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The Board of Zoning Appeals (BZA) met in the Council Chambers at 5:30 p.m. Members present: Hoffmann, Huskey, Kappas, Klapper and Throckmorton.

**APPROVAL OF MINUTES:** March 2019

**\*\*Kappas moved to approve the March 2019 minutes. Throckmorton seconded. Motion carried by voice vote.**

**REPORTS, RESOLUTIONS AND COMMUNICATIONS:**

Scanlan addressed the fact that some members of the BZA received an email from a member of the public regarding CU-07-19 (*Matthew Francisco and Selma Sabanovic – 512 W. Howe St.*). This particular letter outlined an opinion about this petition. Being that the BZA is a quasi-judicial body, members of the BZA are not allowed to have ex parte communication with members of the public. The BZA should base their opinion on everything that is discussed during the actual hearing. Scanlan said to her knowledge none of the Board members actually responded to this person. In addition, Staff let this person know that they would need to come to the public hearing to voice their opinion.

All members of the BZA went on record as saying they did not respond to this particular email.

► *Barre Klapper has recused herself from the first petition—V-01-19 because she is an immediate, adjacent neighbor. Klapper will rejoin the Board for the last two petitions. At this point, Jo Throckmorton (Vice President) will chair the meeting.*

**PETITIONS:**

V-01-19      **Malcolm Dalglish**  
1111 E. Wylie St.  
Request: Variance from side yard setback standards  
Case Manager: Eric Greulich

Jackie Scanlan presented the staff report. The petitioner is requesting a variance from side yard building setback standards, and an architectural standards variance from permitted roofing materials. The petitioner is requesting permission to have a 3-foot side yard setback instead of the required 6-foot side yard setback to build an attached carport on the east side of the existing home. The petitioner is also requesting permission to use polycarbonate roofing; hence the variance request for that. The property is located at 1111 E. Wylie St., which is a core neighborhood. The carport would extend 9 feet from the house. The house is currently 12 feet from the side yard setback, so the proposed carport would be 3 feet from the side property line. The petitioner is asking to use polycarbonate roofing to cover the carport. The petitioner submitted examples of possible corrugated polycarbonate that they would use on-site. This type of material is

not allowed in the zoning district per the Unified Development Ordinance (UDO). This request went to the Historic Preservation Commission (HPC); it's located in the Elm Heights Historic District. The HPC issued a Certificate of Appropriateness (COA) to allow the carport and the proposed material at their March 28<sup>th</sup> hearing. Regarding the setback variance; Staff finds the strict application of the UDO would result in practical difficulties in this situation; this has to do with the location of the house and existing parking area. It would not allow a structure to be constructed over the parking area to protect the vehicle which is a common accessory/addition on houses in this area and all over town. The location of house and driveway; because the driveway comes in at a perpendicular angle it's unique and not always found on properties of this size so it makes the carport parallel to the house necessary. Scanlan stated it's very hard to justify an architectural variance for materials. Staff was unable to find practical difficulty or unique circumstance on this single-family house. No peculiar condition was found that would require that polycarbonate roofing be necessary. The UDO provides for multiple material choices for roofing in this area, anyone one of which could be used and more useful, and more durable than what Staff has found polycarbonate to be in the past. Based upon the findings outlined in the staff report, the department recommends that the BZA adopt the proposed findings and approve the variance for side yard building setback standards, and deny the variance for the requested roofing material.

Malcom Dalglish, petitioner, spoke about his petition and why this is a unique situation. He presented his reasoning behind the use of polycarbonate (translucent) for the proposed roofing material. One reason is for the natural, morning sunlight that comes into the first floor of the home. Using shingles would only darken the home on the first floor. In addition this material is easier to replace, maintain, and easier to hose down or wash off in their elderly years. He believes this is a key element to the overall project.

Hoffmann asked Staff about the permitted options in the code. Scanlan said the options are shingles, shakes, tile, standing seam metal or V-grain metal with the last two being similar. Hoffmann questioned the use of glass. Scanlan responded that glass is not a permitted material. Discussion ensued between the BZA and Staff regarding the use of polycarbonate versus other material, including what types of materials might be permitted in the future given the new UDO that is currently in process. Scanlan responded that this material has not been proposed as one to be allowed in the RC (Residential Core) or comparable zoning district. It might be something to revisit in the future given that polycarbonate is probably different now than it was years ago. Huskey asked what the process would be moving forward should the Board decide to deny the variance for the material. Scanlan explained the petitioner could file for a building permit and use one of the approved materials as outlined in the UDO, or there could be an appeals process to the BZA's decision but that would go into the judicial realm. Throckmorton asked about Staff's rationale behind recommending approval of the side yard setback variance. Scanlan explained that the function of what the petitioner is asking for is for a carport. There is nowhere else on this lot that is available that meets requirements. The least obstructive place to put the carport is where they're asking to place it with the 3-foot encroachment. Kappas asked the petitioner how he would maintain the structure if the polycarbonate were to begin aging. Dalglish said this area only has a couple hours of direct sunlight which would extend the life of the material. If it ever needed to be replaced it would be easy to do so.

**Public comments in favor of the petition:**

Chris Sturbaum from the HPC; Duncan Campbell (Advisory Member of the HPC) who is an expert on architectural compatibility, and Asa Paley.

Judy Klein, petitioner's wife, explained in further detail why it's important for them to have a carport. Overall it's very challenging living without a garage and a functional driveway; they share a drive with their neighbor. A carport would allow a sheltered area going into their basement and for the ramp that will be included as part of this project. The proposed material also meets the requirements of the Historic District. She urged the BZA to approve their request.

Discussion ensued about the historic nature of the home including the fact that the HPC not only approved the polycarbonate material, but actually preferred it to all other materials. Throckmorton asked if there were any material options in the current code that would provide for light to pass through. Scanlan said no; there is no roofing material.

**\*\*Hoffmann moved to approve the location variance (side yard setback) based on the written findings outlined in the staff report. With respect to the materials variance; change the written findings with respect to criterion #3 and say, "practical difficulties will be found if the material variance is denied because the house has the peculiar condition of being a historically designated house, combined with the location of this structure and the specific recommendation by the HPC to allow the use of this material and not any of the materials that are approved in the code." This is very specific to the situation of this property and the fact that the HPC specifically wants this material. Kappas seconded. Motion carried by voice vote 4:0—Approved.**

► *Let the record reflect that Barre Klapper rejoined the Board.*

CU-07-19      **Matthew Francisco and Selma Sabanovic**  
512 W. Howe St.  
Request: Conditional Use approval to allow a detached accessory dwelling unit (ADU)  
*Case Manager: Eric Greulich*

Jackie Scanlan presented the staff report. The property is located at 512 W. Howe St. and is part of the Prospect Hill Historic District. The petitioner is requesting conditional use approval to allow the construction of a detached garage to be used as an Accessory Dwelling Unit (ADU) in the Residential Core (RC) zoning district. The site currently contains one single-family residence; the owners live in the existing home. The proposed 2-story (ADU) would face Smith Ave. on the north side of the property and would also have a garage on the ground floor. There is an existing driveway that accesses the property from Smith Ave. that would be relocated to access the new garage. The Accessory Dwelling Unit would be approximately 400 sq. ft. and have one bedroom. The garage would be finished with a cement composite lap siding to match the existing residence. The Historic Preservation Commission (HPC) reviewed this petition at their March 28<sup>th</sup> meeting and found that it meets the Historic District guidelines and subsequently issued a Certificate of Appropriateness—COA-19-11 for the construction of the (ADU). Based upon the findings outlined in the staff report, the department

recommends that the BZA adopt the proposed findings and approve the conditional use, including the following conditions:

1. The conditional use is approved for the accessory structure as submitted only.
2. Petitioner shall record a commitment to satisfy 20.05.0333(I), indicating that the use approval shall only be in effect as long as the owner(s) of record occupies either the house or the ADU as his or her primary residence. If the ADU approval is revoked any time, the ADU must be removed from the property.
3. Petitioner shall submit a copy of the property tax homestead exemption for the property.

Marc Cornett spoke on behalf of the petitioners. This plan has been in the works for several years. He said they have received support from the neighborhood association. The plan was presented to the Historic Preservation Commission (HPC) at their March meeting. However; they didn't like the Smith Ave. appearance and proposed more of a "front door" appearance along Smith Ave. To that end, their request was continued at the March meeting and they came back with the current proposal. A copy of that elevation was included as part of the BZA's packet. Cornett said in the current plan they have respected the Smith Ave. streetscape, and the wishes of the Historic Preservation Commission. As it turns out, it brings the scale down even further with the addition of the gable dormer and a porch. The zoning standards for this conditional use have been met. They look forward to building the project.

Hoffmann asked Staff about a 2013 proposal that was referenced in a letter that was part of the BZA's information packet. Marc Cornett (petitioner's representative) explained that the owners were interested in doing a granny flat back in 2013 and they received support from the neighborhood association to do that. However; the struggle with the Planning Department was the fact that there wasn't an (ADU) ordinance back then, and it was hard to find a *peculiar condition* to support that in a single-family neighborhood. Cornett added that Smith and Howe are two frontages for through lots. Back then he and the petitioners talked about subdividing the property to more replicate the balance of the properties on the block. Cornett added that all of those lots are subdivided but of them didn't start out being subdivided. Cornett found out through research that most of the lots on the eastern end had been through lots, and over time they had become subdivided and infilled. Klapper asked the petitioner to explain their decision about where to locate the proposed structure rather than placing it being elsewhere along the back of the property line. Cornett said originally it's where the barn was located. Historically, the barn was a little bit closer to the west property line. There is also two power poles. In order to get the driveway in, they have to be to the east or the west. There is also existing trees to the middle of the power pole, including an existing Walnut tree to the west. Historically, appendage buildings would not have been placed on the middle of the site; they would have been close to property lines to retain usage of the yard. With that in mind, they were trying to reuse those same patterns.

Matthew Francisco has plans to work in the garage quite a bit. The yard is basically on that side and he wants to have easy access to the yard when his children are playing outside. It also makes sense to have open space for the family to use.

**Public comments in favor of the petition:**

David Wierhink lives along Smith Avenue and he's in favor of the conditional use and urged the Board approve it. Doug Wissing owns property to the west in Prospect Hill and he has concerns about the proposed height of the garage (ADU). He isn't opposed to the (ADU) just the placement of it.

Cornett explained how the existing power poles make access tricky. Cornett explained if they move much further to the east, the garage door flips sides and then it faces west, which puts the active elevation of the garage for any workshop criteria, car repair, or car sitting on that side of the building. He said they are significantly further away than what code requires. It's actually a one and one-half story building. The peak is the ultimate height of the building. The dormers on both sides are significantly farther to the east than the footprint. Cornett closed by saying it's only tall for approximately one-fourth of the façade.

Hoffmann asked Staff if they discussed the location of the structure. Scanlan responded that she didn't know if Eric (Greulich), Senior Zoning Planner, who previously worked on this case had that conversation with the petitioner or not. In this case, concerns were raised by the immediate neighbor. Scanlan added that Staff often speaks to the petitioner to see if they would be willing to accommodate certain requests.

**\*\*Hoffmann moved to approve CU-07-19 based on the written findings, including the three conditions outlined in the staff report. Kappas seconded. Motion carried by voice vote 5:0—Approved.**

V-11-19      **John Bickley and Sandra Bonsib**

1003 W. Howe St.

Request: Variance from side and rear yard setback standards for the construction of an addition and an attached garage to a single-family home.

Case Manager: Ryan Robling

Ryan Robling presented the staff report. The property is located at 512 W. Howe St. and with the Prospect Hill Neighborhood. The petitioners are requesting variances from side and rear yard setback standards for the construction of an addition and an attached garage to their one-story home. The house is situated on the northwest corner of the lot and has an existing side setback of 4 feet from the western property line. The proposed addition is 528 square feet; the proposed attached garage would be 532 square feet. The proposed garage would utilize the existing driveway which has an entrance from the alley to the west. The proposed garage would be located 4 feet from the western side property line and 6 feet from the southern rear property line. The Unified Development Ordinance (UDO) requires a minimum side setback of 6 feet and a minimum rear setback of 25 feet for primary structures. The east and west property lines are considered side yards and the property line to the south is considered the rear yard. The proposed garage would encroach 2 feet into the western side yard setback and 19 feet into the southern rear yard setback. The petitioners received a *Certificate of Appropriateness* (COA) at the Historic Preservation Commission hearing on March 28, 2019. Staff found no practical difficulties in the use of the property. There are no peculiar conditions that require variance from the setback regulations. Staff recommends denial of the variance(s) request based on the written findings outlined in the staff report.

Cornett explained that Prospect Hill is a dense neighborhood with a lot of interesting site conditions. The steep grade is kind of a “no car zone” for getting in to a garage from the alley. With the design; he said they have intentionally made a courtyard to make an indentation in the property to break the two pieces into half—as if they are attached, although physically connected. This auto courtyard allows a vehicle to pull in to the side off of the alley, to get into a parallel situation to pull into a stacked garage (2-cars long) before the grade falls away.

John Bickley and Sandy Bonsib added some additional comments about why he and his wife decided to attach the garage, including discussions they had with their architect (Marc Cornett) to come up with their current proposal—to have the garage attached to the home so they can age-in-place.

Discussion ensued between the BZA and the petitioner regarding the location of the garage being attached versus detached, including the possible elimination of the carport and moving the garage up and then coming in to the garage from the south. Cornett indicated that moving the garage to the south is not an option because the size of the garage would have to be reduced in size. Throckmorton asked about the square footage of the existing house. Cornett responded it’s approximately 1400 sq. ft. Throckmorton said it appears the proposal is being complicated by the 500 sq. ft. proposed addition. Klapper wondered if any consideration was given to having a stacked garage. Cornett said the petitioner would like to have the option for a shop, including the flexibility to have the parking.

**Public comments in favor of the petition:**

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(First name inaudible) Byder, Jessica Griffin, Clinton McKay (He also submitted a letter of support from partner, Peter Roeth—1002 W. Howe), Douglas Peach, Sandy Welch, Glenda Murray, Tracy Gates, Chris Sturbaum, and Barbara Winn.

Sandra Bonsib, petitioner, said they really need to have a two-car garage because they have two cars. The addition is necessary because the extra space is needed.

Hoffmann outlined the issues the Board is being asked to decide upon. He believes it comes down to the “practical difficulties” in the use of this property that are due to “peculiar” conditions. In his opinion, there are practical difficulties in the use of this property. In this case, what the petitioner is seeking is very much compatible with what is surrounding in the neighborhood. The question is whether there is something that is peculiar to the property. Hoffmann believes there are five ways in which this property is peculiar—not unique, because there are other properties that share some of the same characteristics. But the conditions are certainly not normal, they are peculiar. **#1** The fact that there are two alleys, which limits the usefulness of the remainder of the lot (specifically the yard space); **#2** MD zoning and established MD business that touches the southwest corner of this property; **#3** The grade change which limits the possibility of accessing any garage attached or detached from the south alley; **#4** The existing primary structure is already closer than 6 feet from the property line which is the setback for primary structures in the current code; **#5** The fact that the HPC has already approved the proposed addition and garage in the proposed location.

**\*\*Hoffmann moved to approve V-11-19 based upon the aspects of the property as stated above #1 through #5 as it pertains to practical difficulty, including the written findings outlined in the staff report, but excluding the “practical difficulty” criterion. Kappas seconded. Motion carried by voice vote 5:0—Approved.**

Meeting adjourned.