

**PLANNING COMMISSION  
CITY OF WILLOUGHBY  
SPECIAL MEETING  
SEPTEMBER 27, 2012  
MINUTES**

**PRESENT:** G. Merhar; C. Cox; B. Irvine, Chairman; B. Fiala; Ken Kary  
**OTHERS:** Mayor Anderson; John Wiles, Law Director; Mike Germano, Ass't.  
Law Director; Jim Sayles, City Engr.; Richard Smith, Chief Bldg.  
& Zoning Inspector; Harry Siskind, Chairman BZA; Greg Patt, Bruno  
Frate, BZA; Joseph Palmer, BZA; BZA; Betty A. Nardelli, Secretary

**Chairman Robert Irvine called the special meeting to order at 6:00 p.m.**

**WORK SESSION**

The purpose of this work session is to discuss a proposed amendment to **C.O. 1109.09(e) "Limitations on Variances"**. The proposed amendment will permit the Board of Zoning Appeals to consider appeals for relief of yard setback regulations based on appellant hardship and/or practical difficulty rather than limit the appellant to a maximum of 20% of the required setback.

Chairman Irvine asked John Wiles, Law Director, to open the discussion.

Mr. Wiles explained a memo August 27 to PC that was precipitated by a case that was appealed to Lake County Common Pleas Court out of BZA meeting applying the "20% rule". An appellant applied for an appeal to replace an existing driveway that was on or near his side property line. Appellant was informed by the BZA that, due to the limitation of the "20% rule" BZA was not able to grant the appeal to install the replacement driveway in the same location as the existing driveway. Appellant appealed to Court of Common Pleas successfully overturning C.O. 1109.09(e) "Limitations on Variances".

Mr. Wiles explained the "20% rule" is a number with no rationale or justification and is arbitrary and capricious. Since 2007 there were 10 cases where the C.O. 1109.09(e) was ignored. Inconsistency is not defensible in court. This doesn't mean all variances have to be granted but BZA can apply sound judgment based on guidelines already in place in C.O. 1109.09(b) (1) through (9). A draft of proposed legislation was previously submitted to Planning Commission.

BZA Chairman Siskind stated the 20% rule helps BZA in guidance and thought process. Chairman Siskind is concerned about consistency. Doesn't agree with zero setback even if neighbor agrees. He is also concerned about the administration overturning BZA decision. Mr. Wiles explained the administration has no authority to overturn BZA decisions. A BZA decision can only be overturned by appeal to Court of Common Pleas.

Mayor Anderson stated he has a strong opinion regarding the current variance restriction. Willoughby citizens deserve the right to appeal. If the laws in place don't make sense in their particular case because of a hardship or practical difficulty we don't force our citizens to go to the Court of Common Pleas to obtain a variance. That's why the city has a Board of Zoning Appeals to consider a citizen's request based on their particular hardship or practical difficulty. If the city has a law on the books that doesn't make sense it should be changed.

Chairman Irvine asked if there is a law on the books that permits BZA to grant a variance request beyond 20%. Law Director Wiles stated there is no such provision. Chairman Irvine explained Planning Commission wants to be consistent in making their decisions so applicants don't take advantage of inconsistent decisions. If an applicant is granted a favorable decision and another applicant with similar request is not, a potential court appeal to overturn is created.

Joseph Palmer stated his problem with the rule is inconsistency. He agreed that there should be guidelines. Mr. Wiles said the guidelines are set forth in ordinance 1109.09 paragraph (b). If BZA considers each requirement in this section, and makes a determination to grant or not grant a variance, they have based their considerations on findings of fact which is defensible in court.

Chuck Cox stated he believes eliminating the 20% rule would be going down a slippery slope to allow greater allowances.

Joseph Palmer stated the board has used the 20% rule to limit garage sizes. The 20% number gets stuck in member's minds even though it only applies to setbacks.

Bob Fiala stated applicants' don't present their case well sometimes. Mr. Wiles stated BZA members are very good at helping applicants through their appeal process.

Mayor Anderson stated from the administration standpoint the concept of the 20% is wrong. Recommendation is that the 20% be eliminated.

Bob Fiala asked how BZA members feel about eliminating the rule. Mr. Patt stated he is in favor. Mr. Palmer said the board tries to be consistent but he agrees an arbitrary number like the 20% rule is indefensible.

**The proposed amendment will be considered at the October 11, 2012 for Planning Commission consideration.**

There being no further business the special meeting closed at 6:45 p.m.

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Robert Irvine, Chairman

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Richard Smith, Chief B & Z Inspector