

The City of Milford Board of Zoning Appeals met in Regular Session in Council Chambers at 745 Center Street on Thursday, October 27, 2022.

There being four new BZA Members and no BZA Chair or Vice Chair, Christine Celsor called the meeting to order at 6:10 PM.

Present: Brooke Shanks, David Monroe, Jon Lenihan, Janet Cooper, Kodi Sargent.

Staff: Christine Celsor, Planning and Community Development Coordinator.

Visitors: Emily & Joe White, 845 Walnut Street.

Roll Call: All members were present at the meeting.

Election of Chair and Vice Chair

Ms. Shanks made a motion to nominate Mr. Lenihan as Chair. Ms. Sargent seconded the nomination. All members voted yes. Mr. Monroe made a motion to nominate Ms. Cooper as Vice Chair. Mr. Lenihan seconded the nomination. All members voted yes.

Mr. Lenihan swore in everyone who wished to speak.

VAR 22-02 White Setback Variance Request

Ms. Celsor read the Staff Report into the record:

Project: White Setback Variance Request
Location: 845 Walnut Street, Milford, OH 45150
Property Owner/Applicant: Joe and Emily White
845 Walnut Street
Milford, OH 45150
Tax Parcel Id: 210719.043A
Zoning: R-3, Single Family Residential District
Existing Use: Single Family

BACKGROUND

The subject property is a single-family residence located on the west side of Walnut Street. The applicant is proposing to construct an addition to the first floor and to add a second story. The side yard setback required in the R-3 District is 6 feet. The proposed addition would have a side yard setback on the south of only 4.9-5.4 feet. The front yard setback required in the R-3 District is 30 feet. The proposed addition would have a front yard setback of 29.3 feet. The proposed porch on the front of the house may extend into the front setback a maximum of 50% of the required front yard setback without a variance. The applicant is requesting a variance to reduce

the south side setback from 6 feet to 4.9-5.4 feet and to reduce the front yard setback from 30 feet to 29.3 feet

ADJACENT LAND USE AND ZONING

North: R-3, Single Family Residential;

South: R-3, Single Family Residential;

East: B-3, Commercial, St. Vincent de Paul;

West: R-3, Single Family Residential;

SUMMARY

1. The subject site is a one-story ranch, 1,000 square foot house, built in 1953.
2. The front face of the house is 29.3 feet from the front property line.
3. The left side of the house is 4.9 feet from the left side property line.
4. The building is considered to be a legal, nonconforming structure.
5. The White's would like to construct an addition to the front of the building to square it off and construct a second story addition onto the house which increases the encroachment into the side yard setback and front yard setback.
6. Section 1197.06 Nonconforming Structures of the Milford Zoning Ordinance, specifies, that no such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity.

ANALYSIS

The BZA is to consider whether the applicant should be allowed to construct an addition 4.9-5.4 feet from the side property line and 29.3 feet from the front property line. The applicant has the burden to show that a practical difficulty exists.

All of the factors outlined in section 1131.11.D. do not need to be satisfied. They shall be weighed together in the analysis. The factors to be considered and weighed in determining whether a property owner seeking a variance has encountered practical difficulties in the use of his property include, but are not limited to:

1. 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 non-conforming and inharmonious uses, structures or conditions;
The subject house was constructed prior to Milford's adopted zoning. The lot has a width of only 50.44 feet whereas the R-3 District now requires a minimum lot width of 60 feet. The subject house as it is does not meet zoning requirements for side and front yard setbacks.
2. Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance;
N/A
3. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;
Unknown. It may be possible to construct an addition that meets the required setbacks.

4. Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;
The daughter of the neighbor to the north has expressed concern about the size of the addition (see email from Susan McDaniel dated September 7, 2022). There are two trees providing a buffer between the properties. Clarification should be provided as to whether these trees would remain.
5. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, and trash pickup;
N/A
6. Whether the property owner purchased the property with knowledge of the zoning restrictions;
Unknown
7. Whether special conditions or circumstances exist as a result of actions of the owner;
There does not appear to be any special conditions that apply in this case.
8. Whether the property owner's predicament feasibly can be obviated through some method other than a variance;
Unknown
9. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance;
Substantial justice requires that the interests of the community, neighborhood and adjoining property owners be given due consideration. The applicant bears the burden of proof to the satisfaction of the Board of Zoning Appeals to show that his proposal will not be a detriment to the neighborhood.
10. 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.
Staff does not recommend granting the variance without consideration of additional information.

RECOMMENDATION

Staff recommends getting clarification as to whether the two large trees on the north side of the property would be removed as part of the proposed project. Staff also recommends that the applicant provide clarification as to whether an addition could be built without a variance.

DISCUSSION

Ms. White: We've been looking for houses for two years. This was our starter home, 1,000 square feet, that we bought in 2009. We realize that in order to get something that is a little bit larger in our budget we would almost have to move out of Milford but we own a business in Milford. I walk to work every day and we would prefer not to leave the area but we knew we couldn't add on. The lot is small. Under his brother's recommendation, he's like you guys should add a second story. So he started to look into that and then the more that we looked into it, the shape of the house wasn't super conducive to a second story and so that's when we thought it would make the most sense to just square the house off and add the second story. Essentially the house is in a shape of an "L". We essentially want to square it off. So the encroachment on the side yard wouldn't necessarily increase. It would just be squared off. We wouldn't be adding an addition that would encroach more on Cherie's property. We would square off the front and add a small front porch. Our goal was to work with our current structure and continue growing in Milford instead of trying to find a home elsewhere.

We reached out to Cherie and we also have a good relationship with Susan McDaniel and Frances McDaniel. We did a construction project a couple of years ago. We added a garage behind our house and Frances and Susan were both concerned with that then and we worked with them and in the end they were very happy with what we built in the back. We shared all this information and said if you have questions let me know, also feel free to contact Christine. Frances's house is a two story house with windows on the side. The way that we have the plot for it currently, none of our windows would shine light into her windows. Everything is going to be a little higher up and our house wouldn't be any taller than her house. And as far as the trees go, we have looked at it and we do not plan on removing the trees. We might have to cut back a couple of branches but we love the trees. The goal is to keep everything as in tact as possible, and work with Frances and Susan on it.

Mr. Lenihan: Any questions for the applicant? Could you clarify the nature of the discussions with Susan because the note that she sent to us paints a different picture of the garage situation?

Ms. White: She doesn't like it?

Mr. Lenihan: Has a negative effect on their property value. The note mentioned some concerns with not only the trees but also the garage. I'm only asking because your version is different than what she has expressed to the Board.

Ms. White: She never said anything to us about it.

Mr. Lenihan: The recent concern mentioned the trees and the garage project as a whole.

- Ms. White: The garage has siding on it. It matches the house perfectly. At first I didn't think she liked the garage but when we put the siding on I thought that she liked it. Or at least her mom liked it.
- Mr. Lenihan: Maybe that's the discrepancy here is one writing on behalf of the other. So the trees, you don't plan to remove? Or you'll trim them but not remove them.
- Ms. White: Yeah, if there's any branches that are hanging over the house, we'll probably trim those a little bit but we do not plan on removing them. They are beautiful.
- Mr. Lenihan: Questions or comments for the applicant?
- Ms. Shanks: I have a question. So currently the front of your house is at 29.3 feet so the same is going to be when it's finished, this addition. Where would the porch come out to then?
- Ms. White: Five feet. We will square it off to where it's still 29.5. The reason that we were doing the variance is because the front porch will come out five feet.
- Ms. Celsor: If I could just clarify, the front porch doesn't require a variance. It's just because it's less than 30 feet, the front of the house.
- Ms. White: Correct.
- Mr. Lenihan: It's similar to the side, because your adding more structure within the setback. It's not the encroachment of the porch. You're adding height that's within the front setback.
- Ms. White: There are other houses on Walnut Street that don't follow the 30 foot setback. We wouldn't look awkward.
- Ms. Shanks: Just to clarify, currently the side is 4.9 feet to the side and the proposed end plan would be 4.9 feet still. And the same for the front. It's currently 29.3 and at the end it will still be 29.3.
- Mr. Lenihan: The eaves of the new addition, maybe Christine you can answer this, the eaves of the new addition, what is the permission of those into that setback?
- Ms. Celsor: I'm not sure if the Zoning Code is that specific, about whether the eaves count.
- Ms. White: We currently have eaves on the house and our plan is to build straight up.
- Mr. Lenihan: Sounds like our discussion is whether or not increasing the size of the house, does that encompass enlarging the non-conformance of the property.
- Mr. Monroe: I just have one last question. The trees in question, they're along the side of the property that would not be getting squared off, correct?

Ms. White: The portion that is getting squared off is against Cherie's property and Cherie is in support.

Mr. Lenihan: And I'll note that there are no participants from the public here. And we've heard one email that I think staff has addressed from a neighbor.

Mr. Monroe: Would it be ok to ask one more question of Emily? It sounds like your intent was to keep the trees if possible. Have you engaged with any architects or construction companies to confirm?

Ms. White: The trees are on her property. She considers them her trees so I treat them as her trees.

Mr. Lenihan: Have you evaluated options to move rearward?

Ms. White: There's no way to go back.

Ms. Shanks: By doing this it's not increasing the non-conformity. It's not changing this current setback in the front or on the side. I feel that the neighbor was concerned about her property value and this seems like it's just going to positively impact her property value. They're addressing the trees and also want to keep the trees.

Ms. Shanks: Motion to approve the variances with the condition that the trees, we're going to try to save them.

Ms. Sarget: I second the motion.

Ms. Celsor: Can I just ask, the "try" might be a little vague.

Ms. Shanks: I would be fine to motion just to approve the variances.

Ms. Shanks: I move to approve the variances upon the condition that their architect says the trees can stay.

Mr. Lenihan: Maybe I'll rephrase, we would motion to approve the variance on the condition that the trees will only have minimal trimming and if they need to be removed they will resubmit for further discussion. Is there a second?

Ms. Cooper: Second.

Mr. Lenihan: Christine, if you'd like to take a vote?

Ms. Celsor: Ms. Shanks?

Ms. Shanks: Yes.

Ms. Celsor: Mr. Monroe?

Mr. Monroe: Yes.

Ms. Celsor: Mr. Lenihan?

Mr. Lenihan: Yes.

Ms. Celsor: Ms. Cooper?

Ms. Cooper: Yes.

Ms. Celsor: Ms. Sargent?

Ms. Sargent: Yes.

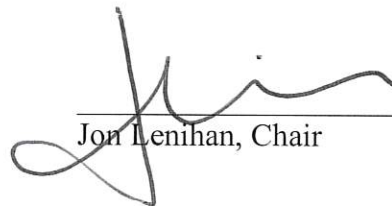
The motion carried by a 5-0 vote.

ADJOURNMENT

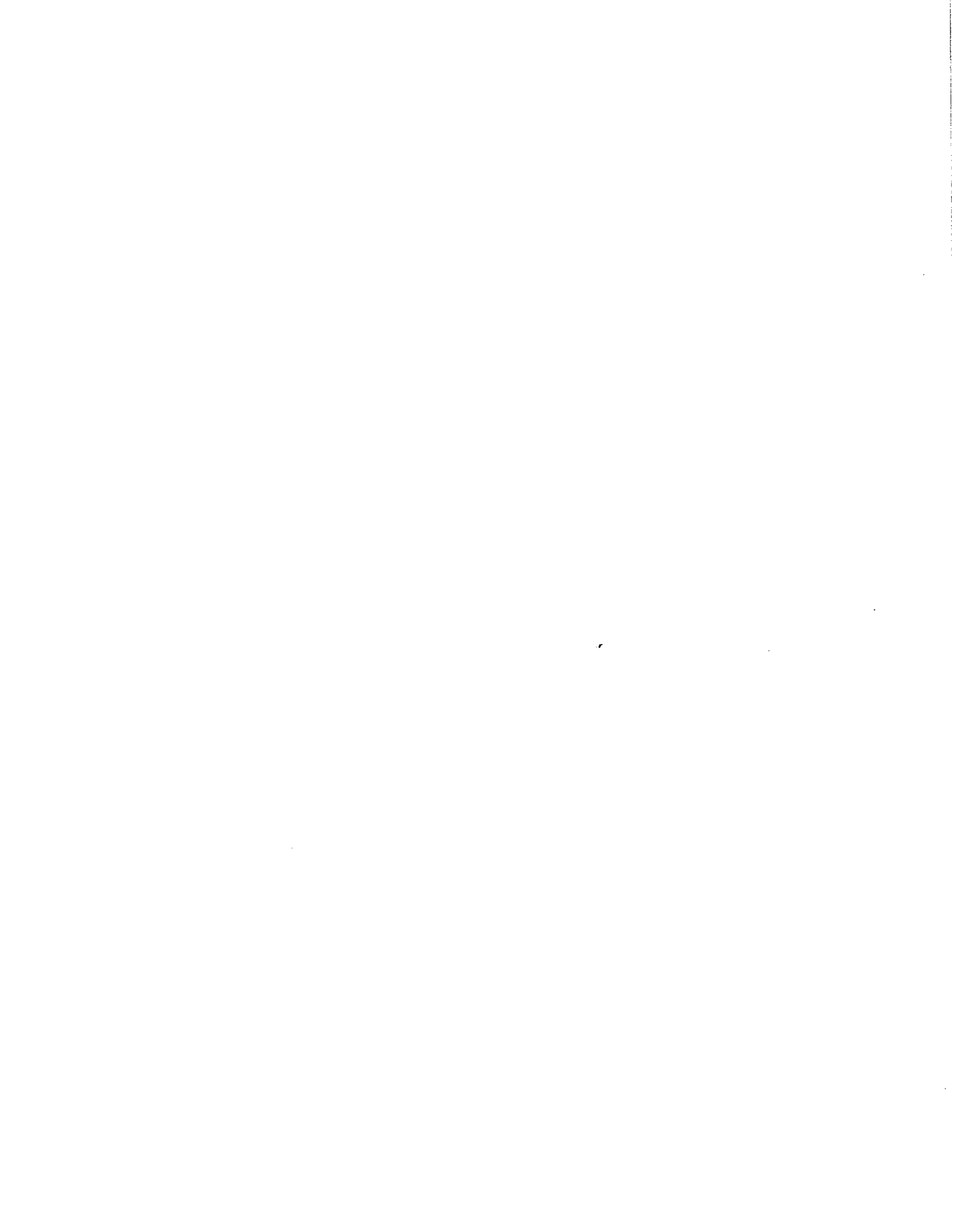
There being no further business to come before the Board of Zoning Appeals tonight, Mr. Lenihan made a motion to adjourn the meeting at 6:36 pm; Ms. Cooper seconded the motion. A 5-0 vote carried the motion.



Christine Celsor, Planning and Comm. Dev.



Jon Lenihan, Chair



CITY OF MILFORD
BOARD OF ZONING APPEALS
October 27, 2022 6:00 p.m.

SIGN IN SHEET

NAME	ADDRESS
Emily + Joe White	845 Walnut St

