick stated that all applications, like Mr. Tillery's, included a site plan that showed exactly where the structure would be located. Mr. Tillery answered that there were approximately (28) structures on Cedar Point Road that did encroach on the road and that he had aerials of the other properties. Chair Feick stated aerials from the auditor's site could not be used and he did not feel comfortable approving the application without a survey. Mr. Delahunt asked if the structure would sit right where the landscape wall was located. Mr. Tillery stated the landscaping walls were located on Cedar Point property and the pavilion would be behind the wall. Chair Feick stated the walls did not fall under the same regulations as a fence would. Mr. Ochs stated that the walls would not fall under fencing regulations but if he was to review the walls today, they would be evaluated as a yard structure. Mr. Tillery stated the survey was going to cost approximately \$1400 and he would rather not spend the money on the survey if the project would not be approved. Chair Feick and Mr. Peugeot stated that they were both in favor of the application if they had proof that the structure would be on the applicant's property. Multiple Board members encouraged the applicant to reach out to Cedar Point about where their easement was located. Mr. Tillery stated that he was not worried about where the road easement was because he knew where it was located but more concerned about how far north, he could go for the size of the pavilion.

Chair Feick made motion to table the application until the applicant returned with a survey that showed exactly where the structure would be located. The motion was seconded by Vice Chair Semans. A vote was called and the motion to table the application passed unanimously.

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2. 1412 E. Farwell Street- An area variance to Zoning Code Section 1145.15 (a) to allow the construction of an accessory structure in the “side yard” in a R1-50 – Single Family Zoning District.

Chair Feick introduced the application and asked for Staff report. Mr. Ochs stated the applicant was in the pre-process of adding an accessory structure next to the existing main structure. The proposed structure was expected to be a 40' x 40' garage. Staff asked the applicant to supply a preliminary site plan to decide about the case. The zoning code required that all accessory structures were permitted only in the rear yard. The variance requested was to allow an accessory structure in the “side yard.” The proposed property was unique in the fact that the main structure was set back 135 feet from East Farwell Street, and the property was split into three parcels, and the main structure was landlocked on a parcel that fronts an undeveloped road and the site’s primary access point was East Farwell Street even though it was tucked behind homes on other properties. The other two parcels were used for access and block the third parcel from fronting East. Farwell Street. If the three parcels were combined, the site would be abutting two rights-of-ways. In a strict interpretation of the zoning code, as the site currently sits, the distance between the front property line along the undeveloped Taft Avenue. right-of-way (currently overgrown woods) and the nearest façade would be considered the front yard of the main structure. This was because the parcel with the main structure was landlocked and a stand-alone parcel. The frontage with the lowest quantitative amount of right-of-way would become the front yard. If the three lots of this application were combined, the distance between the main structure and E. Farwell Street (135 feet) would become the front yard. The side yard would remain the same in either scenario and there was no buildable backyard in either scenario. The site operated in the past as a church use, which was a non-conforming use in this zoning district. Staff asked the applicant to supply documentation of the most recent use of the structure to determine the non-conforming status. A letter explaining the continued use as a church at 1412 E. Farwell Street was given to Staff on February 9th, 2024. The site plan was delivered to Staff on February 12th, 2024. Planning Staff supported the variance requested at 1412 E. Farwell Street and suggested the following condition upon approval that all applicable permits must be obtained through the Building Department, Engineering Department, Division of Planning, and any other applicable agency prior to any construction. Chair Feick asked if it was one large parcel or multiple. Mr. Ochs stated that it was currently three parcels, and it was the plan of the applicant to combine the parcels.

Chair Feick asked if there was anyone present to speak about the request. Mr. Pij Hunter, the applicant, came forward to speak on behalf of the application. Mr. Hunter stated that the building would initially be used as an accessory building and then later to become a workshop that would offer lessons. Chair Feick asked if it was Mr. Hunter’s intent to combine the three parcels. Mr. Hunter stated if he needed to combine the parcels he would. Chair Feick asked the Board if they had any questions. Mr. Peugeot asked where the accessory structure would be located on the map. Mr. Hunter stated it would be starting at the back near Taft Street coming forward towards Farwell Street, near the end of the driveway. Ms. Marietta Johnson, 1420 Farwell Street, stated that she had no objection to a pole barn being built but she was opposed

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to the building being used for youth activities. She added that the existing building was not being used as a church and was not registered with the State as a church. Chair Feick asked what was the proposed use of the building. Mr. Hunter stated currently there was not a specific use other than storage but, in the future, he would like to use the structure as a workshop to teach young men basic vehicle maintenance. Chair Feick stated that he was applying for an accessory structure, not for a specific use. Mr. Hunter stated there would not be scheduled classes but spontaneous lessons. Chair Feick stated that would be an issue because the accessory structure would then become a classroom and would not be allowed as a permitted use. Mr. Hunter stated most churches have classrooms. Chair Feick agreed that most churches do have classrooms located in the Church, but the classrooms Mr. Hunter proposed would not be allowed in the accessory structure. Mr. Hunter stated that he would keep it strictly as an accessory structure. Vice Chair Semans stated he saw four or five parking spots and asked how much parking was available. Mr. Hunter stated there was additional parking in the middle, along the drive, and they planned to add additional parking next to that building. Mr. Delahunt asked if it was currently a church. Mr. Hunter stated it was a private church. Chair Feick asked what were the proposed dimensions of the accessory structure. Mr. Hunter stated a 40-foot by 40-foot structure. Mrs. Johnson returned to the podium and stated that she was okay with a pole barn but if it was for young people she was opposed because she has already had issues with young people being disruptive at Mr. Hunter's property. Chair Feick told Ms. Johnson that the Board was limited in what they could approve with the current application, which was the building's size and location. The Board did not have the authority to make other requirements. Mr. Hunter stated that he had kept Ms. Johnson in mind when he chose the location of the accessory structure to keep it away from her backyard. Mr. Ochs stated the variance was not for use tonight and if a use variance was requested a new application would have to be submitted and the same process of notifying everyone within 300 feet would take place again. Ms. Donna Alexander came forward and stated that she knew the property was being used as a residence, and wondered how it would be enforced if Mr. Hunter was not following the rules. Chair Feick stated that a neighbor would have to place a complaint with the City and Staff would have to investigate the complaint.

Chair Feick called for a motion. Vice Chair Semans made a motion to approve the application with Staff conditions and that all parcels in question be combined. The motion was seconded by Mr. Peugeot. A vote was called and the motion to approve the application with conditions passed unanimously.

Other Business:

Mr. Ochs stated there would be a meeting next month with four items on the agenda. There was discussion among the Board Members on availability because Chair Feick would be unable to vote on two agenda items, due to conflict of interest.

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Adjournment:

Mr. Delahunt moved to adjourn the meeting and Mr. Harris seconded the motion. All members approved the motion, and the meeting ended at 5:15 pm.

Next meeting:

March 21, 2024

APPROVED:

Clerk

Chair/ Vice Chair