

Sheffield Lake Zoning Board of Appeals Minutes  
Held February 21, 2019

The regular meeting of the Sheffield Lake Zoning Board of Appeals was called to order on Thursday, February 21, 2019 at 7 P.M. in Council Chambers with Chairperson Jancura presiding.

ROLL CALL:

Present: Jancura, Tatter, Reilly, Harper, Wright, Radeff, Mayor Bring, Law Director Graves

Attending: Councilperson Gee, Applicants

APPROVAL OF MINUTES: October 18, 2018 - \*Motion by Harper/Second by Reilly to approve the minutes as presented. Yeas All.

Council Representative Radeff report: Councilman Radeff advised at our last meeting we did approve the rezoning for the storage condo's and I am not sure when that is going to start but we did approve it. You had approved the rezoning for that previously. So, that will be starting soon.

Planning Commission Member Wright report: Member Wright advised at last night's meeting, we had taken all of the individual parts that Members of the Commission had revised and assembled them into one document of the revised Master Plan for the city. We made some edits and some omissions. Member Pugh will be putting the newly revised Master Plan together to submit to Superintendent Hastings for his review. Chairperson Jancura asked time frame? Member Wright answered the next couple of meetings it should be all said and done.

OATH ADMINISTERED

As provided in 1353.37 of the Sheffield Lake Building Code, procedure at hearings, an oath was administered by Chairperson Jancura to all members of the audience who would be speaking at this meeting.

CASE#19SFL-VAR001

REQUEST FOR A VARIANCE AT 5165 East Lake Road

Applicant Mr. Edward Williams, 5165 East Lake Road advised I have the drawing if anyone hasn't seen it for what I propose to build. Chairperson Jancura clarified so, you are seeking 3 variances; one is exemption from compliance of required lot. It is an area that requires a 9000 square foot lot and you are requesting a lot size of 6254.5 which is a variance of 2745.5 square feet. A second variance requesting non-compliance from 1133.05; lot width is required 90 feet and owner proposes width of 89.35 feet which is a .65 foot variance. Your third request is a non-

conforming with a rear-yard setback which is required to be not less than 30 feet in depth and you are requesting rear yard of 10 feet which is a variance of 20 feet. We have your proposal and we have seen all the drawings, so what we will do is ask a series of questions.

Chairperson Jancura stated in terms of your variances, it is for an area variance which is the standard of a practical difficulty. She continued I notice that you own two parcels, so this is the parcel that faces the lake. Mr. Williams answered correct. Chairperson Jancura continued but you also have one that faces south which a house is already built upon. Mr. Williams answered yes, that is my residence. Chairperson Jancura asked what do you intend to do with what you have proposed to build? Mr. Williams answered it is primarily being built for my Father who has been a resident for about 60 years and he will be occupying the first floor of this structure and that was the primary concern was to create an in-law suite for his residence. He still lives here in Sheffield Lake on Harris Road and the property is just getting a bit much for him. I live at the house next door and my sister lives about four doors to the east. Chairperson Jancura asked you are the house that is on the south side? Mr. Williams answered yes, the big brick house. Chairperson Jancura asked have you ever thought of joining the lots because this is a substantial variance? Mr. Williams answered I actually, years ago had them split, it was one parcel. I was told at that time that I could not build a structure on a single lot. So, whether that was correct or not I don't know and that is the reason that I have gone in the direction that I have. Chairperson Jancura asked when did you do that? Mr. Williams answered somewhere between 7 and 10 years ago. Chairperson Jancura asked when you split, did anyone ever tell you that you were going to have a possible problem. Mr. Williams answered when it was split, I actually went to the Zoning Board at the time back then and got approval but it has long since expired. Chairperson Jancura stated so you got approved for this lot split obviously because you got it. Mr. Williams stated approval on the lot split and a follow-up on construction on a dwelling on the north parcel. Chairperson Jancura clarified, so you knew that this would be a possible problem. Mr. Williams answered yes, not a lot of Sheffield Lake lots encounter no problems. Mr. Ken Hicks used to live on the corner there and I was good friends with him and he was actually the Chairman on the Zoning Board then but he hasn't been with us in years. Chairperson Jancura asked if the variance is not granted, what will you do? Mr. Williams answered I don't know, I will probably step back and re-assess it. It is one of those things that I didn't want to take an adversarial approach to but I am hoping that it is approved. If not, I will step back and see what my options are. Chairperson Jancura asked is this a garage? Mr. Williams answered yes. Chairperson Jancura asked will you take that down? Mr. Williams answered yes. Member Reilly asked are these plans old? Mr. Williams answered no, I had them done some months ago. Member Reilly stated I see to the west there a proposed garage and I thought there was

already a structure sitting there. Member Harper stated it is right here. Mr. Williams answered oh no, that is existing now and has been there for over 15 years. Chairperson Jancura asked so you are redoing everything? Mr. Williams answered the front lot is not being touched and that garage, if it does say proposed has been there for over 15 years. Member Wright asked you say that you had already requested these variances and then were approved for them? Mr. Wright answered yes, I did not have drawings at the time. I just said proposed house on this lot with the same basic compliance, it would be too tight on the back. I did not know that the frontage was not in compliance at the time being 90 foot and the square footage I wasn't overly concerned about because all the lots in the area have square footage less than lot. Chairperson Jancura asked so 10 years ago you were approved to build this house? Mr. Williams answered not this house but a house but I did not have plans at that time because I knew that it was a process that I would have to go through because if they would have said no then I obviously wouldn't be here now. There was a brief discussion of 10 years ago Mr. Williams creating the unbuildable lot, approvals that Mr. Williams states were granted back 10 years ago, footages, etc. Member Tatter asked what is the hardship? Mr. Williams answered I guess I just look at it as would the city be better off with this house instead of a garage. Chairperson Jancura asked so there is no other way that you could accomplish what you want? Mr. Williams answered I would need some kind of action from this Board to do anything. Chairperson Jancura asked why did you do the lot split? Mr. Williams answered it was with the intent to create a buildable lot there behind my property.

\*Motion by Reilly/Second by Tatter to close presentation. Yeas All.

#### QUESTION AND ANSWER PERIOD

Member Reilly advised normally I would not even consider granting a variance but given the neighborhood, it fits right in. Despite the fact that he was given assurances and he did all this under the assumption that he probably would be able to do it and it does fill up an empty lot and brings in tax dollars and fits right in with the buildings as well as addressing the needs of his family. Anywhere else in the town I would probably say no but as you know, this stretch of area is kind of unique.

Member Tatter advised I don't see where there is a practical difficulty that has been established. So, to me all of the points are moot.

Member Harper advised I tend to agree, I just think for the size of the lot that is a lot of house. That lot right there is maybe  $\frac{3}{4}$  of the lot next to it but the structure is twice the size. Mr. Williams advised the footprint of the house is very similar to the footprint of the neighboring house.

Chairperson Jancura advised I take a bit of issue when 10 or 20 years down the line you are looking to sale. There is just a lot going on on these 2 parcels; you have a main house, you got rental property over here and now you got to build another

house here. You have really close proximities, you have rentals, you have single family. Mr. Williams advised the actual people in the neighborhood, on the south of Edgewater on the lake, probably 75% of the homes are rentals. Chairperson Jancura stated I do know that and I understand that. Mr. Williams added so I am not upsetting the neighborhood. Chairperson Jancura advised part of the Master Plan that Mr. Wright and the Planning Commission are working on is to make the lakefront more user friendly and encourage business and to almost get away from rentals, we would like more homeowners and have active participation and a little bit less rentals, especially on the lakefront and really use the lakefront and Edgewater to that end. Yes, I know that whole area is unique and doesn't really conform as most of Sheffield Lake doesn't conform to any other part of Sheffield Lake but it is just a bit much plus the fact that I think I am in agreement with Ken and Matt. There is no practical difficulty and if there was one he created it himself 10 years ago. Member Wright asked you know I am new on this Board, explain to me what the difficulty is to him adding onto this existing structure versus this whole separate lot, separate building. Chairperson Jancura advised if he were to add on he is making a whole other residence, so he would have like a 3-family residence. There was a brief debate of it technically not being a 3-family resident because of the 2 rentals in the back. Mr. Williams stated in the event that I am denied then I may pursue an addition instead as an alternative. Mayor Bring advised when Mr. Williams did come to us we had the discussion and the building that he resides in now is probably one of the much older buildings that we have in the City of Sheffield Lake and we had the discussion of him to proceed and the discussion that we had was a separate building would probably be ascetically more pleasing to the area. He did line it up to not ruin any views in driving down Lake Road. Member Wright stated if we do not allow him to build, there remains this unbuildable lot. Chairperson Jancura rebutted there is a garage on it that he created. Member Tatter concurred. After a brief discussion, \*Motion by Reilly/Second by Tatter to close the discussion. Yeas All.

**\*Motion by Reilly/Second by Wright to approve the variance. ROLL CALL FOR APPROVAL: Yeas – Reilly, Wright/Nays – Harper, Tatter, Jancura. VARIANCE DENIED DUE TO NO FINDING OF PRACTICAL DIFFICULTY.**

**CASE#19SFL-VAR002**

**4260 E LAKE ROAD, currently zone B1 and request to allow the property to remain R1 so that it can be insured as a home.**

Chairperson Jancura swore in Applicant Jennifer Hart for testimony. Chairperson Jancura advised we have a copy of a purchase agreement but your name is not on that agreement, only your fathers is on the agreement. Mrs. Hart advised he is in Florida. Chairperson Jancura asked do you have authority to represent him, do you have a power of attorney or any official document? Mrs. Hart answered no. Chairperson Jancura explained we need a power of attorney from him to represent

him before we can go forward with this application. Mrs. Hart asked can Mr. George Kolesar, the owner speak? Mr. Kolesar addressed the Board. Chairperson Jancura asked is the intent to continue to be used as a residence? Mr. Kolesar answered yes. Chairperson Jancura asked why are you requesting 100% of the building value, if it is damaged? Mr. Kolesar answered my understanding was that no bank will finance this because if this property God forbids burns down, it has to be rebuilt for commercial purposes only. I have had so many buyers just walk away from it because they don't want to deal with this. It is frustrating, I have had this thing for 3-1/2 years and I am trying to sell it and I live in Elyria and I am running out of money to keep this thing viable. I have a title guarantee that my brother got and the bank did this stuff for the title guarantee and it says it is a Rowelyn allotment. At this time it was written, only lot 5 & 6 were zoned commercial. Now, I talked to David Graves and he said that the title company just copied whatever in 1966 and this thing was switched to commercial only. How come my brother bought this in 1979 and he had no idea, why wasn't that pointed out to him? Member Tatter answered the real estate agent or the title company for not catching the zoning. Mr. Kolesar advised banks will finance this but they have to have 20% down. Member Tatter asked your point is? Mr. Kolesar stated what she asked about 100%, what does that mean? Chairperson Jancura read and explained under our code 1153.06, what you are seeking non-compliance from is destruction by an act of God that states "when a building, the use of which does not conform to the building code for the district in which it is located, to the extent of not more than thirty percent of its total building replacement cost may be restored and extended. You want a 100% percent of the building value and her bank is saying they want 100%. Chairperson Jancura advised Mrs. Hart, you are going to use this as a house? Mrs. Hart answered yes. Chairperson Jancura answered we may grant this with your condition, that if it burns down or the house is somehow demolished, you can use it as an R1 anymore, it has to revert back to a business. That you are not allowed to build on it, you can't change it, it has to be and remain as it is. The reason why this is a concern and Mr. Wright can probably speak to this is exactly where that house is at we are trying to get more businesses there because you have businesses on either side. I walked by it this afternoon and I think even the driveway is in the back? So, it is an odd location for just a residence and we are trying to develop our business zone. We are also giving and encouraging a spot variance which is what we do not want to do anymore. So, you are asking for a use variance, the compliance and the standard for which is much higher than what we just actually denied Mr. Williams. The fact that you are just trying to buy the house, that is not a hardship because you can buy another house. The fact that you might not be able to sell the house, you could sell it to all sorts of people and if they pay cash then you wouldn't need this. So, the variance is really being asked for because you are going through a bank. Mrs. Hart explained I don't want to see



that house destroyed in any way as it is a beautiful house. If you make it a business you would have to be ADA compliance and that would mean changing the structure. Chairperson Jancura advised so really your variance goes to your financing, if you had different financing you probably wouldn't need a variance. It sounds like it is your bank that is requesting this. Member Wright stated it has to do with you are asking us to grant spot zoning, a change of the zoning of that particular lot/property within what has been rezoned as a business district. That is something that we are trying to discourage very much so because it is a very slippery slope once you begin to start spot zoning because then people want favors as we have done it in the past. The point is if you had a cash buyer, you don't have to worry about this or you need to find another lender with different underwriter requirements. Council Representative Radeff advised this lady has come before Council and explained the situation and we all sat there and tried to come up with a way that she might get the property and it didn't seem like it was possible with the bank that she could get this house unless this could be switched. Everyone on Council was for it being allowed to go through so that she could get the loan to buy the house because it is an old house. It is one that I think Council didn't feel it was one that they wanted to lose and they weren't really understanding what the thought process was. Also, with the 30% destroyed obviously, it loses its non-conforming use. So, this is what Council has suggested to do, come and get the variance so that she could buy the house. So, this is why she is taking this avenue and I just wanted to make clear that everyone on Council was for allowing this step. Member Tatter stated what I would like to add because of that statement is that this Board has different criteria and different requirements by state law then Council may have. One of those criteria is the problem not be created by the person asking or the entity asking for the variance. The reality is by your asking for a residential loan, you are creating this problem and it is not anything that the city has done. There is no special use to be allowed because in 1981, residential use is permitted and this was repealed by city ordinance passed on July 14, 1981. So, you cannot in any way change the zoning on this other than through a variance and variance would not be allowed under the unnecessary hardship because you are creating. Although, it sounds similar but it is different from the previous case, you are creating a hardship because you are trying to obtain a residential. I appreciate what Council and anybody else says and I agree, keeping the property like it is, it is a beautiful property. Mr. Kolesar advised it was built in 1900. Member Tatter asked you mentioned your brother in 1979, is he still the owner? Mr. Kolesar answered I inherited it, he passed away. He advised of the information he had been given and repairs and time he had put into it. There was a brief discussion of possibilities. Member Harper advised I just don't see what the big deal is, I mean it is a residence. Chairperson Jancura answered but it is in a B1. Council Representative Radeff advised in speaking with Law Director Graves, he had

advised the main issue is insurance and that even if it is a cash deal no insurance would insure it for this. So, it is not a matter of go get a cash deal or 20%, it is an insurance issue and that was also discussed at our meeting with Mrs. Hart. Chairperson Jancura stated so if we give it the variance, it can be used? Council Representative Radeff answered correct because anything over 30% the house has to turn into a business because no one is going to insure this because you are not going to be able to rebuild. Mr. Kolesar advised of what Law Director Graves had advised him. Chairperson Jancura suggested to table this issue until her father gets back in town as he will be the owner. There was a brief discussion of contingencies' and other issues mentioned above. Law Director Graves asked Mr. Kolesar, do you have an issue with this application? Mr. Kolesar answered no, she is perfect for this house. Law Director Graves advised procedurally, I would think that we could go forward since the owner is here and he would certainly have standing to apply for this and he is basically, saying I am verbally making my own application for the same thing. He is the owner. Chairperson Jancura continued with history of Mr. Kolesar's brother purchased and did not know it was a B1, so he inherited the house when his brother passed. She asked why can't anybody get a mortgage on this house? Law Director Graves answered this property is what is known as existing non-conforming and what that means is the house was lawfully built and complied with the zoning at the time when it was built. However, at some point, the zoning classification changed and I believe that was 1966. So, in 1966 the powers that be in Sheffield Lake at that time decided that this should be a business district and I don't know if there was any opposition on the home-owners part at that time or if they were compensated in any way. So, whatever happened, this single-family residential home came existing non-conforming and that means it is basically grand-fathered and the house can remain as a single-family residence so long as it is continued to be used that way. It can even be expanded up to 10% increase one time. Here is the problem, our code says that if the property is damaged or destroyed to more than I believe 30% then it would have to be reconstructed to comply with current zoning. So, if the house were to burn to the ground, they could not rebuild the house, it would have to be a business. That is why she can't get anybody to insure it and she can't get a loan because no one will guarantee this because if the house burns down it can't be rebuilt. Even if we were to change the code to if it was damaged to less than 75%, she basically needs 100% that it can be rebuilt. But I don't think it can be rechanged because that would apply to the whole city in any non-conforming situation. You know, if it burns down you could always rebuild it. So, in this case in order to guarantee enough to the bank and the insurance company that if the house were to burn down that it could be rebuilt, there has to be some ability for that house to be rebuilt. The only solution that I could come up with is a use variance. The house as it stands today has no viable economic benefit without the variance because this person who has

put a lot of money into renovating the house basically could never sell it. He is just going to have this house forever until one day he just abandons it or it falls down because I can never be transferred because nobody will loan a buyer money or insure it. This, by the way, if the Board were to grant this use variance, it would in no way preclude a future buyer from putting a business there. It is still zoned B1, it just has a use variance for this house. If someone said I want to buy it and put a future there, they could tear the house down and put a business there and that would comply with current zoning. This would just enable the house to continue to be there and just as it is now is a non-conforming use. It is just if the house would come down by an act of God that it could be rebuilt, so that a buyer could get a loan and get insurance. This is not spot zoning, it is a business district. City Council could take this parcel and rezone it residential right in the middle of a business district and that would be spot zoning. Member Wright asked for explanation of a use variance and the spot zoning? Law Director Graves clarified the use variance just allows what is already there to be allowed to continue if it were to burn to the ground. It is already grand-fathered in and already non-conforming, either he or she can have this house there as long as they continue to use it. The problem is if it were to be destroyed, could they rebuild it. Member Wright stated so it remains zoned B1 but we grant the use variance so she can basically get insurance for the house. Law Director Graves concurred and added this is a somewhat unorthodox request and it is not even a typical situation where you would see a use variance. But it is the only way that I could come up with that they could have a potential resolution without having basically that there is no way they could even sale the house or have Council rezone this one parcel. They are really stuck and I don't know how else to say it. Member Tatter asked if we give a conditional for a specific period of time such as the ownership by her Father, if that is a conditional for a specific period of time then she will be facing when she wants to sale the property. Law Director Graves advised variances, by their very nature run with the land. When you see a conditional variance, usually it is where they have to do certain things. You know, we will give you this variance but we want you to put up landscaping or we want you to do certain things as a condition of that variance. You don't really see variance with time limits on them, like we will give you a variance for a couple of years. Member Tatter stated we would be creating a problem, just delaying the problem. The other question that I have is the idea that the insurance will not give insurance on it so the bank will not make a loan, is that the applicant creating the problem or could it be considered the applicant creating her own hardship. Law Director Graves answered I don't think so because it is not anything of her doing and I am not even sure that she walked in with this being a cash deal that this still wouldn't be an issue. Even if she walked in and paid cash with no loan, she probably still could not get any insurance on it. Chairperson Jancura asked I would like to give the variance to Mr. Kolesar; the owner because



if this transaction does not go through, you still have a variance and you are not having this issue anymore. Your house has a variance to be R1 and to continue, so if something happens with this transaction then you can just go and find another buyer and you won't have to come in front of us anymore. Rather than grant the variance to Mrs. Hart, I would like to grant the variance to the property owner. Law Director Graves answered I think that is a good idea. I would rather have the variance go with the land and not with the contract. Mr. Kolesar answered I think that is a good idea and thank you. Law Director Graves asked the audience, is there anyone who would be in opposition of this? No voices were heard. Law Director Graves advised for the Board, for anyone to appeal they would have to be here and participate in the proceedings and express their opposition. \*Motion by Harper/Second by Reilly to amend the application to reflect the applicant to Mr. Kolesar. Yeas All. Chairperson Jancura advised the application has been amended to reflect Mr. George Kolesar as the applicant and so the variance will be granted to him and his capacity as current owner of the property.

\*Motion by Harper/Second by Reilly to close the discussion. Yeas All. \*Motion by Harper/Second by Reilly to approve the use variance to the current owner Mr. George Kolesar with a finding of unnecessary hardship. ROLL CALL FOR APPROVAL: Yeas All – Wright, Tatter, Reilly, Harper and Jancura.

**OLD BUSINESS: None.**

**NEW BUSINESS: Proposed ordinance language;** Chairperson Jancura advised considering we need a company to come in and redo all of our ordinances, I think we should probably take that off. Law Director Graves updated the Board, the complete rewrite of the Avon Lake Planning and Zoning code is winding down. They are doing it in conjunction with the comprehensive land use plan but that is a separate thing. The total rewrite of the code with community consensus, I think the total on that is between 60,000 and 80,000 and that is with hiring an outside consultant to perform that service for the city. So, that is just what you are looking at for a consultant to do it, to do that well that is probably what we are looking at.

**REMOVE.**

Chairperson Jancura advised Member Tatter would like to resign his post. So, if any of you have names please submit to the Mayor as he makes the appointments. She asked could he be kind of a non-active member. If we needed someone and we could use him. Law Director Graves advised that actually is a good idea in some communities, they have what is called alternative members.

**CITIZENS COMMENTARY: None.**

**MEETING ADJOURNED:** With no further business before this board, \*Motion by Harper/Second by Reilly to adjourn at 8:20 pm. Yeas All.

**CLERK OF COMMITTEE AFFIRMATION:** This Meeting Of The City Committee Of The City of Sheffield Lake, Ohio Was Held and Conducted Under

All Rules and Regulations Governing The Sunshine Laws Of The State Of Ohio  
As They May Apply. All meetings are recorded and available in council's office.

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CLERK OF COUNCIL

*Kay Fantauzzi*

I, Kay Fantauzzi, duly appointed Clerk of the Zoning  
Board of Sheffield Lake DO HEREBY CERTIFY that  
this is a true and exact copy of the Minutes of the  
Zoning Board of Appeals meeting of February 21, 2019.

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CHAIRPERSON

*Diana Jancura*

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PRESIDENT OF COUNCIL

*Rick Rosso*