

**RESOLUTION NO. 2022-1**

**Case No. VAR 22-02**

**A RESOLUTION APPROVING A SETBACK VARIANCE TO ALLOW THE  
CONSTRUCTION OF AN ADDITION TO THE EXISTING HOUSE AT 845 WALNUT  
STREET**

**WHEREAS:** Joe and Emily White (Applicants) have applied for a variance to construct an addition to the existing house at 845 Walnut Street within the front yard and side yard setback requirements; and

**WHEREAS:** the City provided mailed and published notice of a public hearing to consider the proposed variance as required by law; and

**WHEREAS:** the public hearing to consider the proposed variance was held on October 27, 2022; and

**WHEREAS:** at the hearing, Ms. White was sworn in; and

**WHEREAS:** at the hearing, Applicants requested 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; and

**WHEREAS:** the Milford Board of Zoning Appeals (BZA), has considered the application, applying the practical difficulties test outlined in Section 1131.11(D) of the City of Milford Zoning Code; and

**WHEREAS:** after due consideration of all evidence and reports offered at said meeting makes the following findings of fact and conclusions of law.

**NOW THEREFORE,** be it ordained by the Milford Board of Zoning Appeals that these Findings of Fact and Conclusions of Law are hereby adopted:

**FINDINGS OF FACT**

1. The property at 845 Walnut Street, Milford, Ohio 45150 (the "Property") is located in the R-3, Single Family Residential District in the City of Milford and subject to the City's Zoning Ordinance.
2. Joe and Emily White own the Property.
3. The subject building is a one-story ranch, 1,000 square foot house, built in 1953.
4. The front face of the house is 29.3 feet from the front property line.
5. The left side of the house is 4.9 feet from the left side property line.
6. The building is a legal, nonconforming structure.
7. The front yard setback required in the R-3 District is 30 feet.

8. The side yard setback required in the R-3 District is 6 feet.
9. Applicants want to construct an addition to the front of the house to "square it off" and to construct a second story addition onto the house which increases the encroachment into the side yard setback and front yard setback.
10. The proposed addition would have a front yard setback of 29.3 feet.
11. The proposed addition would have a side yard setback on the south of 4.9-5.4 feet.
12. Under section 1197.06 "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."
13. The BZA conducted the hearing in accordance with R.C. 2506. Ms. White testified at the hearing and Ms. Celsor provided additional testimony concerning the application of the Zoning Code.

### CONCLUSIONS OF LAW

1. The BZA is authorized to grant area variances under Section 1131.11 of the Zoning Code.
2. In order to grant an area variance, the BZA must determine doing so will not be contrary to the public interest. Code Section 1131.11(A).
3. Under Section 1131.11(D), the BZA must review each application to determine if it complies with the purpose and intent of the Zoning Code and conclude that the literal enforcement of the Zoning Code will result in a practical difficulty.
4. "Practical difficulty" is governed under ten different factors set forth under Section 1131.11(D). The BZA considered and weighed each factor together in analyzing the application.
  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 BZA determines that the subject house was constructed prior to the adoption of Milford's Zoning Code. The lot has a width of only 50.44 feet whereas the R-3 District now requires a minimum lot width of 60 feet. Consequently, Applicants' house currently 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;  
*The BZA determines that this factor is not applicable.*
  3. Whether the variance is substantial and is the minimum necessary to make possible the reasonable use of the land or structures;  
*The BZA determines that this factor is 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 BZA determines that there are two trees providing a buffer between the Applicants' property and the adjacent property. Applicants will not remove the trees and only perform minimal trimming to maintain the buffer.*
5. Whether the variance would adversely affect the delivery of governmental services such as water, sewer, and trash pickup;  
*The BZA determines that is factor is not applicable.*
6. Whether the property owner purchased the property with knowledge of the zoning restrictions;  
*The BZA determines that this factor is unknown.*
7. Whether special conditions or circumstances exist as a result of actions of the owner;  
*The BZA determines that there do 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;  
*The BZA determines that this factor is unknown.*
9. Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting a variance;  
*The BZA determines that the spirt and intent behind the zoning requirement and substantial justice requires granting the variance subject to the condition requiring maintenance of the two trees as a buffer with only minimal trimming permitted. Section 1131.11(F) permits the BZA to impose conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the interest of the furtherance of the purposes of the Zoning Code. Applicants agreed to this condition at the hearing*
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.  
*The BZA determines that the granting of the variance subject to the condition set forth above under Section 1131.11(F), requiring maintenance of the two trees as a buffer with only minimal trimming permitted will not confer any special privilege that is denied by the applicable set-back provision in the R-3 zoning district. Applicants agreed to this condition at the hearing.*

Having made the above Findings of Fact and Conclusions of Law, the BZA unanimously by a vote of 5-0 approves Applicants' area variance request with the condition that the trees will be maintained as a buffer with only minimal trimming permitted.

IT IS SO ORDERED.

CITY OF MILFORD BOARD OF ZONING APPEALS

DATE: 1/26/2023

[Signature]  
Jared Hoop  
[Signature]

[Signature]  
Brook Scott